

Domestic analogy in proposals for world order,
1814-1945: the transfer of legal and political
principles from the domestic to the international
sphere in thought on international law and relations

HIDEMI SUGANAMI

Thesis submitted for the Degree of Ph.D.
The London School of Economics and
Political Science, University of London

1985

A B S T R A C T

The ways in which legal and political principles obtaining within states can profitably be transferred to the relations of states are among the contentious issues in the study of international relations, and the term 'domestic analogy' is used to refer to the argument which supports such transfer. The 'domestic analogy' is analogical reasoning according to which the conditions of order between states are similar to those of order within them, and therefore those institutions which sustain order within states should be transferred to the international system.

However, despite the apparent division among writers on international relations between those who favour this analogy and those who are critical of it, no clear analysis has so far been made as to precisely what types of proposal should be treated as exemplifying reliance on this analogy. The first aim of this thesis is to clarify the range and types of proposal this analogy entails.

The thesis then examines the role the domestic analogy played in ideas about world order in the period between 1814 and 1945. Particular attention is paid to the influence of changing circumstances in the domestic and international spheres upon the manner and the extent of the use of this analogy. In addition to the ideas of major writers on international law and relations, the creation of the League of Nations and of the United Nations is also examined.

The thesis then discusses the merits of the five main types of approach to world order which emerge from the preceding analysis. Each embodies a distinct attitude towards the domestic analogy. The thesis shows that there are weaknesses in the approaches based on the domestic analogy, but that ideas critical of this analogy are not entirely flawless, and explores further the conditions under which the more promising proposals may bear fruit.

Table of Contents

Abstract	2	
Table of Contents	3	
Acknowledgements	4	
Introduction	5	
Chapter I	The Domestic Analogy Debate	20
Chapter II	The Range and Types of the Domestic Analogy	40
Chapter III	Some Nineteenth Century Examples	66
Chapter IV	Contending Doctrines of the Hague Conferences Period	91
Chapter V	The Impact of the Great War	116
Chapter VI	The Effect of the Failure of the League on Attitudes towards the Domestic Analogy	137
Chapter VII	The Domestic Analogy in the Establishment of the United Nations	165
Chapter VIII	An Assessment of the Proposals: Part One	186
Chapter IX	An Assessment of the Proposals: Part Two	221
Conclusion	250	
Notes	264	
Bibliography	336	

Acknowledgements

This thesis could not have been written without the encouragement and criticisms of my two successive supervisors, Professor Alan James and Mr. Michael Donelan; an enduring interest in the subject shared by Dr. John Vincent; and, above all else, without the understanding and unselfish support given to me by my family in Japan. Dr. Andrew Linklater and Mr. Christopher Brewin were generous in taking time to comment on my first draft, as was Dr. Vincent whose timely criticisms of my final draft enabled me to make necessary last-minute adjustments. Keele University gave me on three occasions a term's leave of absence which enabled me to continue my research. I am grateful to them all for having made it possible for me to initiate and continue my study, and at long last to present its outcome in the form of this thesis.

In the second and third years of my study as a research student at the London School of Economics I was fortunate enough to receive the Leverhulme Studentship and the Noel Buxton Studentship in International Relations. I am grateful to the trustees of the funds for their generous support. I would also like to thank Mrs. Ann Williams of the Education Department, Keele for having typed the whole manuscript with great speed and efficiency.

Introduction

According to Hans Morgenthau, '[t]he application of domestic legal experience to international law is really the main stock in trade of modern international thought'.¹ Charles Beitz made a related point when he remarked: 'Most writers in the modern tradition of political theory, and many contemporary students of international politics, have conceived of international relations on the analogy of the [Hobbesian] state of nature', and that '[p]erceptions of international relations have been more thoroughly influenced by the analogy of states and persons than by any other device.'² What these writers are pointing to is the prevalent influence upon international thought of what is in this thesis called the 'domestic analogy'. Hedley Bull has given a brief account of this analogy as follows:

[It is] the argument from the experience of individual men in domestic society to the experience of states, according to which the need of individual men to stand in awe of a common power in order to live in peace is a ground for holding that states must do the same. The conditions of an orderly social life, on this view, are the same among states as they are within them: they require that the institutions of domestic society be reproduced on a universal scale.³

This analogy, however, has had its critics, Bull prominent among them. As will be indicated by a brief survey in Chapter I, the validity or otherwise of the domestic analogy has in fact been one of the central issues in the tradition of speculation about how best to organize the world.

Nowadays, to be seen to be using the domestic analogy is not a very respectable thing among the professional writers on International

Relations. This analogy is associated with 'all that was wrong' about the theory and practice of international relations before E.H. Carr wrote a well-known critique of the League-of-Nations approach to the problem of world order.⁴ There is, moreover, something less than fully satisfactory about the use of analogy in what aspires, within the limits of possibility, to be a scientific pursuit. In addition, those who endeavoured to win for International Relations the status of an academic discipline saw in the modern states-system unique qualities which, in their judgement, could best be appreciated if the habit of thought cultivated for the understanding of domestic social phenomena could be discarded.⁵

The unpopularity of the domestic analogy within the discipline of International Relations is particularly pronounced from about the late nineteen-thirties, although a tendency to regard inter-state relations as fully comprehensible only through the rejection of this analogy had existed among some political philosophers and legal theorists long before International Relations came to be treated as a special branch of academic enquiry.

Against the apparent intellectual legitimacy of the belief in the defectiveness of the domestic analogy particularly among the academic specialists of International Relations, there lingers the notion that perhaps some form of domestic analogy is acceptable after all. More strongly, it is sometimes suggested that we cannot do away with the domestic analogy altogether since some concepts we use in theorizing about international relations must necessarily originate in our domestic social experience.

As recently as in 1982, Andrew Linklater stated that 'a progressive development of international relations necessitates the transference of understandings of social relations from their original domestic

setting to the international arena.' And Moorhead Wright, in his review of Linklater's book, criticized him for a heavy reliance on the 'problematic analogy between domestic and international society.'⁶

Thus, if what may be called the 'domestic analogy debate' can be said to continue today, what is curious about this 'debate' is that no attempt has been made so far to clarify what precisely the 'domestic analogy' is. Thus, although a cursory survey tends to create the impression that the contributors to this debate are divided into those 'for' and 'against' this analogy, such a clear division cannot be presumed since what is to count as an instance of this analogy has not been clearly defined. Hedley Bull, as we noted above, has given a brief explanation of what this analogy is, but, as will be revealed in Chapter II, his definition is far from unambiguous.

In Chapter II, therefore, an attempt is made to analyse the concept of domestic analogy. This is done by examining the range and types of ideas for world order which this analogy may encompass. Particular attention is paid to arguments which are close to, or easily mistaken for, the analogy.

Chapters III - VII will then investigate in what ways the domestic analogy has been employed or rejected by thinkers on world order against the historically changing backgrounds in the domestic and international spheres.

The following passage from Hans Morgenthau's Scientific Man versus Power Politics most succinctly accounts for the periodization in terms of which the materials are arranged in Chapters III - V:

While domestic liberalism converted public opinion in the eighteenth century and conquered the political institution of the Western world during the nineteenth, it was not before the end of the Napoleonic Wars that important sectors of public

opinion demanded the application of liberal principles to international affairs. And it was not before the turn of the century that the Hague Peace Conference made the first systematic attempt at establishing the reign of liberalism in the international field. Yet only the end of the first World War saw, in the League of Nations, the triumph of liberalism on the international scene.⁷

If for 'liberalism' in the above passage we substitute its important manifestations such as 'constitutionalism' or 'the idea of the rule of law', the relevance of Morgenthau's remark to the present study will become clearer. Although the application of 'domestic liberalism' to international relations is not the only way in which the domestic analogy has been used, Morgenthau's periodization is useful for this study. This is because liberalism has been a major force in the field of activity which concerns this thesis although with the failure of the League of Nations and the decline in the credibility of nineteenth-century liberalism within the sphere of domestic politics, some important writers of the mid-twentieth century began to criticize the application of laissez-faire ideology to international relations.

Thus, in line with Morgenthau's periodization, we shall discuss in Chapter III the use of the domestic analogy in proposals for world order which were produced in the period after the end of the Napoleonic Wars and before the Peace Conferences at the Hague at the turn of the century. This was the period in which liberalism made advances within the domestic sphere while the international system, despite a number of ad hoc conferences under the Concert of Europe, remained relatively unorganized in terms of its formal structure. Chapter IV will examine the writings of the Hague Conferences period, in which, internationally also, there began a rapid development in the attempt to enhance the rule of law.

But the optimism of the Hague Conferences period was soon to be shattered by the outbreak of the Great War. The impact of this war upon the attitudes towards the domestic analogy and use of this analogy by those who were influential in the creation of the League of Nations will be examined in Chapter V.

The League of Nations, however, soon began to show its inadequacies, while, within the domestic sphere, old liberalism had lost much of its credibility. Chapter VI will therefore examine attitudes towards the domestic analogy in the face of the failure of the League, and explore what ideas were developed against the new international and domestic backgrounds. Chapter VII will then go on to assess which particular lines of thought discussed in Chapter VI shaped the new world organization, the United Nations, and examine what part the domestic analogy played in its establishment.

In the light of the recurrence of similar ideas across different historical periods as well as the diversity in the character of proposals which these periods have shown, an attempt is made in Chapters VIII and IX to classify proposals for world order into dominant types. Each of these types embodies a distinct attitude towards the domestic analogy, and within each type there are many different varieties. The assumptions and arguments which support these major types are examined in turn. Then, in Conclusion, the major approaches are put in perspective, and a further investigation is conducted on the conditions under which some of the more promising proposals may bear fruit.

Chapters III - VII may be considered as an attempt to write a history of ideas. In exploring the history of ideas in a relatively well-defined practice or discipline, such as physics, chemistry, mathematics, philosophy or theology, it is reasonable to confine our attention to the ideas of the leading practitioners in the field. It is, moreover,

relatively uncontroversial who these are. But in the area of activity which concerns this thesis, it is more difficult to agree on who the 'leading practitioners' might be, since it is not very much of an exaggeration to say that almost everyone has some ideas about how the world should be organized.

What this thesis aims at is to examine in some detail the attitudes towards the domestic analogy shown by a number of well-known writers on international law and relations in different historical periods since the early part of the nineteenth century up to the middle of the twentieth century. These writers have been chosen chiefly from those treated in major secondary works on peace projects. These include: F.H. Hinsley's Power and the Pursuit of Peace, Walter Schiffer's The Legal Community of Mankind, A.C.F. Beales' The History of Peace, S.J. Hemleben's Plans for World Peace through Six Centuries, P. Renouvin's L'Idée de Fédération Européenne dans la Pensée Politique du XIXe Siècle, Walter Phillimore's Schemes for Maintaining General Peace, and Theodore Marburg's Development of the League of Nations Idea. The writers from the more recent period discussed in this thesis are chosen from among those familiar to the students of International Law and Relations particularly in the English-speaking world.

The publicists whose proposals are examined in this thesis are those from the above, and other related sources, and they have been chosen because their attitudes towards the domestic analogy illustrate in an accentuated way the effects of the domestic and international circumstances against which proposals are formulated. However, in contrast to these writers' approach, and to redress the balance, those whose views of world order and attitudes towards the domestic analogy are relatively unaffected by the historical changes in the domestic and international spheres are also included in our survey. The views of

authors examined in this thesis may or may not be 'typical' of each historical period in the statistical sense: it is the distinctive features of their views that attract our attention.

None of the secondary sources listed above, with the exception of Beales' work, examines proposals after the creation of the League of Nations, and even Beales' book does not treat fully the period since 1919. This thesis, by contrast, devotes two chapters to the period between 1919 and 1945. The ideas of this period are particularly important since, as will be shown, they provided the bases of international thinking today. Since this thesis is concerned with the period between 1814 and 1945, proposals for world order produced after 1945 are not investigated in the following. However, those ideas expressed since 1945, which are of particular significance for the purpose of examining the validity of the domestic analogy in pre-1945 proposals for world order, will be introduced freely at various points in the following discussion.

Of the several secondary works listed above, Hinsley's and Schiffer's books are by far the most important in terms of their range and depth of analysis. The other items, with the exception of Renouvin's work, which, unfortunately, is only a short essay, are mainly descriptive in character. While these serve as a useful source of reference they lack the historical and analytical depth of the works by Hinsley and Schiffer. However, neither Hinsley's nor Schiffer's book is without certain shortcomings which this thesis endeavours to overcome.

The two chapters of Hinsley's work, dealing with nineteenth century proposals, which provide the basis of investigation for Chapters III - V below, contain a number of factual inaccuracies. Hinsley does not appear to have studied his sources with care in writing these chapters.

Since this is a rather serious accusation to make against a standard work by a distinguished historian, it may be permitted to substantiate the claim by enumerating some factual errors and inaccuracies encountered therein.

For example, on page 97 Hinsley implies that Cobden wrote in 1842 an essay entitled Free Trade as the Best Human Means for Securing Universal and Permanent Peace. Such a work is not found in Cobden's Political Writings, however.⁸ J.A. Hobson's book, Richard Cobden, the International Man, which Hinsley refers to in his footnote as his source of information regarding the alleged Cobden piece, reveals that 'in 1842 ... [Cobden] proposed to Mr. Ashworth the offering of a Prize Essay on "Free Trade as the Best Human Means for Securing Universal and Permanent Peace"'.⁹ It does not appear that Cobden himself wrote such an essay.

On page 103, Hinsley enumerates followers of Saint-Simon and their works. Among these he lists 'Pierre Leroux's Organon des vollkommenen [sic] Friedens (1837)'. It is curious that a Frenchman should choose to publicize his views in German. Hinsley's source is Renouvin's aforementioned essay, and this reveals that the work in German was in fact written by Johann Sartorius, a Zürich lawyer, who won for it the Geneva Peace Society Prize. Renouvin mentions this one paragraph before his reference to Leroux, and Hinsley somehow seems to have got badly confused.¹⁰

On page 134, James Lorimer is said to have proposed that a successful international organization must be based on the loosest possible bonds, and on page 136, he is said to have proposed an international legislature consisting of government representatives. Similarly, on page 135, J.C. Bluntschli is said to have proposed an international legislature of government delegates. As will be shown in Chapter III below, Hinsley's descriptions here are very inadequate and misleading. In addition, we

may note that Hinsley's use of the terms, 'international government', 'federal' and 'super-state' on pages, 134, 143 and 143 respectively, are not very precise.

On page 144, we find that in 1918 A.J. Jacobs proposed a 'world state', but that his idea consisted mainly of the prohibition of neutrality. A proposal so minimalist as this cannot at the same time suggest the creation of a 'world state'. Jacobs in fact never did. It appears that Hinsley got confused when he studied Phillimore's aforementioned work from which he gathered information about Jacobs' 1918 plan. Jacobs' ideas are treated by Phillimore straight after the proposal of August Schvan, to whom Hinsley also refers, and Schvan is said by Phillimore to have proposed a world state.¹¹

On page 145, we are told that Bryce's group envisaged the Executive and the Legislature as being dominated by the six European Great Powers, the United States and Japan, and Hinsley's footnote suggests that this information is based on page 143 of Hemleben's work. Not only is there no such point made on that page by Hemleben, but the Bryce Group never in fact proposed an International Legislature. Moreover, while the Great Powers were to be given a predominant role in the Council of Conciliation, the Bryce Group report explicitly stated that 'the functions of the Council are conciliatory only, and not executive.'¹²

While each of these may be a minor error, cumulatively they tend to undermine the overall credibility of Hinsley's exposition. Needless to say, care is taken in this thesis to present all the proposals to be examined accurately without relying on secondary sources as Hinsley has done.

Schiffer's work is without careless errors of the kind just enumerated. His argument, however, appears a little one-sided. The gist of his contention is as follows.

Ordinarily, the existence and the binding force of legal rules presuppose the state. But the Natural Law doctrine that there is law independent of any connection with a state made it possible to hold the view that the relations of states are governed by law despite the absence of universal state-like organization above the states. This idea was inherited by certain positivist writers despite their explicit rejection of the Natural Law doctrine. The essence of the modern patterns of thought concerning world organization is that international law and order can be maintained by a League-type institution, i.e., by an association of sovereign states which is not itself a state. Such a pattern of thought could not have arisen unless it had been assumed that there existed or could exist a legal order binding upon independent states. Such an assumption has its historical origin in the Natural Law doctrine, and, when combined with the idea of progress, contributed to the emergence of the League of Nations.¹³

It is true, as Schiffer points out, that Natural Law theorists advanced the idea that, despite the absence of a state-like organization, the relations of sovereigns or sovereign states were governed by a set of normative principles. It may also be true, although Schiffer does not show this historical link, that the Natural Law theorists' ideas initially helped sovereigns and their officials to accept in practice the notion that their mutual conduct was governed by the law of nations. It is also true, although Schiffer does not make this point precise enough, that unless such a notion had been accepted by the sovereign states themselves, it would not have been possible for anyone to argue that a League-type world organization could maintain law and order in international society.¹⁴ Unless international law were assumed by states to be binding upon them, no League-type organization could come into existence, for such a body would have to be constituted by a

treaty, and this would presuppose the principle of pacta sunt servanda embedded in the law of nations. Moreover, unless states believed that they were bound by international law, there could not be any international law to be maintained by a League-type organization. To this extent, therefore, we may agree with Schiffer in seeing the link between the doctrine of Natural Law and the modern approach to world organization as represented by the League of Nations.

Moreover, certain similarities are found between the prescriptions of the Natural Law writers and those of the advocates of a League-type organization. First, neither of them think the establishment of the world state as a necessary condition for world peace. Second, the advocates of the League-type organization favour the prohibition of the use of force by states or at least the circumscription of the conditions under which states can legitimately resort to force. This corresponds to the bellum justum principle of the Natural Law writers. However, not all Natural Law writers fully supported the bellum justum principle. Vattel, in particular, in effect abandoned it.¹⁵ Moreover, none of the classical Natural Law writers, even Grotius, argued that states have an obligation to aid the victim of aggression.¹⁶ It is precisely the absence of such an obligation in international society that many advocates of a League-type world organization were most concerned to rectify.¹⁷

However, in arguing for such a transformation of international society, what many of the schemers of world organization had in mind was the way in which domestic society is organized. Indeed, compared to the near universal, and conscious acceptance by the peace schemers of the assumption that what is needed in the international sphere is the borrowing of some basic organizing principles from the domestic sphere, the cases where they actually think of themselves as relying on the

tradition of Natural Law appear extremely rare.

The Natural Law theory, as Schiffer contends, may have made the modern idea of world organization possible. But, as this thesis will show, what actually shaped the idea of world organization, which when the conditions were ripe led to the establishment of the League of Nations and the United Nations in the present century, was the assumption that international society should become more closely analogous in its structure to domestic society. In what ways and to what extent international society should become more like domestic society was a question to which there were many different answers depending on how the 'domestic analogy' was used. And this in turn, as will be shown, often depended on the changing international and domestic circumstances under which proposals were formulated. Thus, to complement Schiffer's argument, this thesis contends that it is because peace-schemers in the period of our concern already lived in separate states, and were invariably familiar with domestic institutions, that they conceived of a world organization in the ways they did.

A line of argument similar to this contention was advanced by Hedley Bull in his 'Grotian Conception of International Society'. However, in this article Bull contrasts Grotius' De Jure Belli ac Pacis and Oppenheim's International Law as representing opposing attitudes towards the domestic analogy. Grotius, Bull maintains, makes important concessions to this analogy while Oppenheim's system is free of it.¹⁸ The juxtaposition of these two writers is not entirely satisfactory since one is concerned primarily, though not exclusively, to reveal Natural Law prescriptions while the other is concerned with the exposition of Positive Law.¹⁹ Had the Grotian Natural Law prescriptions been transformed into the Positive Law of Nations, then it would have made sense to compare that system with Oppenheim's, and to suggest

that the Grotian system was more analogous than Oppenheim's to a domestic model. However, as they stood, the two systems were incommensurate. More importantly, as will be shown later in more detail, it is doubtful whether the thought process of such early writers as Grotius involved analogical reasoning. At the same time, as will be noted, Oppenheim in his own proposals for world order did make a great deal of concession to the domestic analogy, which Bull has failed to note. Thus, Bull's work is also inadequate from the viewpoint of an accurate presentation of the history of ideas regarding the domestic analogy.

The authors whose ideas and proposals will be discussed in the following are chiefly from English-speaking writers on international law and relations, although, when helpful, German- and, exceptionally, French-speaking writers have been consulted. Thinkers from the English-speaking world have contributed much to the growth of international institutions, as well as to the development of International Law and Relations as academic subjects. Therefore, it is reasonable for us to focus our attention chiefly on these writers. Some prominent publicists on international law and relations in the English-speaking world, however, are Germanic in origin, and the study of their writings in some cases inescapably directs us to the works of other writers from the German-speaking world. This explains partly why a number of German writers, not very well known in the English-speaking world, are included in the following discussion.

The publicists whose ideas will be examined in the following are not confined to academic writers. Particularly in dealing with the impact of the Great War and the birth of the League of Nations, it is necessary to study the ideas of those who were close to the process of its

creation, and these include statesmen and government officials of the period. This step is indispensable, despite the general direction of this thesis to deal with academic writers, so as to reveal the extent to which the domestic analogy had guided the creation of the League. This in turn is a necessary step in the discussion of this thesis as will be revealed in Chapter VI. As it happens, some of the statesmen and government officials influential in the formation of the League were also academics or intellectuals, for example, President Wilson and General Smuts.

The episode of the creation of the United Nations will be discussed in Chapter VII in relation to the main patterns of thought which arose in response to the failure of the League. Here again, the ideas of those politicians and officials who directly influenced the eventual outcome will be investigated.

The main reason why the writers dealt with in this thesis are academics or intellectuals is that their ideas are relatively easy to identify through their publications. Moreover, their professional skill enables them to express their views articulately. Furthermore, unlike government officials, their views may be less directly influenced by the concern for a particular country's national interests. In other words, we may expect to find more genuine instances of 'proposals for world order' in their writings.

Naturally there are some academics and intellectuals who advance an argument whose nationalistic bias is easy to detect. Moreover, the concern for a particular social value, such as 'world order', may be an unconscious reflection of the position of the country to which a given author belongs. These are important points to bear in mind, but will not foredoom an attempt to explore ideas about world order held by the type of thinkers included in this thesis. What is important is not to

lose sight of the possible national and ideological biases of their proposals. Indeed, part of the aims of the discussion which follows is to unravel these very biases on the part of the major writers on world order.

As will be clear from the foregoing, the main objectives of this thesis are as follows. First, to analyse what the domestic analogy is, and to clarify the range and types of proposal which arguments involving this analogy may entail. Second, to explain how changing domestic and international conditions influenced the extent to which and the ways in which well-known planners of world organization from the early part of the nineteenth century to the middle of the twentieth century resorted to the domestic analogy, and how some writers on international law and relations attempted to remove this analogy from their ideas and proposals. And third, to classify the proposals discussed into major types in the light of their attitudes towards the domestic analogy, and to evaluate the merits of the main approaches which underlie these proposals. We shall begin, however, by taking a brief look at the 'domestic analogy debate' in the next chapter.

Chapter I The Domestic Analogy Debate

Before we embark on the major issues of this thesis, it is desirable to acquaint ourselves with an outline of what might be called the 'domestic analogy debate'. This will indicate how the validity or otherwise of this analogy has been among the contentious issues in the history of international thought, and will thereby enable us to place our enquiry on the map of intellectual traditions in the field. In the following, we shall first glance at those who made critical remarks about the domestic analogy, and then move on to those who appear to have supported it. This may seem deliberately to reverse the proper order of presentation, but the procedure is not in fact an unnatural one, for, in the contemporary (post-World-War-Two) study of international relations, we tend to encounter the critics of the domestic analogy rather more frequently than its adherents.

Indeed, among some writers on International Relations, the rejection of the domestic analogy seems to have become enshrined as a guiding principle of their thought and enquiry. Thus we see it stated very often nowadays that the domestic analogy is misleading, that it hinders our accurate comprehension of international relations, and that, in the end, we must abandon it, or use it with greatest care. The very term 'domestic analogy' is somewhat pejorative in that an analogical mode of reasoning is thought not to have the validity or firmness of logical deduction or scientific induction.

While the mode of reasoning here labelled the 'domestic analogy' has had a broad range of supporters and critics, the label itself is relatively uncommon. One of the early instances of its use is found in the writings of C.A.W. Manning. He has some claim to be one of the founders of

International Relations as an academic discipline in Britain, and perhaps, more broadly, in the English-speaking world.¹ It does not appear to be a pure coincidence that a man who devoted much of his life to the establishment of International Relations as a unique subject, dependent on, but separate from, Politics in particular, should also have been a critic of the domestic analogy. If international phenomena could be understood sufficiently well through the application of the existing ideas about domestic phenomena, then the claim for International Relations as a separate subject would be undermined.²

Manning's reference to the term 'domestic analogy' appears in the Lecture entitled, 'The Future of the Collective System', which he delivered in 1935, at the Geneva Institute of International Relations. Having stated that a problem of promoting international order through international law and organization is a problem sui generis, 'one where analogies drawn from domestic experience may admit, at best, of only the most hesitant application', he remarked:

An now let us finally ask what will be the true, the only possible, foundation for any effectively functioning collective system? For once, I'll accept the domestic analogy. What, ultimately, is the basis of orderly coexistence within the local community? Nobody has put it more simply than Professor MacIver. You'll remember his phrase — 'the will for the State' — that is, the sufficiently prevalent disposition, if not to approve, then anyway to tolerate, the retention of those social arrangements that form the constitutional regime. Correspondingly, if the Collective System is ever to have the strength of the domestic order, it will be upon the foundation of an adequate 'will for the Collective System'.³

Here the term 'domestic analogy' is used in its natural, and somewhat

open-ended, sense: analogy drawn from domestic experience, from within the state.

A rather more specific definition of the term is given by Hedley Bull, upon whom Manning's thought exerted some influence.⁴ Bull's ideas about international relations are widely known, and it may not be an exaggeration to say that he is one of the best-known critics of the domestic analogy in the English-speaking world today. According to him, as we saw, the 'domestic analogy' is:

the argument from the experience of individual men in domestic society to the experience of states, according to which the need of individual men to stand in awe of a common power in order to live in peace is a ground for holding that states must do the same. The conditions of an orderly social life, on this view, are the same among states as they are within them: they require that the institutions of domestic society be reproduced on a universal scale.⁵

Two of Bull's essays, both contained in Diplomatic Investigations, and his more recent work, The Anarchical Society, exhibit his long-standing concern to comprehend what he regards as the sui generis problem of international order with as little concession as possible to the domestic analogy.⁶

Bull's acknowledged position on the question of the domestic analogy among contemporary writers is seen, for instance, in Ian Clark's Reform and Resistance in the International Order, where Bull's explanation of this analogy quoted above is reproduced, and some of his critical remarks about 'idealism' in general, and the 'domestic analogy' in particular, are also quoted.⁷ Bull's ideas about the domestic analogy contained in the essays mentioned above are also referred to by Michael Walzer in his Just and Unjust Wars, and by Richard Falk in his Legal Order in a Violent

World.⁸ David Fromkin's The Independence of Nations praises Bull for many services he has performed, and treats the domestic analogy disdainfully as 'false', although Bull's name is not mentioned in that context.⁹

The tendency to regard inter-state relations as fully comprehensible only through the rejection of the domestic analogy, however, had existed long before International Relations came to be treated as an academic discipline. The idea that relations between states are not fully analogous to those between individuals is found in an embryonic form already in Hobbes.

As is well known, Hobbes used international relations as an example to illustrate his contention that the state of nature was the state of war. However, it seems, he needed to explain why the state of nature among states (the international state of nature) had not led to the creation of a 'greater Leviathan' when, according to him, the state of nature among individuals (the pure state of nature) would result in the emergence of the state. He argued, therefore, that the state of nature among states was less intolerable to men than the pure state of nature. He wrote:

But though there had never been any time, wherein particular men were in a condition of war one against another; yet in all times, kings, and persons of sovereign authority, because of their independency, are in continual jealousies, and in the state and posture of gladiators; having their weapons pointing, and their eyes fixed on one another; that is, their forts, garrisons, and guns upon the frontiers of their kingdoms; and continual spies upon their neighbours; which is a posture of war. But because they uphold thereby, the industry of their subjects; there does not follow from it, that misery, which accompanies the liberty of particular men.¹⁰

It is instructive to note that Frederick Schuman, who was critical of the states system, when quoting the above and the subsequent paragraphs from Hobbes, deleted the underlined sentence, replacing it with a few dots.¹¹ Those, like Schuman, who see in the fragmentation of the world into sovereign states the main cause of the unmitigated power struggle between peoples tend to identify the international state of nature with the pure state of nature without incorporating Hobbes's own qualification in this respect.

But the Hobbesian qualification, embryonic in his own writing, became developed into a standard argument in the theory of international relations, that the conditions of social order among states are not identical with the conditions of order among individuals. This line of thought had been adopted and expanded by Spinoza, Pufendorf, Wolff and Vattel, some of whom clearly influenced Bull's conception of international law and relations.¹²

In addition, among some international lawyers particularly of the late nineteenth century and the early twentieth century, there was a tendency to regard international law as sui generis, although not all those who adhered to this view of international law rejected the domestic analogy entirely.¹³ In fact, the view of international society held by Manning, Bull and others who share their position, is in some respects similar to the doctrine of the specific character of international law advanced by those international lawyers. Thus Georg Jellinek, who was influential among the German adherents of this doctrine, characterized both international law and the community of states (Staatengemeinschaft) as 'anarchisch', a description shared by Hedley Bull's The Anarchical Society.¹⁴

Here we may outline Bull's argument to reveal the underlying rationale of the position against the domestic analogy.

The starting point of his analysis is that security against violence,

observance of agreements and stability of property are the three primary goals of society.¹⁵ This is so, according to Bull, not only with any existing society, but also with the postulated world society of mankind.¹⁶ To protect these goals a state is required, although, as Bull notes, primitive stateless societies are in their own ways also capable of maintaining order in the sense of the tolerable degree of satisfaction of these primary goals.¹⁷ But, as the classical writers used to say, when states have come into existence, there is no overwhelming necessity for them to leave the international state of nature.¹⁸ This is because, Bull argues, 'anarchy among states is tolerable to a degree to which among individuals it is not.'¹⁹

There are four grounds for this assertion. First, unlike the individual in the Hobbesian state of nature, the state does not find its energies so absorbed in the pursuit of security that the life of its members is that of mere brutes. The same sovereigns that find themselves in a state of nature in relation to one another have provided, within their territories, the conditions in which refinements of life can flourish. Second, states in the international state of nature are free from all kinds of vulnerability to which individuals in the pure state of nature are subject. Third, to the extent that states are vulnerable to external attacks, they are not equally so: the vulnerability of the great power is qualitatively different from that of a small state. This can be contrasted to the Hobbesian state of nature where men are so little different in their individual physical abilities that even the weakest could have a fair chance of killing the strongest. Fourth, compared to individual human beings, states are much more economically self-sufficient. Thus states can survive without a high degree of economic co-operation much more successfully than can individuals among themselves.²⁰

When Bull maintains that anarchy among states is tolerable to a degree

to which among individuals it is not, it is unclear to whom. Bull's first point, noted above, is that the international state of nature is not so intolerable to individuals as, to them, is the pure state of nature. Yet in his other three points, he is comparing the conditions of 'life' of the personified states in the international state of nature with the conditions of life of individual persons in the pure state of nature.

Since such a term as 'vulnerability' or 'economic self-sufficiency' means different things when applied to individual persons and to personified states, it is doubtful whether there is much sense in comparing the two cases. Bull's point, therefore, may not be that states in the international state of nature are less vulnerable or more economically self-sufficient than are individuals in the pure state of nature, but rather that categories like 'vulnerability' and 'economic self-sufficiency' which we may use to characterize the life of individual persons do not apply in the same sense to personified states.

At any rate, on the four grounds noted above, Bull argues against the notion that what Hobbes suggested men in the state of nature would do, should be done in the international state of nature. As will be discussed more fully in the next chapter, a social contract among sovereign states to leave the international state of nature can be of two types, corresponding to what we shall call in this thesis the two basic forms of the domestic analogy. According to one, the domestic analogy leads to the advocacy of a world state, and according to the other, it leads to the argument that certain basic principles of domestic society should be transferred to the international sphere without thereby altering the nature of international relations as a system of sovereign states. Bull is opposed to both, and argues against the substitution of a world state for the present sovereign states system,

and, within the present system, against those elements of international law relating to the control of force which have been introduced to the system in the twentieth century under the influence of the domestic analogy. Against these alternatives, Bull advances an elaborate argument to the effect that states can maintain ordered relationships among themselves through the operation of what he calls the 'institutions of international society', namely, the balance of power, international law, diplomacy, war and the special role played by the great powers through their co-operation.²¹ According to him, a world government may undermine individual liberty, and is no guarantee of peace and security where mutually hostile communities have to coexist; and the international law of the twentieth century, as embodied in the Covenant of the League of Nations, the Kellogg-Briand Pact and the Charter of the United Nations, is not only ineffective in the control of force, but also positively harmful to the maintenance of international order since it interferes with the operation of other institutions of international society, the balance of power and war, in particular.²²

Bull acknowledges that the goals of economic and social justice, and of the efficient control of the global environment are hard to attain within the framework of the sovereign states system. However, in his judgement, even with respect to these goals, the states system is an acceptable mode of organizing the world. According to him, peace and security between separate national communities are a prerequisite for any move towards economic and social justice, or towards an improved control of the global environment, and the states system is a suitable means for obtaining these preliminary goals. Moreover, in his view, the states system does in fact make some, not inconsiderable, contribution, and might even be expected in future to increase its contribution, towards the goals of justice and efficient environmental control. At

any rate, according to him, there is no assurance that a world government as such can contribute more significantly towards these goals since economic and social injustices and environmental problems have much deeper causes than the political organization of the world.²³

To the extent that we can treat Bull's argument as revealing the implicit assumptions and attitudes of those who oppose the domestic analogy, we can see that their position stems from a number of inter-related factors. Among them are: confidence in the sovereign states system to cope with multifarious problems facing mankind; a conservative inclination to prefer small adjustments within the system to its radical structural alterations; a clear differentiation between intra-societal and inter-societal human relationships, and a tendency to see the state as a different kind of person from the individual; a relatively low estimation of the degree to which the moral standards of human relationships at the international level can be brought up to those of the domestic sphere; a belief in the priority of security, order and peace to economic justice and social welfare; and the distrust of legalism.

Against the critics of the domestic analogy, going back as far as Hobbes and other classical writers, and coming down through certain international lawyers, to Manning, Bull and a number of other contemporary writers on International Law and Relations, there is the opposite tendency, to uphold the domestic analogy, which has been shared by a vast number of writers through generations. The period of the First World War, leading to the creation of the League of Nations, teems with arguments based on this analogy as will be shown later in this thesis. But even before the Great War, many thinkers had advanced arguments based upon it.

For example, James Lorimer, an Edinburgh Professor of Public Law and

the Law of Nature and Nations, who put forward one of the most detailed proposals in Britain in his time for an international government, stated that the ultimate problem of international jurisprudence was to find international equivalents for the factors known to national law as legislation, adjudication and execution.²⁴

Lorimer conceded that future ingenuity of man might discover 'a self-adjusting balance of power, a self-modifying European Concert, or some other hitherto unthought-of expedient which, in the hands of diplomacy, [would] act as a cheaper guarantee against anarchy than' could international institutions built on the analogy of municipal law.²⁵ However, he maintained that, in the domestic sphere, the harmonious action of the three factors, legislation, adjudication and execution, had been found universally to be inseparable from the existence of the body politic.²⁶ He argued that, in the international sphere, all the methods which had been suggested as being capable of creating and preserving order, but did not involve the establishment of an international government, for example, the balance of power or free trade, could be shown to be unsatisfactory.²⁷ Thus, in Lorimer's view, an international government, embracing the functions of legislation, adjudication and execution was indispensable.

Lassa Oppenheim, who wrote a generation after Lorimer, is thought by some to belong to the other camp, the critics of the domestic analogy.²⁸ Indeed, he was opposed to an unlimited use of the analogy, and especially before the First World War, he was against the idea of organized sanctions in international law.²⁹ Nevertheless, he associated himself with the supporters of the domestic analogy when he stated in his well-known textbook that the progress of international law depended to a great extent upon 'whether the legal school of International Jurists prevail[ed] over the diplomatic school.'³⁰ The legal school, according to Oppenheim,

desired international law to develop more or less on the lines of domestic law, 'aiming at the codification of firm, decisive, and unequivocal rules of International Law, and working for the establishment of international Courts for the purpose of the administration of international justice.'³¹ On the other hand, 'the diplomatic school', wrote Oppenheim, 'consider[ed] International Law to be, and prefer[red] it to remain, rather a body of elastic principles than of firm and precise rules.'³² According to him, the diplomatic school opposed the establishment of international courts 'because it consider[ed] diplomatic settlement of international disputes, and failing this arbitration, preferable to international administration of justice by international Courts composed of permanently appointed judges.'³³

Among the better-known international lawyers of this century, one of the staunchest critics of the tenets of the diplomatic school was Hersch Lauterpacht, a Cambridge Professor and judge at the International Court of Justice.

Lauterpacht expressed his ideas on the problem of world order through a number of scholarly writings, the first of which, Private Law Sources and Analogies of International Law, appeared in 1927. In this book, he revealed the extent to which the concepts, rules and institutions of contemporary international law were derived by analogy from domestic private law sources. However, the correspondence between private law and international law broke down in one important respect. Within a domestic system the use of force is generally prohibited, while in the international system the freedom of states to resort to force had traditionally been regarded as being outside the concern of positive law. Consequently, the acquisition of territory by conquest, and, more broadly, the imposition of treaties under duress, were permitted by the traditional system of public international law, while private law does

not recognize such a mode of acquiring property or making contracts.³⁴

Lauterpacht held that this lack of correspondence should not be regarded as an inevitable feature of the law of nations. He characterized this dissimilarity as a 'missing link' of the two systems of law, and remarked as follows:

The development of international law towards a true system of law is to a considerable degree co-extensive with the restoration of the missing link of analogy of contracts and treaties, i.e., of the freedom of will as a requirement for the validity of treaties, and with the relegation of force to the category of sanctions. The Covenant of the League of Nations, which, in its Article 10, safeguards the political independence and territorial integrity of the Members of the League from acts of external aggression, may be regarded as containing, in gremio, the elements of this development.³⁵

It was probable, he speculated, that a body of rules might evolve which closely corresponded to public law within the municipal sphere, for instance, to constitutional and administrative law.³⁶ However, such a development was hindered, he thought, by the influential doctrine of the specific character of international law.³⁷ In the field of adjudication, this doctrine manifested itself as that of the inherent limitations in the judicial process in international law, for the refutation of which he wrote another major work, The Function of Law in the International Community.

Lauterpacht's view that international law should not be treated as a type of law intrinsically different from municipal law was clearly stated in the following passage in this book:

The more international law approaches the standards of municipal law, the more it approaches to those standards of morals and order which are the ultimate foundation of all law.... It is better that international law should be regarded as incomplete, and in a state of transition to the finite and attainable ideal of a society of States under the binding rule of law, as generally recognized and practised by civilized communities within their borders, than that, as the result of the well-meant desire to raise its formal authority qua law, it should be treated as the perfect and immutable species of a comprehensively diluted genus proximum.³⁸

It is with this line of thought in mind, and possibly even with this particular passage in mind, that Manning, a critic of the domestic analogy and one-time colleague of Lauterpacht at the London School of Economics, was later to remark:

It is more realistic to see international law as law of a different species, than as merely a more primitive form of what is destined some day to have the nature of a universal system of non-primitive municipal law.³⁹

The line of thought followed by Lauterpacht, as was noted at the outset, appears now to be somewhat out of fashion, and even in its heyday there were some who never fully subscribed to it, or were critical of it. The idea that the domestic analogy is misleading has become so well-established, it seems, that even those, like Richard Falk, who are progressivist in their outlook, warn against the reliance on this analogy.⁴⁰

This does not mean that the domestic analogy has totally disappeared from contemporary international thought. A recent book by Carey Joynt

and Percy Corbett, Theory and Reality in World Politics, for example, endorses the domestic analogy as being essentially correct.⁴¹ However unfashionable in comparison to the first half of this century, there are still many advocates of international federalism and of world peace through law.⁴² Moreover, the domestic analogy may be said to form part of the assumptions of any contemporary writer on international affairs who attributes the instability of the international system to its anarchic, de-centralized structure.⁴³

Just as the critics of the domestic analogy can claim, so to speak, a distinguished pedigree in the classical tradition of political and international thought, so can the supporters of this analogy. This of course does not mean that a pattern of thought with a distinguished ancestry is inherently superior. But it does suggest that the validity or otherwise of the domestic analogy has been one of the central concerns in the history of international thought.

When early instances of the domestic analogy are sought in the classical literature on international theory, it is sometimes suggested that they are to be found in the early writings on international law. Indeed it is well-known that Natural Law writers of the early modern period freely borrowed principles and concepts from municipal law sources, the Roman ius gentium in particular, and applied them to their new subject-matter.⁴⁴ In the words of T.E. Holland, the law of nations 'is an application to political communities of those legal ideas which were originally applied to the relations of individuals.'⁴⁵

It is questionable, however, that very early writers considered their legal reasoning as being analogical when they asserted that certain principles governed the relations of sovereigns. These principles, in their view, were axiomatic and governed human conduct universally.

It was because of this universal validity that, in their view, Natural Law governed international relations. Thus, according Joynt and Corbett: 'For the earliest writers, the law of nations ... was world law equally binding upon governments and individuals. The sovereigns and the common man were alike members of a world community and, in their different stations, subjects of its law.'⁴⁶

The difference between analogical reasoning and the application of axioms to particular instances will be explored further in Chapter II.

In Natural Law tradition, the transfer of principles from the municipal to the international sphere was largely in the area of private law, although an element of public law was also transposed to the international sphere. Thus, as Michael Donelan points out, in the Natural Law tradition, war was often conceptualized as a process whereby sovereigns were to act as judges.⁴⁷

The idea that sovereigns should act as judges, or as if they were judges, however, differs from a proposal for establishing an international court in which there are judges. Although some Natural Law writers commended arbitration and conferences, it was not their primary concern to advocate the re-organization of international society by transferring domestic constitutional institutions, such as the court of justice.⁴⁸

The writings of those who considered it to be their primary task to propose a plan for the re-organization of international society may be said to form a separate genre from the works on Natural Law. F.H. Hinsley's Power and the Pursuit of Peace, and a number of works concerned to exhume the precursors of the League of Nations ideas record many projects for the re-organization of the European, or international society.⁴⁹

Within this body of literature, we encounter, for instance, the

project of Saint-Pierre, who, according to Murray Forsyth's study, was inspired by the domestic analogy. In Forsyth's judgement, Saint-Pierre believed that 'the kind of argument that Hobbes had used to demonstrate the necessity for men to unite into states, could be transposed one stage further to demonstrate the necessity for states themselves to form a universal union.'⁵⁰ Furthermore, according to Forsyth, it is clear from Saint-Pierre's writings that 'the Swiss Confederation, the United Provinces of the Netherlands, and above all the Germanic Empire, provided the guidelines for the kind of organization that he wished to see established at the European level.'⁵¹

It may be noted here that a somewhat technical question arises as to whether a project derived from a confederal model, such as the old Swiss Confederation, can be said to be based on the domestic model at all, given that a confederation is not, strictly speaking, a state. This question will be discussed in Chapter II.

Here it may also be noted that the domestic analogy entered the theoretical discourse on international relations when sovereigns or sovereign states came to be regarded as co-existing in the pre-societal state of nature. There is a clear tension between such a view of international relations and the older view that 'sovereigns and common man were alike members of a world community and, in their different stations, subjects of its law'. The use of the domestic analogy indicated both the decline in the assumption of the universal moral community as a foundation of international theory and the felt need to reconstruct the international system so as to enhance co-operation between states or to realize the potential unity of mankind.

Statements along the lines of the domestic analogy are also found in Kant who built on the works of Saint-Pierre and Rousseau.⁵² In the

oft-quoted passage from Idea for a Universal History from a Cosmopolitical Point of View, Kant states as follows:

What avails it to labour at the arrangement of a Commonwealth as a Civil Constitution regulated by law among individual men? The same unsociableness which forced men to it, becomes again the cause of each Commonwealth assuming the attitude of uncontrolled freedom in its external relations, that is, as one State in relation to other States; and consequently, any one State must expect from any other the same sort of evils as oppressed individual men and compelled them to enter into a Civil Union regulated by law.⁵³

We shall have an opportunity to come back to this remark later in this thesis.

In a later work, The Metaphysical Elements of Justice, Kant also wrote:

Inasmuch as the state of nature among nations, just like that among individual men, is a condition that should be abandoned in favour of entering a lawful condition, all the rights of Nations and all the external property of Nations that can be acquired or preserved through war are merely provisional before this change takes place; only through the establishment of a universal union of states (in analogy to the union that makes a people into a state) can these rights become peremptory and a true state of peace be achieved.⁵⁴

Kant went on to qualify that the universal union of states could not in fact take the form of a world state, but should be a 'permanent congress of states'.⁵⁵ According to Forsyth, Kant gradually shifted his view on the extent to which justice can be realized within the existing

framework of international relations, and, by the time the above passage was written, he had come to favour a less radical change than in his earlier days when he preferred a somewhat closer union of states.⁵⁶ Nevertheless it remains the case that the basic structure of Kant's argument was along the lines of the domestic analogy: states must unite into an international body just as it was necessary for individuals to unite under separate states.⁵⁷

Throughout the nineteenth century, after the Napoleonic Wars, many proposals for European or international organization were put forward. As early as 1814, at the time of the Congress of Vienna, Saint-Simon, in France, advanced a proposal for the re-organization of European society. Towards the middle of the century, in America, William Ladd, the founder of the American Peace Society, formulated his plan for the Congress and the Court of Nations. Towards the end of the century, there was a project by James Lorimer mentioned earlier, and a counter-proposal advanced in Germany by J.C. Bluntschli. Proposals by these writers are examined in Chapter III.

Those who appear to support the domestic analogy are not uniform in their fundamental assumptions. For example, Saint-Pierre argued along the utilitarian lines whereas Kant, by contrast, held it to be a moral imperative to overcome the unlawful conditions of the existing states system. Yet there are certain common elements in the beliefs and attitudes of those who appear to support the domestic analogy. Among them are: a general dissatisfaction with the ways in which the international system is organized, and, in some cases, an acutely critical attitude towards the sovereign states system as such; a belief in the possibility, or even the actuality, of the historical progress of mankind towards more harmonious relationships; the tendency to regard war as an unacceptable institution; the desire to transform the present conditions

of international life in which power dominates into a more rational system based on free consent, and to expand the realm of the rule of law from within the state to the external relations of states.

Thus we now have a rough picture of the contending intellectual dispositions in the tradition of speculation about the system of states. On the one hand, the opponents of the domestic analogy appear to include: Hobbes, Spinoza, Pufendorf, Wolff and Vattel; certain international lawyers of the late nineteenth century and the early twentieth century who stressed the specific character of international law; Manning, Bull, and those who follow, or agree with, their basic tenets about the uniqueness of international society. On the other hand, the supporters of the domestic analogy seem to include: Saint-Pierre and Kant; Saint-Simon, Ladd, Lorimer, and Bluntschli; Oppenheim, Lauterpacht, and those contemporary writers who follow their paths either in advancing a proposal or in diagnosing the conditions of international life.

The division of thinkers in terms of these two contending intellectual dispositions is not an entirely externally imposed pattern. As indicated by Oppenheim's own distinction between the 'legal school' and the 'diplomatic school', some thinkers have characterized their own views in the light of the division of opinion over the issue of the domestic analogy.⁵⁸

However, the debate about the domestic analogy has not so far been conducted in a very systematic fashion. There does not appear to be any agreement in detail over what the 'domestic analogy' is, or any clear analysis of its range and types. This may be because a paradigmatic instance of the domestic analogy is easy to see, for example, an international police idea. It may also be because the term 'domestic

analogy', or the idea it signifies, has been used more as a weapon of debate than as a tool of analysis. Under these circumstances, cases are conceivable where one writer, who claims to favour the use of the domestic analogy, and another writer, who claims to be opposed to it, turn out, upon closer examination, to be making a similar degree of concession to it. Those who in principle endorse the domestic analogy may in fact resort to it in such diverse ways that there may be a good deal of disagreement among them. Moreover, those who at first appear to be using the domestic analogy may turn out to be advancing a type of argument which cannot be classified as an instance of this analogy.

Since this thesis attempts to make sense of, and to scrutinize, commonly held ideas about how the world should be organized specifically from the viewpoint of their reliance on, or independence of, the domestic analogy, our first step must be to examine the range and types of this analogy. What types of proposal should be regarded as being based on this analogy? What kinds of argument will count as instances of the domestic analogy? These are the questions to be discussed in the next chapter. Only with some clear ideas about these questions can we hope to discuss how the domestic analogy has been used, or rejected, in proposals for world order.

Chapter II The Range and Types of the Domestic Analogy

It is important to point out at the outset that in the following the word 'analogy' is used only in the sense of 'analogical reasoning'.¹

This has the following form:

Since with regard to an X or Xs, Y is the case, therefore with regard to X', which is like an X, Y must also be the case.

The Oxford English Dictionary defines this sense of the word as:

The process of reasoning from parallel cases; presumptive reasoning based upon the assumption that if things have some similar attributes, their other attributes will be similar.

The term 'analogy', of course, has a number of other related usages. Thus, for example, to make the point that a treaty is like a contract, it is sometimes said (1) that there is an 'analogy' between treaty and contract, or, exceptionally and perhaps incorrectly, (2) that the 'domestic analogy' of treaty is contract. In (1), the word 'analogy' means 'correspondence', 'affinity' or 'similarity', and in (2) it really means an 'analogue', 'counterpart' or 'comparable object'. This thesis, however, is concerned with 'analogy' only in the sense of 'analogical reasoning'. The term 'analogy' will be used in this sense alone throughout the following discussion except where it has otherwise been used in a passage to be quoted from other works.

It must also be pointed out that in the following we are not concerned with municipal law analogies in legal reasoning. For example, D.W. Bowett has argued that the right of collective self-defence under

Article 51 of the United Nations Charter cannot be exercised by a state which could not legally have exercised a right of individual self-defence in the same circumstances.² This interpretation, as Michael Akehurst points out, is based partly on analogies drawn from English law at the time Bowett was writing. At that time, English law did not allow one person to use force in defence of another unless there was a close relationship, for example, a family relationship, between the two persons concerned.³

To the extent that Bowett's argument is advanced as an interpretation of existing international law, it is a legal argument. It is part of the practice of law that analogies are employed from time to time. Although, admittedly, the boundary between what is to count as an interpretation of existing international law and what is in effect an argument de lege ferenda may in some cases be obscure, municipal law analogies which occur within the framework of legal discourse, purporting to state what the law is on a given issue, will not form part of the concern of this thesis.

What then is the precise character of the domestic analogy which forms the focus of attention of this thesis?

According to Hedley Bull's formula noted in the previous chapter, the 'domestic analogy' in part prescribes that 'the institutions of domestic society be reproduced on a universal scale.'⁴ However, it may be recalled, Manning had conceded that he was resorting to this analogy 'for once' when he argued that, as in the domestic sphere, a system at the international level required for its effective functioning a sufficiently prevalent disposition, among its constituent units, at least to tolerate the system.⁵ No matter how broadly the term 'institutions' in Bull's formula may be interpreted, it is clear that the disposition to tolerate a system cannot itself be an 'institution'. Therefore, although Manning

had himself admitted that he was resorting to the domestic analogy in the above context, he cannot be regarded as having done so if, as our criterion, we take Bull's narrower conception of it.

In fact, most of those who discuss the 'domestic analogy' appear to do so in Bull's sense of the term, and we may therefore take his formula as a guideline for our investigation. An unexpectedly large number of complex questions arise, however, as to Bull's seemingly innocuous remark that, according to this analogy, the institutions of domestic society should be reproduced on a universal scale. An examination of these questions provides us with one effective way of elucidating the range and types of the domestic analogy, and this is what we aim to do in this chapter. Before we embark on this task, however, it is necessary to return once again to Manning's contention noted above in order to reveal an important feature of the analogy.

The argument below rests on two points: that the domestic analogy involves an analogical inference from an empirical statement supported by domestic experience; and that this analogy should be distinguished from an argument based on logical deduction from a necessarily true proposition. It will be contended that Manning's argument, which he considered as an instance of the domestic analogy, is not in fact an analogical argument at all, but that on closer examination it turns out to be a case of logical deduction from an axiom. To clarify this point, we may compare the following two arguments adapted from Lorimer and Manning respectively, and presented schematically to facilitate contrast.

Argument (I)

1. Universal experience shows that individuals, in order to enjoy an orderly social life among themselves, require a

government consisting of the legislative, judicial and executive branches.

2. States are like individuals.
3. Therefore, states, in order to enjoy an orderly social life among themselves, require an international government consisting of the legislative, judicial and executive branches.⁶

Argument (II)

1. In order for a social system to function effectively, there has to be a sufficiently prevalent disposition among its units at least to tolerate it.
2. In the international sphere, we at present have a system commonly known as the 'Collective System'.
3. Therefore, in order for the 'Collective System' to function effectively, there has to be a sufficiently prevalent disposition among states at least to tolerate it.⁷

Argument (I) fits the formula stated at the beginning of this chapter, and is clearly 'analogical'. Moreover, it is important to note that Argument (I) proposition 1 is a statement purported to be a universal generalization on empirical matters. Its plausibility rests on the strength of empirical evidence, and hence it is not axiomatic. The first proposition of Argument (II), by contrast, is not an empirical statement at all. It is in fact a statement which must be necessarily true. This is because, a social system being at least partly a human-operated thing, it cannot function effectively unless there is a human disposition to operate it effectively. How much disposition there has to be, if at all meaningful, is a difficult empirical question. But that this disposition be 'sufficiently prevalent' is necessarily true because here 'sufficiency' cannot but be measured in terms of the disposition's ability to make the system function effectively.

Therefore proposition 1 is just as necessarily true as a statement that for someone to finish reading this chapter, there has to be a sufficiently strong disposition on his or her part so to do.

If Argument (II) proposition 1, like its counterpart in Argument (I), were an empirical statement, then we could not rule out the possibility of us one day encountering a social system with regard to which proposition 1 would not hold. But this cannot be the case as Argument (II) proposition 1 is necessarily true, and hence it must be true of any social system. If it is true of any social system, then it must be true of the 'Collective System', which is a social system, and which, just like any other social system, is at least partly human-operated. Thus, Argument (II), which is Manning's, is an instance of a logical deduction from an axiomatic statement, and, unlike the case of Argument (I), it does not involve an analogical inference from an empirical statement.

It will perhaps be objected that by a 'social system' should be understood a society of individuals and that, therefore, the 'Collective System' is not actually a 'social system': it is like a 'social system'. This appears to be what Manning had assumed in suggesting that he was, for once, accepting the domestic analogy.

However, whether Manning was aware of it or not, Argument (II) proposition 1 is structured so as to apply to any social, at least partly human-operated, system. Thus, there seems no reason to insist that the term 'social system' in this statement should only mean a society of individuals. Indeed, to do so would be to draw an unnecessary demarcation line between 'social' and 'international'. It is on the basis of this demarcation, which is unnecessary in the context of proposition 1, that Manning appears erroneously to have conceived of his reasoning as being 'analogical'. This may be an instance where his determination to see international phenomena as sui generis clouded

his power of analysis.

We may now turn to the main task of this chapter, which is to examine a set of questions arising from Bull's remark that, according to the domestic analogy, the institutions of domestic society should be reproduced on a universal scale. Our first question relates to the purposes of those proposals which can legitimately be described as being based on this analogy. This will be followed by an investigation into the means suggested by this analogy.

When Manning used the term in the passage discussed above, he was referring to the conditions of orderly coexistence in the domestic and international spheres. Similarly, Hedley Bull has explained the domestic analogy as the argument which holds the conditions of an orderly social life to be the same among states as they are within them. However, 'order' is not the only subject-matter with regard to which we may argue about the validity or otherwise of the domestic analogy. Although Bull himself distinguishes not only between 'order' and 'justice', but also between 'order' and 'peace', it would be unreasonable if he were to insist that the domestic analogy should be about the conditions of order, and not about any other social goals.⁸

Thus, it will be understood in the following that the domestic analogy is an argument based on experience from within the state as regards the conditions of order, and other related social goals, such as peace, security, welfare and justice in international society. This last phrase, 'in international society', however, needs to be looked at with caution.

Typically, a proposal based on the domestic analogy will suggest, for example, that just as order among individuals within a state requires a police force, so order in international society requires an analogous institution, an international police. There will be little hesitation

in characterizing such a proposal as one dependent on the domestic analogy.⁹

A proposal, however, may suggest, for example, that an international police should be used for the maintenance of order not only in international relations, but also in suppressing rebellion against the existing national regimes. Saint-Pierre's project noted earlier contained a similar idea.¹⁰

In this type of project, the institution being proposed may be said to serve the goal of order in two realms, international and domestic. Nevertheless, to the extent that the institution being proposed is analogous to a domestic institution (in this case, the police), and to the extent that the purpose of the proposed institution is at least partly, and perhaps chiefly, the maintenance of international order, it would be reasonable to say that such a proposal was dependent on the domestic analogy. This is because a proposal of this type does involve the assumption that domestic order and international order require a similar type of institution.

What can be said, however, if a proposal for an international institution, which is in some way inspired by a domestic model, aims chiefly at the simultaneous attainment of a certain goal within each member-state?

For example, it may be proposed that the problem of unemployment cannot be solved without an authority which can co-ordinate the economic policies of separate states. An institution proposed on such an assumption may have been inspired by a domestic institution, for example, an economic planning agency, but will be designed chiefly for the purpose of creating jobs for the citizens of separate states.

Such a plan can be contrasted with the case noted above where an international police, based on a domestic analogue, is designed to serve

the purpose of maintaining international order. In that case, the entities intended by the proposal to enjoy order are states as such in their mutual relations, unlike in the case noted here, where it is not the states as such which the proposal aims to create jobs for. Clearly, it is absurd to speak of states as being employed or unemployed, while they can meaningfully, though metaphorically, be said to enjoy an orderly social life among themselves.

A proposal for the solution of an unemployment problem of the kind being considered here assumes that the problem of economic and social welfare within the sphere of each state can be dealt with more effectively if the level of control is upgraded from the domestic to the international. The reasoning which underlies such a proposal is qualitatively different from the domestic analogy proper since, ~~unlike the latter,~~ the former does not involve the personification of the state.

If we can interpret this kind of proposal as being intended for the enhancement of the general welfare of personified states in international society through the reduction in unemployment within each, then the proposal may be said to involve the domestic analogy. This is so because such a proposal assumes that just as a domestic economic planning authority serves the general welfare of individual citizens within a domestic sphere, so an international economic planning authority serves the general welfare of personified states in international society. However, it may in practice be difficult to determine whether a proposal can be said to involve this form of analogical reasoning.

To complicate matters somewhat, a proposal for an international control of the internal problems of separate states is also sometimes intended to serve the goal of creating more harmonious relationships between them. Thus, for example, a proposal for an international institution designed to solve the problem of unemployment in each of the

member-states may at the same time be intended to contribute towards the goal of peace among them through the removal of the economic causes of war. A number of proposals produced in the middle of the twentieth century, in the aftermath of the Great Depression, falls into this category as will be discussed later in this thesis.¹¹ To the extent that the aim of these proposals is partly to create order between states by the establishment of those institutions inspired by a domestic experience, it may perhaps be thought that these proposals involve a domestic analogy.

This is not necessarily so. If a proposal for an international economic planning authority is based on the assumption that international order presupposes international economic justice (a fair distribution of wealth among states or between classes of states) just as domestic order is dependent upon economic justice within a state (a fair distribution of wealth among citizens or between classes of citizens), then the proposal clearly involves an analogical reasoning based on experience from domestic society. If, however, the proposal assumes that by solving economic problems of each state through an international authority, we will remove the economic causes of war, then no analogical reasoning is involved in the argument at all.

The type of proposal under consideration, exemplified by an advocacy of the creation of an international economic planning agency for the solution of economic problems within each member-state, will not be excluded from our discussion which follows, but the nature of the reasoning which underpins the proposal will be clarified.

The foregoing analysis is based on the distinction between 'national' and 'international' purposes, and it may be objected that this distinction is unwarranted. Indeed it is well known that there is no such thing as a matter which is intrinsically within the domestic jurisdiction of a state.

As soon as a given issue becomes an object of international regulation, it ceases to be a matter of domestic jurisdiction in international law. In a similar vein, it may be argued that what is apparently a domestic issue, such as the problem of unemployment, is in fact an international issue to the extent that its full solution can be had only through the co-operation of states. If so, it may be argued, a proposal for an international economic planning agency, inspired by the domestic experience, is intended to solve an 'international' problem proper, just as much as a project for an international police. Consequently, it might be thought inappropriate to draw a demarcation line, as we have done, between the two types of proposal.

This is indeed an interesting line of argument which points us to the danger of unconscious reliance on the mental image of the state as a solid spatial object with an internal structure and external relations.¹² None the less, it has to be repeated, the subjects intended by a proposal for an international police to enjoy order can meaningfully be said to be states, although the citizens of these states may enjoy security in their own lives as a result. By contrast, the subjects of economic and social welfare in the case of the other type of proposal are primarily individual men and women living in separate states, although these states, as a result of the successful operation of the proposed institution may claim higher standards of national well-being. To clarify this distinction, it may be said that the purpose of the one type of proposal is 'international' while that of the other is 'cross-national'. According to this terminology, the legitimate purposes of a proposal based on the 'domestic analogy' are 'international', although those proposals whose purposes are 'cross-national' will not be excluded from our discussion which follows.

From the investigation into the purposes, we may turn to the means:

what means are suggested for the kind of purposes noted above by those proposals which we can justifiably regard as involving the domestic analogy? According to Bull, the means offered are the 'reproduction of the institutions of domestic society on a universal scale'. But, first of all, what is meant by 'institutions' here?

Perhaps it is natural to assume that here Bull has in mind legal institutions of a state, institutions found within a state expressed in a legal form. But the term 'institutions' has a somewhat broader connotation than legal arrangements or devices, and includes rules, practices, and conventional techniques of a society which are not expressed in the form of law. Bull himself includes under the category of 'institutions' conventional rules and practices which are non-legal.¹³

The point made, for example, by Inis Claude is relevant here. He is critical of the domestic analogy exercised in a legalistic fashion, particularly where the argument is based on the criminal law model. But he is not opposed to borrowing political techniques for the management of power from within the sphere of domestic politics to apply to the international domain. Thus, in his view, what we can fruitfully learn from our domestic experience is not how a government deals with individual robbers, but how, through 'sensitive and skillful operation of the mechanism of political adjustment', it deals with the problem of maintaining order among conflicting groups.¹⁴ A similar view is advanced by E.H. Carr and J.L. Brierly.¹⁵

'Sensitive and skillful operation', on the part of a government, 'of the mechanism of political adjustment' is a rather vague phrase. None the less, whatever may be meant by it, it seems doubtful that one can be said to be resorting to the domestic analogy unless the guiding principles of such an 'operation', whose application to the international sphere one is proposing, belong primarily to the realm of domestic

politics. This point may be clarified by the following example.

One of the most essential techniques for the management of power, of the non-legal kind, is, in some writers' view, the balance of power. This is treated by some writers not only as the most fundamental, but also as a distinctive, institution of international society.¹⁶ However, there are also some, like J. Allen Smith, who see the balance-of-power idea in international relations as 'merely an application of the check and balance theory of the state to international politics.'¹⁷ Thus, according to one view, an argument in favour of the balance of power as a means of creating and maintaining international order will not count as an instance of the domestic analogy while, according to another view, it will

As we noted above, however, a proposal can only be regarded as an instance of the domestic analogy if the institution in question belongs primarily to the domestic sphere. The balance of power does not seem to satisfy this condition since it is a device or technique found both in the domestic and in the international spheres. Moreover, as Martin Wight, a well-known author on the subject pointed out, the balance of power is a practice which statesmen had operated in inter-state relations long before the idea began to be formulated in theoretical terms.¹⁸

Thus, while some theorists may have argued, along with J. Allen Smith, that the balance of power in international relations is an application of a domestic political theory and practice, this does not seem to provide a sufficient ground for saying that a proposal for the maintenance of international order through the balance of power is essentially an instance of the domestic analogy. However, if the argument which supports the proposal is explicitly based on a domestic model, it will be difficult to deny that in that particular instance its author is resorting to the domestic analogy although it was unnecessary to have done so.

Let us return to the Bull formula of the domestic analogy as there are a number of other points which require clarification. In Bull's view, the 'domestic analogy' holds that 'the institutions of domestic society be reproduced on a universal scale.' It has been noted above that here Bull probably has in mind 'the legal institutions of domestic society'. However, he could not have in mind all the legal institutions of domestic society in this context. However much we may be used to thinking of states as though they were persons, not all legal institutions relating to natural persons are relevant to entities which are persons only by imputation.¹⁹

Thus Bull may be saying that, according to the domestic analogy, all or most of the important legal institutions of domestic society, which can meaningfully be applied to international relations, should be reproduced on a universal scale. According to this criterion, there would be little doubt that James Lorimer, for example, was using the domestic analogy since he advocated the creation of an international government consisting of the legislature, judicature and executive.

One important question arises here, however. If, for example, one advocates the necessity for an international legislature and judicature, but argues against the necessity for an international executive organ, can one still be said to be using the analogy in question? The answer must be in the negative, if by the domestic analogy is understood an argument in favour of creating all or most of the important institutions of domestic society which can meaningfully be applied to international relations, for clearly an executive organ is one of such institutions.

In fact, some writers stress the absence of an executive organ from their proposals as one of their distinctive features. Oppenheim, for example, was emphatic that his proposed international organization was un-state-like precisely because of this feature.²⁰ Bull, as we saw,

has remarked that according to the domestic analogy 'the need of individual men to live in awe of a common power in order to live in peace is a ground for holding that states must do the same'.²¹ The Hobbesian phrase 'in awe of a common power' suggests that, like Oppenheim, Bull may be of the opinion that a proposal which does not involve the creation of an international executive authority does not count as an instance of the domestic analogy.

However, there is an important distinction to be drawn between the proposition that one's proposed international organization is un-state-like, and the proposition that there is no element of the domestic analogy in one's proposal. In the first place, however un-state-like, the proposed body may have some affinity with the state. After all, no organization is perfectly state-like unless it is actually a state. Secondly, regardless of the degree of affinity which may exist between the organizational structure of the state and that of the proposed body, one's argument in support of the proposed body may be based on analogical reasoning derived from domestic experience.

Thus, the absence of a particular domestic-type institution from a proposed entity does not by itself seem to be a good ground for concluding that the proposal is free of the domestic analogy. Oppenheim's own project gives a good illustration here, because, despite his claim that his proposed body was un-state-like, he very clearly based his advocacy for the establishment of an international court and courts of appeal upon the experience of the judicial system in the domestic sphere.²²

This seems to lead us to a tentative conclusion that even if one's proposal is far more modest than, for instance, James Lorimer's, and even if it only suggests, for example, that arbitration should become an international practice in the place of war, the proposal must be said to involve the domestic analogy. This is because an international

system equipped with an arbitration treaty is more analogous to a domestic system than is an international system not so equipped. Moreover, however negligible the affinity between the proposed body and a domestic system, the proposal may nevertheless be based explicitly on the domestic analogy. Thus, for example, although the proposal advanced in the middle of the nineteenth century by William Jay was, as a practical first step, simply to insert an arbitration clause in the next treaty between the United States and France, he must none the less be said to have resorted to the domestic analogy since he wrote as follows in support of his plan:

Individuals possess the same natural right of self-defence, as nations, but the organization of civil society renders its exercise, except in very extreme cases, unnecessary, and therefore criminal.... Instead ... of resorting to force, he [a citizen] appeals to the laws. His complaint is heard by an impartial tribunal, his wrongs are redressed, he is secured from further injury, and the peace of society preserved.

No tribunal, it is true, exists for the decision of national controversies; but it does not, therefore, follow that none can be established.... It is obvious that war might instantly be banished from Europe, would its nations regard themselves as members of one great society, and, by mutual consent, erect a court for the trial and decision of their respective differences.²³

The same type of question as arose in relation to the balance of power earlier may arise in the case of arbitration. Is 'arbitration' primarily a domestic institution? The problem here is that the practice of arbitration could be traced back to ancient Greece. Thus, it may be

argued that arbitration is not primarily a domestic institution on the grounds that the ancient Greeks resorted to it in solving disputes between their city-states.²⁴

This appears to be a rather strained argument, however. Arbitration has not always been a well-established institution of international relations. Thus there does not seem to be a strong enough reason to insist that an argument in favour of arbitration in the international sphere does not count as an instance of the domestic analogy, unless, of course, the argument specifically uses as models examples from the international sphere, such as the practice of arbitration between Greek city-states.

It ought perhaps to be stressed here that, for a proposal to count as an instance of the domestic analogy, it is sufficient that the institution concerned is found primarily in domestic society. The institution need not be an essential institution of domestic society in the sense of being a defining condition of a state. There are a number of institutions found primarily, or even exclusively, within the domestic sphere which are not integral to the concept of state. The arbitral tribunal, as opposed to a judicial authority, may itself be among them. The institution of the courts of appeal is another. A parliament is not integral to the concept of state, and even the institution of police is a relatively modern invention.²⁵ It would be unreasonable to insist that a proposal for the reproduction of any of these institutions in international society was not an instance of the domestic analogy merely because they were not essential to the concept of state.

This leads us to another problem which arises from the Bull formula. He refers to the 'institutions of domestic society', but what precisely is domestic society? The term 'domestic' indicates that the society, the transfer of whose institutions into the international sphere is in

question, should itself be a state. Hence Bull's own remark that, according to the domestic analogy, the conditions of social order are the same 'among states as they are within them.'

But what is the state? Some difficulty can arise here because it is usual to consider 'unitary states' and 'federations' as instances of 'states', but to exclude 'confederations' from the category of 'states'. The German terms 'Bundesstaat' and 'Staatenbund' express this point well. A federation (Bundesstaat) is a state (Staat), but a confederation (Staatenbund) is a union of states (Staaten). To put it another way, a federation is a sovereign state whereas a confederation is a union of sovereign states, and not itself a sovereign state.²⁶

If a peace-schemer argues that the institutions of a certain confederation be transferred to international society, in other words, if the schemer's model is a confederation and hence not a state, he may well claim that no domestic analogy is involved in the scheme. In an intellectual environment where the domestic analogy is treated with suspicion, a claim not to be using the domestic analogy, because the model employed is confederal, is one which a peace-schemer may well advance.

Here it is important to note that whether a peace-schemer's model is a confederation, a federation or a unitary state may make little difference to the legal character of the body being proposed. To clarify this point, it is necessary to refer to another ambiguity in the Bull formula. This relates to the expression 'reproduced on a universal scale' which his formula contains.

'Reproduction', in this context, can take one of the two basic forms, one retaining the sovereignty of the states involved, the other removing their sovereignty altogether.

If it is proposed that the sovereign states system should remain

intact, but that the relations between legally independent political communities should now be governed by a legal system containing a set of principles more analogous to those of municipal law than at present embodied in international law, then the proposed reproduction of the domestic institution is of the first form. By contrast, if the suggestion is that the new entity should be organized in such a way that it will itself count as a sovereign state, then the proposed reproduction is of the second kind. The first form of reproduction is less far-reaching than the second, entailing, at most, the creation of a confederation, international government or organization, whereas the second type involves the creation of a world state, whether unitary or federal.²⁷ In the second case, the sovereign states will transform into provinces or member-states of a federal union.

Between these two basic types, it is possible to think of an intermediate type. This involves the creation of a supra-national organ, directly controlling the citizens' activities in certain limited areas which at present are controlled by separate national governments.²⁸

Paradoxically perhaps, there is a case for saying that between the two basic types only the first form of reproduction should count as an instance of the domestic analogy. As a corollary, whether the intermediate type can be said to involve this analogy may depend on whether it is treated as a sub-category of the first type of reproduction.

The argument that only the first type of reproduction counts as an instance of the domestic analogy rests on the following consideration. To the extent that the domestic analogy is interpreted as an argument which holds the conditions of order to be the same either within or among sovereign states, in each case requiring the same type of institutions, the argument can be understood to hold that the type of institutions in question must govern sovereign states as such, that is,

without affecting their legal independence. Therefore, on this view, the second basic form of reproduction under consideration, inasmuch as it advocates the replacement of the sovereign states system by a universal sovereign state, cannot count as an instance of the domestic analogy. Thus, for example, when Frederick Schuman argued that reforms within the framework of the states system were unsatisfactory, and that peace required the replacement of the sovereign states by a world state, his advocacy, on this view, was not an instance of the domestic analogy.²⁹

However, this view of the domestic analogy may be considered as a little too narrow. The difference between the two basic types of 'reproduction' may be seen as a matter of degree inasmuch as the two types of body resulting from them, seen from the viewpoint of formal structure, are different only in terms of the degree of centralization. It may of course be objected that we must not obscure the fundamental difference in the political and sociological underpinnings of the two types of entity by simply choosing to see them in the light of the degree of centralization. On the other hand, if the 'domestic analogy' is defined as an argument according to which domestic-type institutions be employed to govern the relations of communities at present divided into sovereign units, then it can be made to encompass both types of proposal.

If this broader definition is adopted, the claim made earlier that a proposal, in order to count as an instance of the domestic analogy, must aim at goals which are 'international', as opposed to 'cross-national', in character, requires a corresponding modification. The goal of order, peace, security, welfare or justice, which a proposal seeks, need no longer be 'international' in the sense of 'pertaining to the relations of sovereign states'. It is sufficient that it aims to establish one or more of these goals in the relations of communities which are at present divided into sovereign states.

It is interesting to note here that Bull himself seems to have no hesitation in considering as an instance of the domestic analogy an argument in favour of the replacement of the sovereign states system by a single, universal state.³⁰ In fact, it even appears that our first form of reproduction, in Bull's view, is not actually an argument based on the domestic analogy, but one which makes 'concessions to it'.³¹

At any rate, the two basic types of proposal share similarities, and it seems unwise to remove from our purview a set of proposals which are akin to those based on the domestic analogy in a narrower, and perhaps strict, sense. Thus, in the following discussion, the two basic types of proposal will be included in our survey, together with the intermediate type, although the distinction between them will be borne in mind.

The foregoing analysis shows that a peace-schemer's proposed entity may take various forms. It may be a state, unitary or federal. It may be a confederation, international government or an international organization, with or without supra-national organs. In its weak form, it may simply be an international court of arbitration. What is important to note is the fact that the legal character of the proposed entity is not necessarily identical with that of the model upon which the proposal is based. Thus it is possible that a unitary state is used as a model for a project where the proposed entity is itself a confederation, or even a loose form of international organization. Indeed, if the first form of reproduction noted above is used, the proposed entity cannot be more centralized than a confederation because, by this mode of reproduction, the sovereignty of the member states is to remain intact. The legal character of the proposed entity depends on how a model is used as much as on what a model is.

This leads us back to the question we left earlier. If the model is

confederal, can we still say that the project involves the domestic analogy?

Because the legal character of a peace-schemer's model, that is, whether it is a confederation, federation, or a unitary states, does not necessarily determine the legal character of the proposed body, there is a case for saying that, for the purpose of our discussion, it is inadvisable to draw a sharp demarcation line between the confederal and federal models.

Let us suppose that a peace-schemer A uses a confederal model and produces a blue-print for an international organization X, and that a peace-schemer B uses a federal model and produces a blue-print for an international organization Y. Let us also suppose that X and Y involve a similar degree of centralization in the structure. Such a situation is easy to imagine. Depending on how a model is used, even a unitary-state model could produce a project for a confederation or a looser form of international organization. Indeed, some will insist that an argument based on the domestic analogy proper cannot, by definition, produce a plan for a body more centralized than a confederation.

It appears that in such a hypothetical situation, little could be gained by insisting that A had not, and B had, used the domestic analogy. A might of course insist that, given the 'international' nature of his model, it would be unfair to class him together with B whose project was derived from a genuine domestic model. To this we may reply that a confederal model, while it is, strictly speaking, not a domestic model, is not a genuine 'international' model either. A confederation embodies institutions which are either borrowed from, or similar to those of, the domestic sphere. Thus, a confederal model is, so to speak, a second-order domestic model. Because of this it would seem more advisable to include in our purview those cases where confederal models are used than to

exclude them from it entirely. Here it may be noted that Oppenheim included in his scope of 'state-like' entities not only unitary and federal states, but also confederations.³²

The ambiguity arising from the case where the model used is confederal is not of marginal significance. It directs our attention to the degree of artificiality involved in separating institutions into those of the domestic sphere and those of the international sphere. The division between the two types of institution is somewhat obscured by the presence of confederations in the middle. Another factor which can obscure the division is the historical development of international institutions.

We may suppose that since the time Saint-Simon put forward his proposal for the re-organization of European society, the principles which govern inter-state relations have become somewhat more analogous to those pertaining to the domestic sphere. Disregarding for the moment the effectiveness of those institutions which have been transferred from the domestic to the international sphere since the time of Saint-Simon, and especially since the end of the First World War, we may say that institutional grafting has already taken place to some extent. This means that a peace-schemer, unlike in earlier times, may no longer have to depend on the domestic analogy explicitly. This point can be illustrated by comparing the arguments of William Jay, whom we noted earlier, and those of the Bryce group for the establishment of a League of Nations.

As we saw, writing in the middle of the nineteenth century, Jay, in a relatively unambitious proposal for the eventual creation of an international tribunal, had argued explicitly on the basis of domestic experience. But, by the time the First World War was fought, international society had seen some degree of institutionalization. Thus, rather than

turning to strictly domestic experience, the Bryce group, in the period of the Great War, could propose the establishment of a League of Nations on the basis of existing international institutions, such as the 'Bryan Treaties' and the Hague system of arbitration, although, admittedly, 'teeth' were to be added to them. The Bryce group argued that they were building upon existing facts and tendencies of international life, and claimed that they were not advocating a revolutionary change, but an orderly development. This claim had some plausibility because the suggested change was small enough by the standard of that time to enable the plan to be explained more economically as a generalization and systematization of existing international institutions than in terms of any domestic model.³³

This does not mean that the Bryce group proposal was not in the end based on the domestic analogy. What this example shows is that a dividing line between the institutions of domestic society and those of international society is historically variable. This point will be discussed further in relation to the Bryce group proposal itself in Chapter V. The question of what may count as a case of the rejection of the domestic analogy will be discussed in Chapter IV.

The foregoing discussion reveals that the domestic analogy has a very wide range of instances. It will be useful to conclude this chapter by summarizing the major points which have been noted.

The domestic analogy is an analogy drawn from domestic experience, and it must be distinguished from deduction from axioms. It is a pattern of thought, or mode of reasoning, concerning the conditions not only of order, but also of such other related social goals as peace, security, welfare and justice.

The purposes of a proposal based on this analogy must in principle primarily be 'international', as opposed to 'cross-national', in

character, although the proposal may at the same time aim at the attainment of certain social goals within each state. If, however, the achievement of goals within each state is the sole purpose of a proposal, it is doubtful whether the proposal can be said to involve a domestic analogy. The last point, however, will be dealt with more fully when we encounter concrete examples.

According to the domestic analogy, the institutions of domestic society i.e., those which are found primarily in the domestic sphere, should be transferred to the international sphere. For a proposal to count as an instance of the domestic analogy, however, the institutions to be transferred to the international sphere need not be essential institutions of domestic society in the sense of being part of the defining conditions of the state.

The institutions to be transferred may encompass all or most of the important institutions of domestic society, which can meaningfully be transferred to the international sphere, but this need not be the case.

A body proposed on the basis of the domestic analogy can take various forms. According to a narrower, and perhaps strict, definition, a proposal for the creation of a state, unitary or federal, in the place of the existing sovereign states will not count as an instance of the domestic analogy. However, this analogy might be defined as an argument according to which domestic-type institutions be employed to govern the relations of communities at present divided into sovereign units. If this broader definition is adopted, the earlier claim that a proposal, in order justifiably to be regarded as an instance of the 'domestic analogy', must aim at goals which are 'international' in character, requires a corresponding modification.

A claim not to be using the domestic analogy because the model being employed is confederal or because the proposed institution is no more

than a slightly modified version of what already exists in the international sphere creates some difficulty. However, a confederal model is not a genuine international model, and can be interpreted as a second-order domestic model. Whether or not the domestic analogy is being used where the proposed organization is merely a slightly modified version of what already exists in the international sphere is a question which should best be examined when we face a concrete example.

In the following, proposals to be examined are frequently referred to as proposals for world order, or characterized as falling into that general category. This should not be taken to mean that we are excluding proposals for peace, security, welfare or justice. As it will be tedious to have to spell out each time that we are talking about proposals for order or other related social goals such as peace, security, welfare or justice, we will use the term 'world order' as a convenient shorthand for all.

Nor shall we exclude from our discussion those proposals which do not encompass the whole world. Historically, schemes designed to cover all the nations of the world are relatively rare. A large proportion of them are concerned with major countries of the world, chiefly European nations and America. In some cases, proposals were formulated for a small number of states with a clear expectation that the number would gradually increase. In other cases, authors appear to have thought that if order could be achieved between the major countries of the world, the problem of 'world' order would largely be solved. In some other cases, especially in an earlier period, some European writers may have been sufficiently Eurocentric not to be concerned with problems outside Europe: to them Europe was the world. In any case, it is only in the recent period that proposals to encompass the whole world began to be advanced, and hence

the necessity began to be felt to distinguish between schemes for 'regional' organization and those for 'global' organization. Although from today's standpoint this distinction is significant, its utility as a tool of analysis is limited when we consider proposals from an earlier period as this thesis intends to do. In the following discussion, therefore, unless there is a special reason, for the purpose of exposition, to characterize a proposal as one for 'regional' order as opposed to 'world' order, it will be treated as belonging to the general category of 'proposals for world order'.

It should be added here that, in the following, 'world' order and 'international' order are used interchangeably unless otherwise specified. It is of course possible to draw a distinction between the two along the lines suggested, for example, by Hedley Bull. According to him, the units which enjoy 'international' order are sovereign states while the units of 'world' order are individuals.³⁴ However, most authors discussed in the following use terms such as 'international peace and order', 'world peace', 'peace and welfare of nations', 'liberty and happiness in Europe' and so on without abiding by any clear common linguistic convention. Moreover, some proposals aim at the attainment of social goals among sovereign states and within them at the same time. Even where a proposal is intended specifically for an international goal, such as the maintenance of order in the external relations of sovereign states, its author is at least implicitly committed to the view that the proposed international institution, in conjunction with certain domestic institutions, would ensure the achievement of 'world' order in Bull's sense of the term. Therefore, as a part of the characterization of the proposals in the following, we shall treat the terms 'world' and 'international' as though they were interchangeable.

Chapter III Some Nineteenth Century Examples

This chapter is concerned with the use of the domestic analogy in proposals for world order which were produced in the period after the end of the Napoleonic Wars and before the Peace Conferences at the Hague at the turn of the century. The next chapter will examine the writings of the Hague Conferences period, which will be followed by Chapter V where the impact of the Great War upon the use of the domestic analogy will be discussed. Chapter VI will go on to examine attitudes towards the domestic analogy in the face of the failure of the League of Nations to preserve peace.

The authors chosen for examination here are Saint-Simon, William Ladd, James Lorimer and J.C. Bluntschli. They have been selected chiefly because their proposals give a valuable insight into the use of the domestic analogy in proposals for world order. Apart from partly confirming Morgenthau's general statement, noted in the Introduction, that during the nineteenth century important sectors of public opinion demanded the application of liberal principles to international affairs, the four writers considered here also reveal in a striking manner the extent to which one's choice of a particular domestic model is influenced by one's immediate domestic political experience. Moreover, the four authors share a number of common characteristics which it is interesting to compare with those of other groups of thinkers from other historical periods.

The similarity of methods used by these authors, which will be revealed in the following, is particularly noteworthy when contrasted with the divergence in the legal character of the bodies they proposed. Saint-Simon's project appears to involve the federal integration of Europe, Ladd's scheme envisages a very loose association of states, and Lorimer's and Bluntschli's solutions, despite their disagreements, were confederal. Thus,

F.H. Hinsley, in his Power and the Pursuit of Peace, has treated these writers among others as representing the three distinct approaches of the nineteenth century to the problem of world order, each dictated by the specific tradition and historical circumstances.¹ Their approaches, from the viewpoint of the legal character of the bodies proposed, are indeed mutually exclusive, and conjointly close to being exhaustive of the general categories. The selection of these authors in our survey is therefore easy to justify, particularly when, in addition, there are certain important similarities in their attitudes towards the domestic analogy which can be distinguished from those of certain other writers from other historical periods.

Saint-Simon wrote his De la Réorganisation de la Société Européenne in collaboration with Augustin Thierry in the autumn of 1814 as the Congress was assembled at Vienna.² Having lived through the great upheaval of the Revolution and Wars, he was deeply concerned with the problem of how to create a stable order not only in France but also in Europe as a whole. But such a goal, in Saint-Simon's view, could not be achieved by the Congress. This was because, he wrote, '[n]one of the members of the congress [would have] the function of considering questions from a general point of view; none of them [would] be even authorized to do so.'³ The problem, he thought, required a much more radical solution.

Saint-Simon's own plan was based on the view that the peace and prosperity of Europe, or the liberty of the Europeans, could not be attained without the establishment of a common government for Europe, which was in the same relation to the different peoples as national governments were to individuals. Moreover, he insisted, the best possible constitution that the contemporary state of human knowledge could reveal would have to be applied to all the national governments as well as to the common

government.⁴

His own theoretical explanation of the principles of the best possible constitution is so confused and misleading that it need not detain us here.⁵ Suffice it to note that, in his judgement, the English constitution embodied these principles, and that therefore all the national governments as well as the common government of Europe would have to be modelled on that constitution.⁶ On the basis of these preliminary considerations, Saint-Simon proposed the establishment of a European Parliament consisting of the King of Europe, Houses of Peers and Commons.⁷

The work of 1814, however, was incomplete. Saint-Simon postponed the discussion of the choice of the King of Europe to a sequel, but this appears not to have materialized.⁸ Nor did he, in his 1814 essay, discuss the constitutional position of the King outside the parliament, except to say that the King should be hereditary and should be the first to take up office in order to enable, under his initiative, an orderly formation of the two Houses.⁹ Moreover, while the European parliament was also to function as a judicature, Saint-Simon failed to make explicit how international disputes were to be adjudicated.¹⁰ Furthermore, he failed to clarify the jurisdictional relationships between the proposed common government and the national governments of Europe.¹¹

Despite these flaws, the outline of the proposed European Parliament was clear enough, an outline which, according to Saint-Simon's own account, was drawn from the English model. There were, however, at least two points at which his European Parliament deviated significantly from the actual English constitution.

First, Saint-Simon's three legislative authorities, the King, Peers and Commons, were to be equal in their power, each having the right of initiating, and vetoing, any legislative measures.¹² This was not the

case with the actual English constitution.¹³ Second, Saint-Simon introduced an original provision as regards the election of the members of the European House of Commons. This was original in that the proposed method of election was neither in line with the actual English constitution nor based on what Saint-Simon claimed was the case with that constitution. He wrote:

For every million persons in Europe who know how to read and write there should sit as their representatives in the House of Commons of the great parliament, a man of business, a scientist, an administrator, and a lawyer. Thus, assuming that there are six million men in Europe who know how to read and write, the House will be composed of 240 members. The election of members will be made by the professional body to which they belong. They will be elected for ten years. Every member of the House must possess 25,000 francs income at least, from landed property.¹⁴

Saint-Simon's own justification for devising such a method of election to the European House of Commons was as follows.

He argued that institutions moulded men, and hoped that the European parliament, once established would foster 'patriotism beyond the limits of one's own fatherland' or the 'habit of considering the interests of Europe instead of national interests.'¹⁵ However, Saint-Simon contended that an institution could not take root if men were not adapted to it beforehand, for, in his view, it was also the case that men made institutions.¹⁶

Thus, in order for the European parliament to function well, it was necessary that its members be motivated by European patriotism. It was patriotism that enabled a national government to have a 'corporate will', and the same would be the case with the European government, he argued.¹⁷

Saint-Simon remarked, however, that European patriotism was to be found only in a certain class of people, and maintained that men of business, scientists, magistrates and administrators belonged to that class because of their wider contacts, emancipation from purely local customs and their occupations which were cosmopolitan in aim rather than national.¹⁸

Thus, according to Saint-Simon's own account, the special provision noted above was necessary for the election of the European House of Commons, for otherwise it would not function as one body. However, it seems wrong to suppose that Saint-Simon's sole purpose in proposing such a form of election was to foster unity in the European House of Commons. This point can be explained on the basis of the following three considerations, and these in turn will reveal what Saint-Simon really had in mind when he argued that an English-type constitution should be applied to the European government.

First, the type of person to be elected to the European House of Commons was what could be regarded as the leading members of the bourgeoisie.¹⁹ Although Saint-Simon himself did not explain the composition of the House in these terms, it would be reasonable to suppose that he was aware of this distinctive feature of the House he was proposing.

Second, this House was to coexist, on an equal footing, with two other authorities, the King of Europe, and the European House of Peers. The Peers were to be nominated by the King without limitation of numbers, and every Peer was to possess at least 500,000 francs income from landed property. Peerage was to be hereditary.²⁰ Thus, the European House of Peers can be considered as representing the views and interests of the European aristocracy as a whole.

Third, Saint-Simon must be regarded as having overstated his case when he argued that whatever common interests existed in the European community could be traced to the sciences, arts, law, commerce, administration and

and industry.²¹ The interests of these professions, which, in Saint-Simon's view, transcended national parochialism, were to make the European House of Commons function as an effective organ. But his proposal undoubtedly presupposed the transnational solidarity not only of the social stratum to be represented in the House of Commons but also of the aristocratic class of Europe who were to provide the House of Peers. Otherwise, his European parliament could not consistently be held to be workable, for one of its branches, lacking in solidarity, would have to be admitted to be as incapable of reaching any decision as he considered diplomatic conferences to be.²² It must be remembered here that Saint-Simon's European parliament was to enact laws through the concurrence of decisions among its three branches. If any one of them could not reach a decision, then the whole system would be immobilized. Therefore, in order to be consistent, Saint-Simon could not have thought that the only social stratum, which had transnational solidarity, consisted of scientists, artists, lawyers, businessmen and so on.

This last point somewhat weakens the supposition that Saint-Simon's sole aim in proposing his original method of European Commons elections was to foster unity in the House. If unity had been the sole purpose, he could equally well have suggested that the European parliament be unicameral consisting of the Peers of Europe, for at least implicitly he was committed to the idea that they too had transnational solidarity.

Combined with this point are the first two considerations noted above. These seem to point to the idea that what Saint-Simon really had in mind was the creation of a stable social order in Europe through the balancing of social classes across borders. In other words, the theory of domestic politics which he was trying to apply to Europe as a whole was that of the mixed constitution.

This theory, like the theory of the separation of powers popularized

by Montesquieu, used to be associated with the English constitution, although the former had a far longer history than the latter in Western political thought.²³ Its basic tenet was that a constitution was good which combined and balanced the elements of monarchy, aristocracy and democracy in such a way that the state was governed conjointly by the king, nobles and people.

Bolingbroke, for example, explained the English constitution in the light of this theory when he stated:

It is by this mixture of monarchical, aristocratical and democratical power, blended together in one system, and by these three estates balancing one another, that our free constitution of government hath been preserved so long inviolate.²⁴

It is true that Saint-Simon did not explicitly advance the theory of the mixed state. Nor did he explain the excellence of the English constitution in the light of that theory, although he betrayed its influence upon him when he characterized the function of the English House of Lords essentially as a balancer of monarchic and democratic forces.²⁵

Working backwards from his project itself, however, it is possible to conjecture that Saint-Simon was in fact trying to create a mixed constitution at the European level, and to balance the interests of the King-to-be, the aristocratic class, and the rising professional classes of Europe by a new institutional arrangement.

There are a few remarks scattered in the latter part of his essay which partly confirm that he favoured the idea of a mixed constitution. Thus, he expressed his dislike of the despotism both of a single man and of the people: the former would lead to tyranny, the latter to democratic

anarchy. Therefore, he argued, 'the moderate part of the nation' was needed to restore social order.²⁶

What is important to note here is the particular political circumstances of France at the time of his drafting the proposal. Napoleon had abdicated in April 1814, and was at that time in Elba. Louis XVIII, who had been in exile in England, was restored to the throne in the following month, and in June that year he bestowed on his subjects the Charte Constitutionnelle. This Charter was based on a compromise between the principles of the Ancien Régime and those of the Revolution. Thus, although a great deal of power was left in the hands of the King, the Charter did introduce a parliamentary system along the lines of the English constitution. The Parliament was bicameral, the Chambers of Peers recruiting its members largely from the old Imperial Senate, and the Chamber of Deputies from the Législative Body of Napoleon's days. Like the English House of Commons in those days, the Chamber of Deputies was to be subject to election on the basis of property qualifications.²⁷

This Charter was undoubtedly an attempt to maintain a balance among the restored Bourbon Dynasty, the aristocracy and the middle classes, and shows some striking resemblances to Saint-Simon's project for a common government of Europe.²⁸ It is safe to assume that he was familiar with this Charter. Thus it would not be a wild conjecture that this immediate model was in fact the French Charter itself, although this in turn was modelled on the English constitution.

It must also be noted here that Saint-Simon was convinced that England, France and Germany all faced an internal crisis, which could lead to a revolution in each country.²⁹ This could be obviated, he thought, if these countries were to unite under the constitution he was proposing. Apparently, it was not sufficient, in his view, that each country be equipped with a good, English-type, constitution; unless a common

government was also established, international conflict and intrigues would continue, which would in turn destabilize the internal order of those countries.³⁰

This then was Saint-Simon's grand design, however incomplete, for the creation of a stable social order both within and between the nations of Europe. What he applied to the international level in his 1814 proposal was a theory of domestic politics which was implicit in the model or models he employed. He did not identify this theory by name, but it was one which undoubtedly appealed to him as a means of re-establishing order in Europe in the aftermath of the French Revolution and the Napoleonic Wars.

Because he did not clarify the jurisdictional relationships between the proposed common government and the national governments, it is not possible to determine unequivocally the legal status of the proposed union. However, his European parliament was not like the legislative body of a confederation, despite his reference to the proposed union by that term.³¹ Unlike many other proposals for an international assembly designed basically to be regular meetings of governmental representatives acting in accordance with a set of common procedural rules, Saint-Simon's proposal involved a full-scale merger of the existing sovereign states into one single polity at least in so far as his legislature was concerned. The function of the proposed parliament was consequently very broad, and included even the codification of national and individual ethics.³² Given the structure and function of the proposed common parliament, his European Confederation may fall into the category of a unitary or federal state.

If so, the proposed 'reproduction of the institutions of domestic society' in his case was the latter of the two basic types we noted in Chapter II.³³ Therefore, there is a sense in which Saint-Simon cannot

be regarded as having resorted to the domestic analogy: his advocacy was rather an extension of the existing domestic institutions to cover the whole of Europe than an application of the principles of domestic society to the relations of sovereign states as such. Nevertheless it remains the case that his choice of the domestic model was a reflection of one of the most important domestic political issues of contemporary France, the creation of stable social order in the period after Napoleon.

Saint-Simon was a prolific writer and was a powerful source of inspiration for many of the prominent thinkers of the nineteenth century in the field of social theory.³⁴ He also stimulated writings on the unification of Europe, particularly in France.³⁵ In the Anglo-Saxon world, however, the exploration of the road to peace in the aftermath of the Napoleonic Wars had a different source of inspiration: Christian pacifism. This soon became an organized movement also on the European Continent.³⁶

Early pacifist thinkers of the nineteenth century were, however, concerned primarily with the conversion of individuals to the doctrine of non-violence.³⁷ If such an approach could be termed 'first image' pacifism, after Kenneth Waltz's well-known work, 'third image' pacifism, seeking a solution at the international level while also adhering to the doctrine of non-violence, was soon to develop.³⁸ The proposal advanced in the middle of the century by William Ladd, the founder of the American Peace Society, was an early example of this approach, and was an influential one in the nineteenth century peace movement.³⁹ We shall now turn to his work to see how he used the domestic analogy, and how his choice and use of the domestic model reflected the American theory and institutions of domestic politics of his time.

Ladd was familiar with the works of Natural Law writers on the Law

of Nations, such as Grotius and Vattel. However, while appreciating the beneficial influences these writers had exerted on mankind, he noted that there were many serious disagreements over details among them, and thought that it would be better if periodic meetings of ambassadors could be arranged to settle disputed principles of international law, and to conclude treaties to promote the peace and welfare of nations.⁴⁰ This was his idea of a Congress of Nations, which was later to be realized, in a somewhat more unstructured way, in the form of the Hague Peace Conferences.

According to Ladd, the distinctive characteristic of his project was that, in addition to this Congress, which he regarded as a legislature, there was to be established, as a separate body, a Court of Nations, a judicature: the executive functions were to be left entirely to the strength of world public opinion, which he trusted.⁴¹

Ladd's argument for the establishment of a Court of Nations was based explicitly on the domestic analogy.⁴² Moreover, he relied, unexpectedly perhaps, on the argument from domestic experience even in his attempt to show the redundancy of an executive organ at the international level. His point was that, even in the domestic sphere, the effectiveness of law did not depend on 'the sword of the magistrate'. In his judgement, 'fear of disgrace' was the most important source of the effectiveness of law, and therefore a Court of Nations could function without the support of an executive. 'If it is disgraceful to go to war when there is a regular way of obtaining satisfaction without,' he wrote, wars would be as rare as duels in New England, where they are disgraceful'.⁴³

Despite his explicit reliance on the domestic analogy, Ladd's Congress and Court of Nations were dissimilar to their domestic counterparts in certain important respects.

Without a doubt, his Congress could be said to resemble a domestic

legislature to the extent that it was designed as a permanent organ whose members were to hold a periodic session to enact laws in accordance with a set of established procedural rules, and that, therefore, one session was to have structural continuity with another. However, his Congress differed from a domestic legislature in that the unanimous consent of the nations represented at the Congress, as well as ratification by their governments, were to be required for any legislative enactment.⁴⁴ Furthermore, it differed even from a federal-type legislature in that the Congress was to have nothing to do with the 'internal' affairs of nations.⁴⁵ Likewise, his Court of Nations, while resembling a domestic judicature to some extent, fundamentally differed from it in that his Court was not equipped with the power of compulsory jurisdiction, though, in this respect, Ladd compared his Court to a Chamber of Commerce to show that a domestic counterpart could be found.⁴⁶

It is in line with the relatively unambitious nature of Ladd's proposed international organization that he did not argue for a ban on the use of force by states. Thus, one of the major functions of the Congress of Nations was to be the settlement of disputed principles of international law chiefly in the area of the laws of war.⁴⁷ However, it was in keeping with his progressivism that Congress was to consider whether a nation, unless attacked, had a right to declare war against another or to make reprisals until it had resorted to all other means of obtaining justice.⁴⁸ If, after the establishment of the Congress, its members were to decide to renounce such a right, then the international organization, based on Ladd's proposal, would become more analogous to domestic society, where there is also a general ban on the use of force. However, as it stood, the similarity between his proposed organization and an ordinary domestic society was very limited.

It might be supposed that, in advancing this relatively unambitious

proposal, Ladd perhaps used a confederal model, and that the deviations of his proposed organs from their counterparts in the domestic sphere resulted from this. Indeed, he maintained, in support of his plan, that the 'civic part' of the Helvetic Union, which was a confederation, was the 'nearest working model' of his Court and Congress.⁴⁹

Ladd's knowledge of the Helvetic Union, however, was rather limited. He did not show in any detail the similarities between his Court and what he called 'the court of judges or arbitrators'⁵⁰ of the Helvetic Union. The truth was that the sources of information he referred to did not provide him with sufficient knowledge on the subject. Moreover, what little information he managed to obtain regarding the 'court' of the Helvetic Union was misleading. It was not entirely his fault to have believed that his proposed Court resembled the 'court' of the Helvetic Union, but a brief survey of those few basic treaties constituting the Union, mentioned in Ladd's sources, shows that there never was a judicial or arbitral 'court' specifically designed to deal with inter-cantonal disputes in the period of Swiss history which his sources were concerned with.⁵¹

Ladd managed to obtain a little more substantial information regarding the Diet of the Helvetic Union, and his description of it shows that he was aware of some important similarities that actually existed between the Swiss Diet and his proposed Congress: neither of them was concerned with the 'internal' affairs of the member states, and both of them worked essentially as a regularized form of the conference of ambassadors.⁵²

Thus, taken as a whole, Ladd's knowledge of the Swiss Confederation might have helped him to form his conception of the Congress and Court of Nations, but it is not likely to have been the original source of his inspiration. It appears that Ladd's ideas were in fact more closely linked with his experience at home. Here we are in the realm of

speculation, but not in an entirely unfounded one.

There are some remarks which Ladd made in his essay which tend to confirm the view that his actual model was American. Thus, in order to form a Congress, ambassadors were to be sent to 'a convention', which would then adopt rules and regulations necessary for the Congress — a procedure reminiscent of the birth of the U.S. Constitution.⁵³ The permanency of his Court was compared by him to that of the U.S. Supreme Court, and the periodic nature of the sessions of his Congress to the case of the Congress or Senate of the United States.⁵⁴ Finally, Ladd compared the ability of the U.S. Supreme Court to settle inter-state boundary disputes with what a Court of Nations, when established, could achieve.⁵⁵

Moreover, in omitting an executive organ from his scheme, Ladd might have taken note of the fact that in inter-state disputes the 1787 Constitution does not provide for the execution of the Supreme Court decisions by force.⁵⁶ Ladd's proposed Congress, however, might have been modelled on the Congress of the United States under the Articles of Confederation.⁵⁷

The idea that Ladd's proposal was inspired by the experience of the United States is supported by J.B. Scott in his preface to Georg Schwarzenberger's book, William Ladd. According to Scott, Ladd was 'well-nigh contemporary with the young republic' as the Articles of Confederation (1777) came into force when Ladd was three (1781), and the new Constitution of the United States was drawn up when he was nine (1787). Scott suggests that Ladd was permeated with the constitutional ideas of America and was fully informed of her institutions.⁵⁸

Central to the constitutional ideas of America was the notion of the separation of powers. The 1776 Declaration of Independence itself, while not using the term 'separation of powers' explicitly, accused George III of his tyrannical deeds, among the most serious of which was stated to

be his refusal to acknowledge the independence of the legislative and judiciary powers from his authority over the colonies. He abolished, according to the Declaration, 'the free system of English laws in a neighbouring province, establishing therein an arbitrary government'.⁵⁹

Moreover, apart from its enshrinement in the Constitution of the United States of 1787 itself, the principle of the separation of powers was accepted by the various state constitutions. One notable example, the Massachusetts Constitution of 1780, stated: 'In the government of this commonwealth, the legislative department shall never exercise the executive and judicial powers, or either of them: The executive shall never exercise the legislative and judicial powers, or either of them: The judicial shall never exercise the legislative and executive powers or either of them'.⁶⁰ This constitution, which built on the constitutions of certain other states, was itself soon to be copied by the second constitution (1784) of New Hampshire, where Ladd was born.⁶¹

It seems almost without doubt then that Ladd's taken-for-granted attitude towards the idea of the separation of powers, which shaped the framework of his plan, derived from his close familiarity with the constitutional history of America. The idea was in the air. It is true that Ladd did not stress, along with the doctrine of the separation of powers, that it was the liberty of nations that was at stake in separating the Court from the Congress. However, he did remark that one of the main weaknesses of the regional confederations in the past had been the union of the three powers in one body, and that this had caused 'intrigue, ambition, and many other baleful passions and practices'.⁶² The sufficiency of Ladd's historical knowledge may be doubted in such a statement, but it does indicate his implicit acceptance of the liberal doctrine.

The foregoing discussion suggests that Ladd's reference to the

constitution of the Helvetic Union, his knowledge of which was limited, was chiefly for the purpose of making his plan appear more relevant to international problems. Other things being equal, a union whose constituents are more diverse is naturally more valuable as a model for an international organization, for the latter will have to overcome wider national differences than any regional unions. Ladd therefore may have thought the Swiss example to be more impressive than the American model in this respect. He stressed differences 'in language, religion, laws, forms of government, manners and customs', which existed among the members of the Helvetic Union, and argued that no 'good reason [could] be given why a plan, which [had] worked so well on a small scale, [might] not be extended, so as to embrace all Christian and civilized nations.'⁶³ Whatever his actual model, it seems clear that Ladd's proposal reflected one of the most important doctrines of domestic politics in the United States of his time.

It should be noted that, unlike Saint-Simon's 'European Confederation', Ladd's proposed international body was not itself a state. This was due to the fact that, unlike Saint-Simon, Ladd used the domestic analogy in accordance with the first of the two basic modes of 'reproduction of the institutions of domestic society' discussed in Chapter II. Ladd's units of international organization were sovereign states.

It may finally be noted that, in reproducing some of the domestic institutions at the international level, Ladd seems to have been clear that the principles underlying these institutions need to be modified substantially. However, this appears, in the case of Ladd, to have resulted from his consideration of practicability rather than from the view that the inherent nature of international law made it impossible for it to become analogous to a municipal legal system beyond a certain point.⁶⁴ This view, or the doctrine of the specific character of

international law, will be discussed in the next chapter. There is no trace in Ladd's writing of his adherence to such a doctrine.

Saint-Simon's European reorganization plan and Ladd's Congress and Court of Nations stood at the opposite ends of a spectrum. The former emphatically dismissed the method of diplomatic conference, and envisaged a merger of Europe into a single polity. The latter, being more optimistic about the ability of states to behave reasonably towards one another, and being more practically minded, held that only two institutions would be sufficient for the creation of international order: a regularized form of diplomatic conference to determine the law, and a machinery to settle international disputes on an entirely voluntary basis.

Between the two approaches of Saint-Simon and Ladd, there was a third: one which envisaged an international government less centralized than Saint-Simon's ideal, but more closely organized than Ladd's proposed institutions. This intermediate vision was held, among others, by James Lorimer, whose position on the domestic analogy has already been noted briefly in the first chapter.⁶⁵

Lorimer's scheme was published in 'The Ultimate Problem of International Jurisprudence' written as the final part of his The Institutes of the Law of Nations (1884). This was in substance the same as his earlier essay, 'Le Problèm Final du Droit International' (1877), but contained some further explanations, in view of its critical reception by the members of the Institut de Droit International, in whose journal the essay had appeared.⁶⁶

Among his critics was Johann Caspar Bluntschli, a Heidelberg Professor of International Law and Political Science, who, in reply to Lorimer, had written, in a popular journal Die Gegenwart, an essay entitled, 'Die Organisation des Europäischen Staatenvereines' (1878).⁶⁷ However,

Bluntschli's own plan, while less centralized than Lorimer's, was also of the intermediate kind, not involving the unification of Europe under one sovereignty, but envisaging nevertheless a far-reaching alteration in the international legal framework of Europe. The works of these two writers will be examined below to see what their domestic models were, and how, despite their disagreements, their use of the domestic analogy reflected the domestic political concerns of the period in Great Britain and the newly unified Germany. First, let us clarify their disagreements.

According to Bluntschli's criticism, Lorimer's mistake was to have gone too far in his attempt to apply domestic political institutions to the international sphere. He accused him of attempting to create a European federal republic on the principle of a representative government and the separation of powers borrowed from the Anglo-American constitutional doctrine and practice.⁶⁸ To this Lorimer replied that his proposed international body was not a federal republic, and that the closest existing parallel to the functions which it would be called upon to discharge would be found 'in those assigned to the "Delegations" by the constitution of the Austro-Hungarian Empire — the international executive corresponding to the central Ministry of War.'⁶⁹ In this debate, neither side was entirely correct as will be shown below.

The correspondence, in structural terms, between the 'Delegations' system and the Ministry of War of the Austro-Hungarian Empire, on the one hand, and Lorimer's proposed international legislative and executive bodies, on the other, were negligible. Moreover, the functions of Lorimer's proposed bodies were more extensive than those of their supposed counterparts of the Empire. It is therefore somewhat doubtful that Lorimer had modelled his project on the Austro-Hungarian Constitution.⁷⁰

A closer examination reveals similarities, and in some cases almost

verbal correspondence, between the articles of Lorimer's project and certain legal provisions of England, the United States, and the Swiss Confederation. Thus, Lorimer's judicature was similar in a number of ways to the English system, and his bicameral legislature was close to the English Parliament, though some of the procedural rules proposed resembled the American model. Lorimer's executive branch, however, showed similarities with that of the Swiss Confederation under the Constitution of 1874.⁷¹

Bluntschli, therefore, was correct to point out the similarities between Lorimer's proposal and the Anglo-American principles. It is curious that Bluntschli, himself a Swiss, did not mention the Swiss Confederation as one of Lorimer's likely models.⁷²

On the other hand, Lorimer was right to insist that his proposed international body was not itself a state. The main reason for this is that his legislature was designed to enact international law, and that, although ratification was to be unnecessary, there was no provision in his scheme suggesting that the international legislature could enact laws directly binding on the citizens of a member state.⁷³ Thus, although Lorimer's international government came close to being a federal government, it appears in fact to have lacked one of the distinctive characteristics of a federation. Therefore, Bluntschli's assertion that Lorimer's project entailed the creation of a European federal republic cannot be accepted.

By contrast with Lorimer's far-reaching scheme, Bluntschli claimed that his own project was based on the 'indispensable principle' of 'the careful preservation of the independence and freedom of the associated states', particularly, those of the Great Powers.⁷⁴

As an application of this principle, questions concerning the existence, independence and freedom of states, or matters of 'high politics', were

to be treated as 'non-justiciable'. Thus, in Bluntschli's view, it was only for the solution of relatively unimportant matters, such as commerce, communication, transport, hygiene, weights and measures, extradition and so on, that an arbitration clause might be adopted, permanent international tribunals set up, and an international court of justice established.⁷⁵

Also as an application of the above principle, the 'College of the six Great Powers' was proposed in the place of Lorimer's highly centralized international executive, of which Bluntschli was very critical.⁷⁶ Thus, according to Bluntschli, any enforcement measures were to be conditional, among other things, upon the unanimous consent of the six Great Powers, namely, Germany, France, Great Britain, Italy, Austria-Hungary, and Russia.⁷⁷ Lorimer's highly centralized international executive was based on the assumption that proportional disarmament had been undertaken as a preliminary step, but Bluntschli rejected such an assumption as unrealistic: according to him, disarmament would come about gradually only after Europe had been re-organized along the lines of his proposal.⁷⁸

Despite these differences between the two writers, there were also some basic agreements. Both writers stressed the inevitability of change in international relations, and considered a mechanism for peaceful change as indispensable.⁷⁹ Moreover, they both recognized the fact of inequality in the power of states, and believed it necessary for the new organization of Europe, in order to be effective, to take this into consideration.⁸⁰ But, most important, Bluntschli praised Lorimer for having realized the necessity of popular representation in the running of international affairs, and consequently, for having incorporated this idea in the proposed European organization.⁸¹ Bluntschli's criticism of Lorimer on this point was that he had gone

too far.⁸² The difference of opinion here between Lorimer and Bluntschli can be fully appreciated when we compare the structure of legislatures proposed by the two writers respectively, and to this we now turn.

Lorimer's international legislature was bicameral, consisting of the Senate and the Chamber of Deputies. Popular representation in the running of international affairs, he thought, could be achieved if a direct link could be established between the national legislatures and the proposed international legislature.⁸³ Thus, the Senators were to be chosen by the Crown or other chief authority, acting along with the upper house, of each state; or, in states where there was no upper house, by the central authority of the state. In a parallel fashion, the Deputies were to be chosen by the lower house of each state where there was a lower house; in states where there was but one house, by that house; and in states where there was no representative government, they were to be nominated by the Crown or other central authorities of the state.⁸⁴

Lorimer expected the Senate to consist of those who already attained to high position and fortune, but there was no such expectation as regards the Chamber of Deputies.⁸⁵ Lorimer seems to have held that the national will could be best represented in an international legislature if the will of the upper class was represented separately from, but on the same footing as, that of the rest of the society. In this respect, Lorimer appears to have intended to transfer the basic structure of the English Houses of Parliament to the international sphere. It seems very likely, moreover, that Lorimer's concern to introduce the principle of popular representation into his proposed international government was prompted by the gradual democratization which had been taking place in the government of Britain throughout the nineteenth century.⁸⁶

Bluntschli's proposed legislature was also bicameral. But, unlike

Lorimer, who applied the principle of popular legislation to both chambers of the proposed international legislature, Bluntschli combined this principle with the traditional principle of international practice: the diplomatic representation of the will of the sovereign (executive) authority.

Bluntschli's bicameral legislature was therefore a hybrid between Lorimer's international legislature and Ladd's Congress of Nations. On the one hand, there was to be a House of Representatives or Senate, whose members were to be selected by national legislatures, and who were, therefore, to be expected to represent the peoples of Europe. On the other hand, there was to be the Council of Confederation (Bundesrath), which was to be in essence a regularized form of a conference of ambassadors sent and instructed by the government (the executive authority) of each member state.⁸⁷

In presenting such a form of legislature, Bluntschli appears to have used the German Imperial Constitution of 1871 as his model. This can be surmised from the following points of correspondence between the two institutions.

As in Bluntschli's project, the German Imperial legislature was bicameral, consisting of the Reichstag and the Bundesrath. The members of the German Reichstag represented the German people as a whole: like Bluntschli's Senators, who were to represent the peoples of Europe, they were not bound by instructions from their national governments. On the other hand, like Bluntschli's Bundesrath, the German Bundesrath consisted of diplomatic agents, appointed by, and voting under the instructions from, their respective governments.⁸⁸

Moreover, as in Bluntschli's proposal, the majority of votes in both chambers was necessary and sufficient for any legislative enactment of the German Empire, although, unlike the legislature of Germany, the law

to be enacted by Bluntschli's legislature was to have the character of international law.⁸⁹ It may also be noted here that according to the German Imperial Constitution, an inter-state constitutional dispute, for which no competent judicial authority was found in either of the contestants was to be 'amicably arranged' by the Bundesrath or settled through Imperial legislation.⁹⁰ This provision is reminiscent of Bluntschli's suggestion that the question of 'high politics' within the proposed European Confederation, being non-justiciable, should be entrusted to the Bundesrath, and that recourse might be had to legislative solutions.⁹¹

Unfortunately for our argument, Bluntschli himself remarked that the German Empire was unsuitable as a model for the European organization. However, the source of his objection was that European nations could not, in his view, allow one single state to become the leading partner of their confederation, as Prussia was of the German Empire.⁹² A union of states, such as the German Empire, where one member had a dominant constitutional position, Bluntschli called a Bundesreich, and distinguished it from an ordinary confederation of states (Staatenbund).⁹³ A Bundesreich-type structure, he thought, was unsuitable for Europe.

Nevertheless, in his proposed European Confederation, Bluntschli did give a constitutionally dominant position, not to any single state, but to the six Great Powers conjointly.⁹⁴ It appears therefore that, despite his express denial of so doing, Bluntschli did in fact model his European legislature on that of contemporary Germany, and that, in so doing, he substituted the principle of Hexarchy for that of Prussian supremacy.

It must be noted here that Bluntschli had been called to the University of Heidelberg five years before the outbreak of the Austro-Prussian War. He was made a Privy Councillor by the Grand Duke of Baden,

where liberal and democratic attitude was more strongly rooted in comparison to many other parts of Germany characterized by autocracy. Bluntschli himself was a liberal parliamentarian, and was instrumental in the constitutional reform of Baden in 1864. He represented Baden in the Tariff Parliament of 1867, and did much to prepare the way for the union of North and South Germany. He was therefore very closely involved in the development of German constitutional history in the latter part of the nineteenth century.⁹⁵ Given this background, Bluntschli's remark that the proposed unification of Europe could not be more difficult than had been the unification of Germany is specially noteworthy.⁹⁶ It would not be surprising if he was thinking that the new Imperial Constitution could offer some useful ideas for the re-organization of Europe.

The foregoing examination shows that Lorimer and Bluntschli probably employed the same method in working out a major part of their respective proposals. This was to transpose certain basic constitutional principles of their respective countries to the international sphere. This is particularly true of their proposed legislatures. In applying these principles to the international system, neither of them advocated the replacement of the sovereign states system by a single sovereign state, federal or unitary, although, in some respect, Lorimer's proposed international body was close to being a federation.

It is particularly interesting to observe that both these writers appear to have been significantly affected by what was at that time regarded as among the most vital issues of domestic politics in their own countries. Their use of the domestic analogy was therefore affected by their interest in the rise in the power of the representative legislature vis-à-vis the executive authority. What they advocated was an extension of this tendency or idea to the international sphere, rather more fully in the case of Lorimer than Bluntschli.

Reflecting the limitations on the representative character of the English Parliament, Lorimer's proposed Senate was to consist of those who had already attained to high positions and fortune. Reflecting the special circumstances of Germany, which had been unified after a long period of confederal division, Bluntschli's proposed legislature was to combine the principle of democratic legislature with that of diplomatic conference. Here then, after Saint-Simon and Ladd, we have two more cases which illustrate the extent to which one's choice of a domestic model is influenced by one's immediate domestic political experience.

It may be observed that while the proposals of these four writers stimulated speculation among many thinkers on the future organization of international society, the formal framework within which foreign relations were conducted remained more or less unchanged throughout the nineteenth century. But at the turn of the century, a remarkable event took place, the Peace Conferences at the Hague. This appeared to many writers on world order to signify the arrival of a new era in the history of international relations. In the next chapter, we shall examine the views of those who wrote against this new background.

Chapter IV Contending Doctrines of the Hague Conferences Period

The writers of the nineteenth century, whose ideas we examined in some detail in the previous chapter, had a number of intellectual dispositions in common. Among these were their belief in the progress of human civilization, and their confidence in certain existing forms of government.

The belief in progress was clearly expressed by Saint-Simon and William Ladd.¹ Even Lorimer, who did not believe his project to be realizable in his own generation, was confident that proportional disarmament, which was to be the preliminary condition for the establishment of his proposed international government, would sooner or later be undertaken, and that the boundless progress of human civilization ensured the eventual formation of the proposed government itself.² Bluntschli, who had in fact written that he did not know if or when his project could be put into practice, nevertheless stated that his proposed European Confederation would be easier to form than was the German Empire whose establishment he had himself witnessed.³

One of the factors which led these writers to hold a progressivist view of history was their judgement that the political conditions of some states had shown marked improvements in the recent past. The domestic experience of these writers was not like that of the earlier writers.⁴ France was now equipped with the best, 'English-type', constitution, said Saint-Simon.⁵ In civilized nations, force was no longer regarded as an honourable means for obtaining justice, wrote Ladd.⁶ Satisfaction with certain existing domestic legal systems is implicit in Lorimer's claim that universal experience proved domestic social order to depend on the harmony of legislation, adjudication and execution.⁷ Bluntschli, too, appears to have been satisfied with

certain political developments in Germany.⁸

It is little wonder then that these nineteenth century writers believed that there was something to be learned from their domestic experience. Whether they were right in applying it to the international sphere in the way they did is open to question. But it is clear that they were all favourably impressed by the advances made in the domestic sphere of some states, saw this as a mark of human progress, and thus thought it right to apply the relevant principles of domestic organization to the hitherto comparatively underdeveloped area of international relations.

It is important to note that the international system of the period, in which these writers produced their plans, was largely lacking in formal international organizations. International administrative organizations began to emerge in the final quarter of the nineteenth century. But these institutions do not appear to have attracted the attention of peace-schemers till later. There was of course the diplomatic practice of ad hoc conferences, the Concert of Europe. But Saint-Simon, seeing no merits in diplomatic conferences as such, would have been dismissive of it. Ladd briefly referred to the Holy Alliance, but his knowledge of it was thin. He was more concerned to praise its supposed Christian basis than to use it as a model for his Congress of Nations. James Lorimer was very critical of the Concert, and only Bluntschli saw it somewhat more positively as an embryonic international organization.⁹ The relative lack of formal organization at the international level may explain why these writers relied rather conspicuously on concrete domestic models. There was little in the international system itself which they could point to as a foundation for future progress towards peace, while there were certain domestic institutions which in their view were successful, and therefore

appealed to them as good models.

The situation was markedly different for the writers at the beginning of the twentieth century. While the earlier writers' attempts to transfer all at once to the international sphere those domestic institutions, which they considered as necessary for the achievement of world peace, had proved futile, international law nevertheless began to show signs of step-by-step progress at the turn of the century.

The Hague Peace Conferences of 1899 and 1907 produced a large number of conventions and declarations, and established a Permanent Court of Arbitration.¹⁰ The Geneva Convention of 1906 amplified that of 1864, and eliminated certain obscurities in the laws of war.¹¹ A Naval Conference met in London in 1908 and 1909, and drew up laws of naval warfare with the view to providing the International Prize Court, proposed at the second Hague Conference, with necessary legal criteria.¹² The Hague Court of Arbitration was used on several occasions, and more than one hundred arbitration treaties were negotiated in the first decade of the twentieth century.¹³ Textbooks of international law were revised and updated to incorporate such rapid developments, and the authors expressed hopes for its further improvements.¹⁴

But such hopes were soon to be shattered by the outbreak of the war in the summer of 1914. This experience brought about a radical shift in the opinions of many of those who were concerned with the problems of world order. George Keeton wrote:

Whereas only a few years before many publicists thought that the Hague Peace Conferences had ushered in a new era in international relationships, during which mankind could look forward to long periods of unbroken peace and steady progress, and while they were unanimous that the respect for international law was firmly based upon a public opinion

whose censure would be sufficient to deter the potential lawbreaker, the war had made it necessary to abandon these doctrines, which were in fact no more than a late outcrop from the School of Jurisprudence whose underlying philosophy was the progressive evolution of the human race towards increased law-abidingness.¹⁵

And in a similar vein David Mitrany wrote:

The generations of the Second World War can hardly realise what a shock that earlier event [the First World War] was — they had been prepared for violence and conflict by years of Hitler and Mussolini, of Bolshevik Revolution and the Spanish Civil War. For us 1914 followed a long period of stability and liberal optimism, of expanding international trade and cultural intercourse, of pacifist movements and efforts — like the Hague Conferences at the turn of the century.¹⁶

These two contrasting episodes, of peace and war, provide the international historical background for this and the next chapter. Chapter V will deal with the impact of the Great War, and will examine how this event shaped the use of the domestic analogy, and how this analogy provided the basis of the League of Nations. But here we are concerned with the effects of the development of international law and relative peace at the turn of the century.

In the first part of this chapter, we shall examine the ideas of Walther Schücking, a Marburg Professor of International Law, and his Cambridge counterpart, Lassa Oppenheim. These writers have been selected from among the well-known mainly because their projects illustrate, in a striking manner, the influences of the development of international law and relative peace at the turn of the century upon the use of the domestic analogy in proposals for world order.

In the latter part of this chapter, we shall study those writers on international law who appear to have belonged to Oppenheim's 'diplomatic school'. Those writers were Oppenheim's contemporaries, and wrote against the same historical background of progress in international law. Yet, as we noted, this school was said by Oppenheim to be opposed to the development of international law along the lines of municipal law.¹⁷

As it turns out, apart from one possible exception, none of the authors whom Oppenheim may have considered as belonging to this school was well-known or influential. None the less, we shall discuss the views of those authors so as not to lose sight of the fact that the development of international law at the turn of the century did not necessarily produce a uniform response among international lawyers in favour of a further approximation of international law to municipal law than it had already accomplished by that stage. Indeed it appears to have been partly as a criticism of the strong current of progressivism among international lawyers that the writers of the diplomatic school produced their conservative views. At any rate, an examination of their views should clarify what it is to reject the domestic analogy while remaining within the confines of what Kenneth Waltz has called the 'third image' analysis of international relations.

One of the major effects of the development of international law at the turn of the century was the growth of gradualism based on optimistic, progressivist assumptions. Instead of debating on the impracticable ideal the writers of this period began to concentrate on the theme of the gradual modification of the existing system. The optimistic yet gradualist interpretation of the development of international law at this time was vividly expressed in relation to the Hague Conferences

by J.B. Scott. According to him, they were 'the first truly international assemblies meeting in time of peace, for the purpose of preserving peace, not of concluding a war then in progress': they marked, in his view, an epoch in the history of nations for they 'showed on a large scale that international cooperation [w]as possible and they created institutions — imperfect it may be, as is the work of human hands, — which, when improved in the light of experience, will both by themselves and by the force of example promote the administration of justice and the betterment of mankind.'¹⁸

It is not suggested here that gradualism was totally absent from nineteenth century proposals. Such a categorical statement is not likely to be true in the study of human thought. Thus, we noted earlier that William Jay's proposal advanced in the middle of the nineteenth century was characterized by gradualism.¹⁹ There was an element of gradualism also in William Ladd's proposal.²⁰ However, at the turn of the century, gradualism appears to have become much more pronounced among those who planned for peace.

One of the most systematic proposals on peace through law made along the lines of gradualist progressivism is found in the work of Walther Schücking. His book, Der Staatenverband der Haager Konferenzen (1912) contained a complete programme for a step-by-step development of international law, from the immediate future, in which the third Hague Conference was expected, into the more distant. Such an approach to peace-planning was based on a prevailing belief in the unilinear progress of mankind towards the goal of peace.

In Schücking's view, mankind were not starting from nought in this process, as it had in earlier times. As he saw it, the organization of the world had already reached the stage of a loose confederation through the institution of the Hague Conferences and the laws that were emanating

from it.²¹ He thought there was a 'well-known inherent law of things that a development once begun increases its pace as it proceeds'.²²

A further institutional development of this existing confederation into a more fully equipped international government, and, if necessary, into a world federation was, in his opinion, the line of future progress. A more detailed presentation of his proposal reveals how he used the domestic analogy in each stage of his argument.

Among the tasks of the immediate future in Schücking's programme were the conversion of the Hague Conference into a formal legislative organ of the international community and the development of international judicial organization. In order to heighten the sense of solidarity among the participants of the future Hague Conferences, and to formalize the hitherto de facto world confederation, the name of the 'Union des Etats de la Haye' was to be given to it, and its constitution drawn up.²³

This constitution, as Schücking envisaged it, was to establish formally a union of sovereign states, which was to be looser than the German Confederation of 1815.²⁴ There are frequent references in his proposal to the constitutional instruments of this confederation (the German Act of Confederation of 1815, and the Vienna Final Act of 1820), as well as, in minor procedural matters, to the German Imperial Constitution of 1871.²⁵ It is beyond doubt that his close knowledge of German constitutional history helped him to work out in detail his project for the 'Hague Union'.

As this stage in Schücking's programme, the proposed world confederation stood between the proposals of William Ladd and James Lorimer. It resembled Ladd's plan in that they both lacked an executive organ. Moreover, Schücking's legislative body was in essence a regularized form of diplomatic conference like Ladd's Congress of Nations. On the other hand, the highly developed judicature which Schücking expected to see in the 'Union' was more like the judicial department of Lorimer's

international government.²⁶

Schücking did not stop here, however. There were more developments to be made in the next stage of the gradual perfection of the legal organization of mankind.

Among the goals of the more distant future in Schücking's programme were the mutual recognition by the member states of their independence and territorial integrity, the renunciation of war, compulsory adjudication of all disputes without reservation, and the creation of an international executive organ.²⁷ As for the last of these, Schücking incorporated the plan put forward by his contemporary, Cornelius van Vollenhoven of Leyden, but considered all these four goals to be inter-related, and, in his view, the time was not ripe for their realization.²⁸

In addition, Schücking considered as necessary the gradual development and systematization, under the Hague constitution, of international administrative unions, and the creation of a World Parliament to work as a second legislative chamber side by side with the periodic Hague Conferences of governmental representatives.²⁹

This World Parliament was to be composed, as in the case of Bluntschli's proposed European Senate, of delegations from the parliaments of the contracting parties. Here Schücking referred not only to the proposal of Bluntschli, whose legislature, we argued in the previous chapter, was derived from the model of the German Imperial legislature, but also to the latter legislative body itself, as well as to some reform projects which had been advanced in Germany in the 1850s and 1860s. According to Schücking, these projects all clung to the idea of a confederation as the type of union desirable for Germany, but at the same time they envisaged the creation of a unified assembly as one of its constitutional organs. He wished to see the same principle applied eventually to the

'Hague Union'.³⁰

Schücking went even further. Just as the United States of America, Switzerland and Germany grew out of the stage of a confederation into that of a federation, it might, in his view, become necessary in the very distant future for the whole world to make their bond even closer. Eventually, therefore, the 'Hague Union' might develop itself, if such necessity should arise, into a world federal state.³¹ Here Schücking's programme is completed.

The foregoing exposition reveals that in Schücking's view international law could approximate the domestic legal system as much as necessary, and could even transform itself into a federal legal system. Schücking himself did not specify any clear threshold which, in its gradual approximation towards municipal law, international law would have to cross in order to serve effectively for peace, although there were some writers among his contemporaries who did. For instance, Vollenhoven, the Leyden Professor of International Law, whose plan Schücking incorporated in his programme, insisted that the creation of an international executive was an indispensable condition of peace.³² There were also some writers who thought the federal merger of the existing states to be an essential step towards world peace.³³ But these views were all accommodated within the gradualist framework of Schücking's programme. His was undoubtedly one of the most comprehensive of all contemporary projects on peace through law, ordering the rest, from the more modest to the radically ambitious, along the time scale of future human progress.

The view that there was no limit to the gradual approximation of international law to municipal law was not peculiar to Schücking. For example, T.J. Lawrence, a British textbook writer of the same period, in his fourth (1910) edition of The Principles of International Law,

remarked confidently that an International Prize Court would come into existence in the immediate future, a High Court of Arbitral Justice would probably follow at no distant date, and, if sanctions were needed, something resembling an international police was within the limits of possibility.³⁴ The rapid development of international law, which he was witnessing, appeared to him to ensure the coming of an organized international society, equipped with legislative, executive, and judicial organs.³⁵

However, there were also some writers at the turn of the century, who, while concerned to develop international law gradually on the basis of its contemporary achievements further along the lines of municipal law, stressed that it was unnecessary for the former to approximate the latter beyond a certain limit. Lassa Oppenheim is a case in point, to whose ideas we shall now turn.

As we saw in Chapter I, Oppenheim was of the opinion that the progress of international law depended to a great extent upon whether the 'legal school of International Jurists' prevailed over the 'diplomatic school'. The 'legal school', according to Oppenheim, desired international law to develop more or less along the lines of domestic law, while the 'diplomatic school' was critical of such a vision.³⁶ He did not say which particular international lawyers of his day belonged to each of these schools, with the exception of John Westlake, of whom he said that he was a champion of the legal school.³⁷ It should be clear, however, that Oppenheim considered himself a member of this school, for otherwise it would have been odd for him, as an international lawyer concerned for the future of international law, to say that this depended on the prevalence of this school over the other.

Like Schücking and Lawrence, Oppenheim was impressed by the

contemporary development of international law. He took the view that international law had entered a 'new and pregnant epoch' where the beginning of the development was before their eyes, and that, in order to create a more peaceful world, any scheme of international organization must try to build gradually on the foundation laid at the Hague.³⁸

Oppenheim's heightened confidence in the future of international law can be shown by comparing a passage from the first (1905-6) edition of his well-known textbook with a corresponding passage from its second (1912) edition. In the former, he had stated that international law did not object to states waging war, but now in the latter, he qualified this by adding a phrase, 'at present'. Likewise he now held it to be only 'at present' that eternal peace was an impossibility, whereas earlier he had stated this goal to be merely an unrealizable ideal: it now appeared to him that this ideal would 'slowly but gradually be realized'.³⁹ It would appear that the development of international law which had taken place in the intervening years, which had necessitated the revision of his book, had itself raised his confidence in the future contribution of international law to world peace.

It is very important to realize, however, that it was international law qua 'international' law that he, as a member of the legal school, desired to see perfected on the lines of domestic law. To put it more fully, there was for Oppenheim a definite line beyond which 'international' law could not go, without contradicting its essential nature, in the process of its assimilation to a domestic legal system. If international law were to be made to approximate a domestic legal system beyond this boderline, in Oppenheim's view, it would cease to be 'international' law, i.e., the law between sovereign states.

Therefore, while Oppenheim wished to see international law develop 'more or less on the lines of municipal law', he was equally opposed to

those who desired to develop it beyond that borderline, and, who, in Oppenheim's conception, were consequently attempting to substitute a 'world state' for the sovereign states system governed by 'international' law. As we shall see presently in more detail, this borderline consisted, for Oppenheim, in the introduction of the idea of organized sanctions into international law, which, in his view, would fundamentally contradict the 'nature and definition' of that system of law.⁴⁰

Naturally, the mere notion of what is to count as 'international law', whether it be a popular or scientific definition, cannot by itself dictate to mankind the limit beyond which its global legal system could or should not develop. One might accept Oppenheim's criteria as to what is to count as 'international law', and yet suggest that 'international law' thus defined, however closely it might be made to develop along the lines of domestic law, was not good enough as a means of organizing the world. To those who think it essential to bring the global legal system even nearer to a domestic model, the scholarly admonition that such a system would contradict the concept of international law would be irrelevant.

What underlay Oppenheim's position was not only his definition of international law, upon which his textbook as well as his proposal was built, but his confidence in the power of international law thus defined. International law, which, by his definition, was incompatible with the idea of organized sanctions, appeared to Oppenheim as a satisfactory means of organizing the world. The introduction of such an idea would be not only logically incompatible with the nature of international law as he defined it, but also unnecessary, in his opinion.

Oppenheim's belief in the redundancy of organized enforcement in the international sphere was explicitly grounded on his perception of the development of law within the domestic sphere. He wrote:

In the internal life of states it is necessary for courts to possess executive power because the conditions of human nature demand it. Just as there will always be individual offenders, so there will always be individuals who will only yield to compulsion. But states are a different kind of person from individual men; their present-day constitution on the generally prevalent type has made them, so to say, more moral than in the time of absolutism. The personal interests and ambitions of sovereigns, and their passion for an increase of their might, have finished playing part in the life of peoples. The real and true interests of states and welfare of the inhabitants of the state have taken the place thereof. Machiavellian principles are no longer prevalent everywhere. The mutual intercourse of states is carried on in reliance on the sacredness of treaties. Peaceable adjustment of states' disputes is in the interests of the states themselves, for war is nowadays an immense moral and economic evil even for the victor state.⁴¹

While Oppenheim was therefore of the opinion that organized sanctions would be both unnecessary and contrary to the definition of international law, he held it to be both necessary and consistent with its definition to form an international court of justice, consisting of permanently elected judges, and deciding the cases of international disputes laid before them in terms of strictly legal criteria.

In his proposal of 1911, contained in a short work, Die Zukunft des Völkerrechts, he did not argue that this court should be endowed with the power of obligatory adjudication, although he was confident that this aim would be achieved in the third, or some later, Hague Conference.⁴² In his view, the obligation to submit to the court all or certain types of international disputes would be unnecessary, for once the court had been established, states would, in his judgement, voluntarily submit to it a whole range of cases. The type of cases submitted would, in

his view, at first be those of smaller importance, but he was confident that as the court's reputation became well-established, more important cases would come to be submitted. What was lacking was the machinery: once available, it would be used, and its role would expand.⁴³

In addition, Oppenheim, like Schücking, suggested the conversion of the Hague Conference into a permanent periodic assembly of governmental representatives for the codification of international law.⁴⁴ He also planned international courts of appeal, to be established at a later date, to stand above the international courts of justice, in order to make the voluntary acceptance of the judgements more likely.⁴⁵

All these proposed organs were, in Oppenheim's view, both necessary to, and consistent with the notion of, international law: anything beyond them both unnecessary, and contrary to it.

At this stage, we may note that we have witnessed at least three different ways in the use of the domestic analogy, exemplified by Lorimer, Schücking and Oppenheim.

Lorimer recognized the principles of good government at work within the domestic sphere, but saw nothing in the international sphere to build on. He therefore advocated the direct transfer of those principles to the virgin soil of international relations. Schücking, on the other hand, noted within the international sphere a promising, embryonic institution in the form of the Hague Conferences. He therefore argued that this could be developed gradually along the lines of municipal law to its logical end, the creation of a World Federation. Oppenheim, too, saw both the principles of good government at work within the domestic sphere and embryonic institutions within the international system, and his approach was just as gradualist as Schücking's. But, unlike Lorimer and Schücking, he considered that the progress of government

in the domestic sphere made it unnecessary for international law to develop beyond certain limits along the lines of municipal law.

Thus, in the case of Lorimer, we find the domestic analogy leading to an outright transfer of most of the important domestic institutions to the international sphere. In the case of Schücking, we see an extensive, but gradualist use of the domestic analogy. And, in Oppenheim, a gradualist, but limited use of this analogy.

As we noted at the outset, the development of international law at the turn of the century did not necessarily produce a uniform response among international lawyers in favour of a further approximation of international law to municipal law than it had already accomplished by that stage. There were those whom Oppenheim had called the 'diplomatic school'. In the remaining part of this chapter, we shall attempt to identify who belonged to this school and what its views were. What follows is somewhat conjectural as unfortunately Oppenheim himself did not disclose whom he counted as among this school.

According to the Oxford English Dictionary, a 'school' is a body or succession of persons who in some department of speculation or practice are disciples of the same master, or who are united by the general similarities of principles and methods, and hence, figuratively, a set of persons who agree in certain opinions. In describing the 'diplomatic school', Oppenheim did not suggest that it was headed by a particular 'master', nor did he state that the members of this school were 'united' in the sense of seeing themselves as united. Therefore, we may suppose that when Oppenheim referred to the 'diplomatic school' he had in mind a set of international lawyers of his time whose opinions on certain aspects of international law were similar to one another. Their ideas were similar, as Oppenheim stated, inasmuch as they were opposed to

the creation of an international court of justice composed of permanently appointed judges, and they desired international law to remain a body of elastic principles rather than to work towards the condification of firm, decisive and unequivocal rules.⁴⁶

In fact it is not very easy to find an international lawyer among Oppenheim's contemporaries who satisfies his descriptions of the 'diplomatic school', although there may have been many politicians who, from the viewpoint of their respective national interests, were opposed to the establishment of an international court of justice or the codification of international law in some specific areas. However, an extensive survey of the relevant literature reveals that Otfried Nippold, a German international lawyer, but citizen of Switzerland, may have been among those whom Oppenheim had in mind as the members of this school.⁴⁷ This suggestion is based on the following findings.

The opposition between the two schools appears to have occurred to Oppenheim between 1905 and 1911 or 1912. In 1905, the first edition of his textbook was published, but no reference was made to the two schools. In 1911, Oppenheim published Die Zukunft des Völkerrechts, in which he advocated the creation of an international court of justice. In this book, he briefly referred to those who were critical of the creation of such an institution, but he did not say who they were.⁴⁸ In 1912, the second edition of his textbook was published in which for the first time he referred to the two schools by their labels, and described the 'diplomatic school' in terms virtually identical with those which he had used in his 1911 work to characterize the opponents of an international court of justice.⁴⁹

In this work of 1911, Oppenheim had stated that it was among the old champions of arbitration that the most violent opposition was raised to the erection of a real court of justice.⁵⁰ Nippold fits into

this category well. Moreover, importantly for our hypothesis, Nippold's major work, in which he stressed the role of arbitration, but criticized the idea of adjudication, appeared in 1907, that is, between the publication of the first and the second editions of Oppenheim's textbook.⁵¹

Furthermore, in 1908, Nippold published a two-volume work on the second Hague Conference, in which he repeated his opposition to the idea of an international court of justice.⁵² The copy of the second volume available in the British Library of Political and Economic Science has an inscription on the title page, showing that it had been given personally to Oppenheim by its author. Although the copy of the first volume, in which Nippold expressed his opposition to the idea of a court of justice, unfortunately, has no indication that it had been given to, or read by, Oppenheim, it may well be that he had read both volumes. This could well have stimulated Oppenheim to characterize those who were opposed to the creation of an international court of justice in the way he did in his book of 1911, and, subsequently, to refer to the antagonism between the two schools in the second edition of his textbook. The reference to the two schools reappears in all the subsequent editions.⁵³

On such indirect evidence, we may suppose that Oppenheim considered Nippold to belong to the 'diplomatic school', and examine the latter's view on the conditions of international order as an example of how that school treated the subject.

Curiously enough, the outline of Nippold's argument about the nature of international law turns out to be remarkably similar to that of Oppenheim. They both stressed the specific character of international law. The main difference between the two writers consisted in the fact that whereas Oppenheim placed the borderline, beyond which international

law could not develop without contradicting its nature and definition at the level of creating a mechanism for organized sanctions, Nippold put this upper limit of international law at the lower level: the level at which states became subjected to an international court of justice composed of permanently appointed judges, and acting in accordance with its own procedural rules.⁵⁴

Nippold's own plan, moreover, turns out to be a little more far-reaching than one might expect. He proposed a general treaty which obliged states to resort to one of the three peaceful methods: arbitration, mediation or inquiry by commission. Neutral states were to be legally obliged to remind the contestants of their legal duty to resort to one of these peaceful means.⁵⁵

It will have to be accepted of course that the concession he made to the domestic analogy was small, and more limited than the case of Oppenheim. Nippold's concession to it consisted in the fact that his proposal to impose a system of legal restrictions upon the freedom of states to resort to self-help was at least implicitly an attempt to emulate to some extent the achievements of a centralized legal order as shown within the borders of states.

The affinity between the two writers leads us to suspect that perhaps Nippold stood at the 'legalist' end of the spectrum among the 'diplomatists' (just as one might suspect that Oppenheim was at the 'diplomatist' end of the 'legalist' spectrum), and that some writers on international law at the time might have rejected the domestic analogy rather more fully than did Nippold. The writings of Karl von Stengel and Thomas Baty throw some light on this question, and we shall examine their ideas for world order in the following.

Karl von Stengel was a Professor of Law at Munich, and was

appointed a member of the German delegation to the first Hague Peace Conference. Some of those who knew that he had written a book in praise of war and depreciating arbitration seem to have thought it odd that he should be among the delegation.⁵⁶ Stengel's view of international law, however, was similar to that of Nippold.⁵⁷ The main difference between them was that Stengel went further than Nippold in protecting the existing legal freedom of states to resort to force as a means of settling disputes.

In Stengel's view, an arbitral tribunal could have jurisdiction over a dispute insofar as the parties agreed to provide it with such jurisdiction. He held that a court of arbitration or justice equipped with compulsory jurisdiction was just as incompatible with the idea of international law as would be an international legislature capable of imposing laws upon states against their will. Should arbitration fail, he thought, states would have no other choice but to settle their differences by force in accordance with the laws of war.⁵⁸

Stengel's conservatism could be regarded as an instance of the rejection of the domestic analogy inasmuch as he was opposed to any attempt to move the then existing system of international law closer to a domestic model especially in the area of the settlement of disputes.⁵⁹ It is not known whether Oppenheim considered Stengel as a member of the 'diplomatic school', although Stengel's opposition to the aims of the 'legal school' had been noted, for example, by Walther Schücking.⁶⁰ If we are right in our judgement that Nippold stood at the 'legalist' end of the spectrum among the 'diplomatists', it might be that Stengel was at the other extreme within the 'diplomatic school'.

However, in order to appreciate Stengel's view fully, it is vital to bear in mind that his position on international law was firmly

rooted in German nationalism. In his view, Germany, a late-comer to the international struggle, was encircled by hostile nations. They were, according to him, bound to start a war against Germany if, under the influence of misguided pacifism, she chose to reduce her armaments, trusting in the power of international arbitration. Thus, he concluded, pacifism would defeat its own aim, and militarism was what was needed in Germany at that time: only through the adoption of a militaristic policy now, he said, could Germany resort to a peaceable policy in a generation hence.⁶¹

Therefore, if we are to treat Stengel as exemplifying the attitude of the 'diplomatic school' towards the domestic analogy, we must not forget the fact that his view on this question was derived primarily from the viewpoint of protecting the position of one particular nation rather than from the viewpoint of world order as such. Although Stengel linked these two perspectives together, the overall bias of his book was clearly in the direction of German nationalism.

In contrast to the case of Stengel, there is no clear evidence to suggest that Thomas Baty's views on international law, in the area of our concern, were rooted in the interests of any one country as he perceived them to be, although it is of some interest to note that he was a legal adviser to the Foreign Ministry of another revisionist power, Japan in the inter-war years, and was a Shintoist.⁶²

In the opinion of this little-known British practitioner and scholar, international law was a near perfect system as it stood. It was more perfect than domestic law because it worked well without a government. We have seen that this belief was shared to some extent by Oppenheim, but Baty's admiration of international law was something of a different order.

Baty wrote in his book published in 1930: 'It is the special glory

of the Law of Nations that, so far, it has triumphantly overridden the policeman'; 'International law overrides the policeman, and can do very well without him. Equally is it able to do without a Legislature — and not only able, but exultant'; 'Nor does it call for an authoritarian Code'; 'the longer it does without [a legislature] the better'; 'It bows to no sovereign set of managers.'⁶³

Baty also argued that as a consequence of the anarchical structure of international society, its rules would have to be simple, certain and objective, while nevertheless elastic.⁶⁴ Baty's emphasis on the elasticity of international law satisfies part of Oppenheim's criteria of the 'diplomatic school', although Baty's book appeared two decades after Oppenheim's reference to the two schools of thought.

Baty's earlier work, International Law, however, had been published in 1909, and this contained an interesting analysis of arbitration, and a somewhat unusual chapter on federation.

Baty's favoured solution in search of a substitute for war was a treaty for obligatory arbitration of all disputes without reservation. But unlike many elaborate proposals advanced by the peace advocates of his time, his plan consisted in a very simple declaration on the part of each contracting party to bind itself to discover a person in whom it would have confidence to come to a just decision in case of dispute with another.⁶⁵ The actual choice of the arbitrator and the regulations of the procedure would have to be left, he thought, until each time the necessity for arbitration arose. This elasticity, in Baty's view, was the mark of arbitration, in contrast to adjudication, and was for this very reason particularly suited to the international environment. He rejected the 'fantastic projects for the composition of international courts' as being 'suitable material for undergraduates' essays in Political Science' and 'unnecessary to be recommended or

adopted.⁶⁶

Baty defended his preference for a simple and elastic treaty, consisting of a mere pledge to refer all disputed questions to arbitration by arguing that whether simple or complex, the substitute for war would have to be based on exactly the same foundation, i.e., the force of a world-wide opinion constraining the observance of treaties.⁶⁷ He went further still: the moral force of a simpler and freer treaty would be greater, for the more 'fair and liberal' an agreement, the more strongly would public opinion condemn its breach.⁶⁸ He concluded: 'If the nations are still so prone to war that they will look without disapproval on one of their number making a peaceful settlement of a given dispute impossible, in defiance of her solemn engagement, it is evident that no scheme of obligatory arbitration, however detailed, is likely to succeed.'⁶⁹

Furthermore, Baty went on to warn against the importation into the domain of international disputes 'the arts of the advocate' and the 'sordid and suspicious atmosphere of the law-courts'.⁷⁰ Excessive legalism, in his view, was harmful to the cause of arbitration.

Baty's position as regards the role of law for the achievement of international peace was thus in perfect accord with Oppenheim's description of the 'diplomatic school', and the possibility is not ruled out that he was among those whom Oppenheim had in mind. Baty's opposition to the establishment of an international court of justice was known, for example, to a German writer, Hans Wehberg, who referred to Baty's International Law in his Das Problem eines Internationalen Staatengerichtshofes (1912), and it would not be an unreasonable conjecture that Oppenheim, in England, was also aware of Baty's views.⁷¹

Baty, however, went beyond the horizon of an ordinary international lawyer. He was convinced that the state was becoming obsolete and being overtaken by the social classes. This, in his view, might result

in a completely different structure of the world. But once the old sovereign states system had been broken up, and a long period of uncertainty had passed, Baty assumed that local units, much smaller than the present nation-states, would gain ascendancy as the centres of true patriotism. What he envisaged as the model of a very distant future for the global organization of mankind was a 'federation' of these minute local units. However, this 'federation', in his view, should not be organized on the model of a domestic government: in particular, it was not to have a legislature or an executive, for, in his view, these organs were becoming the target of ever-growing criticism even in the domestic sphere. After all, it was the absence of those organs from the international sphere that had rejoiced Baty so much.⁷²

As we noted in Chapter II, an advocacy for the conclusion of an arbitration treaty between two states could be derived from the domestic analogy.⁷³ A fortiori, Baty's proposed treaty, which, despite its flexibility, was general, and was to cover all disputes, can be said to contain an attempt to move the world one step nearer to the conditions which obtain within the borders of states. But, on the other hand, Baty was emphatically opposed to pushing the world system closer to the domestic system than the point at which states pledged to use arbitration as a means of settling their disputes.

Moreover, in many of his remarks about international law and domestic systems, we can even detect the reverse of the domestic analogy: not that international law ought to emulate a domestic model, but that domestic law is inferior to international law, that even within the domestic sphere governmental machinery is under attack, and that the state will disappear as a unit of global organization in some distant future. Thus, in Baty, whether or not he was counted by Oppenheim as among the 'diplomatic school', we see the domestic analogy approach

the vanishing point, be rejected in most parts and even 'reversed'. The analogy was reversed in the case of Baty in the sense that it was now international law which was to provide a model for municipal law, and not the other way around, even though with respect to arbitration he might be classed together with those who made concessions to the domestic analogy.

Because Oppenheim did not clarify who in his judgement belonged to the 'diplomatic school', it is difficult to know for certain who it comprised and what precisely its attitude was towards the domestic analogy. It would appear, however, that the 'diplomatic school' was a label which Oppenheim had imposed upon a number of international lawyers who were unwilling to see international law emulate a domestic model as far as he had himself desired. It is not surprising then that the difference between Oppenheim and Nippold, for example, was a matter of degree. It is nevertheless easy to appreciate Oppenheim's concern to draw a sharp demarcation line between himself and someone like Nippold for the question which divided them was precisely those which carried particular significance in the aftermath of the second Hague Conference, the creation of an international court of justice.⁷⁴ Within the 'school', the attitude towards the domestic analogy was not uniform. Nevertheless, we see in their prescriptions general scepticism towards reliance on the domestic analogy.

One observation needs to be added here. Just as gradualist progressivism, while particularly pronounced in the early twentieth century, was not absent from the nineteenth century, so the ideas advanced by the diplomatic school were not confined to the Hague Conferences period. There were those who adhered to similar ideas before the first decade or so of the twentieth century. Thus, according

to Lauterpacht, the idea that a permanent international court would be incompatible with the concept of the state (and hence with international law defined as law between states) had already been expressed by Bergbohm in 1877.⁷⁵ The views, rooted in German nationalism, advanced by Stengel were in many ways similar to those of Heinrich von Treitschke.⁷⁶ Nevertheless, it remains the case that Nippold, Stengel and Baty all produced their works partly as a criticism of what they regarded as excessive concessions which a significant portion of international lawyers at that time were making towards the domestic analogy.

Chapter V The Impact of the Great War

It was characteristic of the optimism and self-confidence of the early twentieth century that the necessity for coercion in the international sphere was not very strongly felt among the writers on world order. Vollenhoven, who regarded the establishment of an international army and navy as a necessary condition of peace, appears in this respect to have been in the minority, as he was himself aware.¹ His plan for an international army and navy was incorporated in Walther Schlücking's long-term programme, but the latter was far from stressing the mechanism of coercion as a sine qua non of peace.² Similarly, T.J. Lawrence, Schlücking's contemporary, said of an international police that it could be established in the distant future, if the necessity arose, given the trend of development in international law. His point was not that such an organ was an indispensable condition of peace, but rather that international law had reached the point of take-off for boundless progress.³

Many thinkers on the future of international law and relations, who wrote in the aftermath of the Second Hague Conference, did so with the Third Conference in mind, which they expected in 1915.⁴ What awaited them instead was the outbreak of the First World War a year earlier. One of the consequences of this shattering experience was a tendency among these writers to converge on one central theme: the introduction of the element of coercion into the international system. This point is illustrated well by the change of attitude shown during the war by those who had previously been firmly opposed to the idea of organized sanctions in international law.

As we saw, Oppenheim was opposed to such an idea before the war, but now in his letter of February 1919 addressed to Theodore Marburg, one

of the organizers of the American League to Enforce Peace, he stated:

As regards the question which you raise in your letter, namely "whether it is necessary to provide for enforcing the judgment of the Court," before the war I was of opinion like you that, if we only got the International Court of Justice established, no enforcement of its verdicts would be necessary.... However, the war has changed everything ... [I]n case, a party against which a verdict of the Court has been given disobeyed the verdict and resorted to hostilities, there is no doubt that the [proposed] League would have to take the side of the attacked party.⁵

In conformity with such a change of view, Oppenheim also wrote in the third edition of his textbook (1929) that the right of neutral states to intervene against belligerents violating the laws of war was insufficient, and that it should be made a duty of the League of Nations, which had by then come into existence, to exercise such intervention. Although this edition was produced by Roxburgh, the statement was Oppenheim's own.⁶

The third edition also contained Oppenheim's criticism of the League of Nations. Among the defects of the League was, in his opinion, the fact that it was possible for a member either to withdraw, or to be expelled, from it. In his judgement, there ought not to be any such possibility, and the recalcitrant member should be coerced by force to submit to the decisions of the League, and fulfil its duties.⁷ Another important weakness of the League, in his view, was the absence of compulsory jurisdiction by the Permanent Court of International Justice.⁸

Even at this stage, Oppenheim refrained from joining those who criticized the League of Nations for not being a 'super-State'. By a 'super-State' he meant an international organization equipped with an

'international Government', an 'international Parliament with power to legislate by a majority' and 'an international Army and Navy'.⁹ But the ground for dissociating himself from this type of criticism was simply that he did not consider any such advanced organization to be realizable. The kind of sharp doctrinal denunciation which one might have expected from pre-war Oppenheim was conspicuously missing. He simply stated that no state would at that time give its consent to the establishment of a League of Nations constituting a 'super-State' in this sense.¹⁰

The example of Franz von Liszt is no less striking. The author of one of the best-known textbooks of international law in the German-speaking world, he had repeated in ten successive editions of his work the view that international law was based on consent between states and that the idea of coercion found no place in international law. But in the eleventh edition (1918), an important change of opinion is observable. International law was now said to be inferior in quality to domestic law in that it lacked organized sanctions: it was still at a primitive stage in the development of law, which domestic legal systems had long overcome. The introduction of coercion to the system of international law was now said to be the greatest problem for the future of international legal order.¹¹

Otfried Nippold, Oppenheim's likely 'diplomatist' critic, too, changed his mind through the experience of the war. This was disclosed in his Die Gestaltung des Völkerrechts nach dem Weltkrieg (1917).

Quoting a passage from his own work published in 1907, Nippold explained that before the war the idea of coercive measures was contrary to his conception of international law. There was no reason, in his pre-war view, why international law should require coercion. The fact that no state had yet unlawfully refused to accept an arbitral award

appeared to him to prove that the advocates of international sanctions were unduly underestimating the lofty position of international law: lofty because its effectiveness rested entirely on the mutual confidence of civilized nations.¹²

But, he now stated, the war had been a severe lesson: many pre-war views had to go absolutely by the board, and views on international law were no exception. The call of the whole civilized world for more real sanctions for international law could not be ignored, he thought, for international law could no longer rest on its moral power alone.¹³ In his book, he listed a number of writers from many parts of the world who joined in this call for a real guarantee in international law.¹⁴

Thus the prevailing opinion of the international legal writers in the period of the Great War was that international law should become more analogous to municipal law by accommodating the idea of coercion. There were some, like Philip Marshall Brown, a Yale Professor of International Law, who still clung to the idea that international law was unique and that no coercion was necessary.¹⁵ Likewise, there were some who, from the pacifist or other viewpoint, rejected the idea of coercion.¹⁶ But they were less conspicuous. As some former champions of the doctrine of the specific character of international law revised their pre-war positions, the idea that some form of coercion was as necessary in international law as in domestic law was gathering momentum as the central theme of those individuals and groups who actively participated in the debate about the post-war reconstruction of international society.

Those publicists, associations, and statesmen, particularly those of Britain and the United States, whose proposals had a more direct influence on the eventual creation of the League of Nations, while tending to advocate less radical changes than academic writers, were

also in agreement on one fundamental point: that international relations could no longer be organized in the nineteenth-century fashion, and that the freedom of states to resort to war would have to be legally restricted. The ideas formulated for this end included a cooling-off period, regular conferences, a security guarantee, the principle of the indivisibility of peace, and an international court of justice. All these ideas contained an element of the domestic analogy, as the examination below will reveal.

The idea of a cooling-off period was contained in the Bryce group proposal, the Fabian Society programme, and was also implicit in the proposal advanced by the League to Enforce Peace.¹⁷

The last of these was headed by ex-President Taft, and it is suggestive of the general climate of opinion of this group that he had written an article entitled 'United States Supreme Court the Prototype of a World Court'.¹⁸

Marburg, one of the organizers of this association, personally favoured the creation of an international army and navy to secure the submission of disputes and to enforce its decrees, and considered a 'super-State', 'dominating the various nations as the Federal Government dominates the individual states comprising the American Union', as the ideal solution to the problem of peace.¹⁹ Marburg's correspondence and the summary of discussions at the early meetings of the association reveal that their idea of a League was closely guided by their understanding about the basis of order in the domestic sphere in general, and their knowledge of the American constitution in particular.²⁰

Dictated by the consideration of practicability, however, what emerged as the association's official proposal was along the lines of most other middle-of-the-road proposals of the period: compulsory submission of

justiciable and non-justiciable disputes to a tribunal and a council of conciliation respectively.²¹ Taft explained the idea behind the proposal as follows:

We do not propose in our plan, to enforce compliance either with the Court's judgment or the Conciliation Commission's recommendation. We feel that we ought not to attempt too much. We believe that the forced submission, the truce taken to investigate and the judicial decision, or the conciliatory compromise recommended will form a material inducement to peace. It will cool the heat of passion and will give the men of peace in each nation time to still the jingoes.²²

It may be questioned here whether a proposal for the creation of an international institution embodying the idea of a cooling-off period can, by virtue of that fact, be regarded as involving the domestic analogy. The important point to note in considering this is that the idea that a moratorium on the use of force will tend to decrease a tension between contestants is an empirical supposition. A peace-schemer who favours the introduction of such an institution to the international sphere must therefore have some experience in mind in which 'delay' actually led to 'cooling off'. Admittedly, such an experience need not have taken place within the domestic sphere. However, if the supposition is based on the experience of inter-personal and/or inter-factional disputes within a state, then there is a case for saying that a proposal of this kind is an instance of the domestic analogy.

The Bryce group proposal poses a rather complex question here, since the group borrowed the institution of a cooling-off period not directly from domestic sources, but from the so-called Bryan treaties which had by then come into existence.²³

In Bryan and World Peace, M.E. Curti maintains that it was the existing commissions of inquiry in disputes between capital and labour that suggested to Bryan the extension of the idea to the sphere of international relations.²⁴ If Curti is correct, there is therefore a case for suggesting that the Bryan treaties were based on a domestic analogy and that therefore the Bryce group resorted to this analogy at least indirectly.

However, the first publication of Bryan's proposal for the compulsory investigation of all international disputes, accompanied by a moratorium on war, was in 1905 and this seems to have predated corresponding labour legislation in the United States or elsewhere, although such legislation had taken place by the time the Bryan treaties were being negotiated.²⁵

Nevertheless, according to Bryan's own account, he had for some time been advocating a plan for a compulsory investigation of all labour disputes when in 1905, during the Russo-Japanese War, it occurred to him that the same principle could be applied to the settlement of international disputes.²⁶ It appears therefore that the Bryan treaties were not derived from existing domestic institutions, as Curti suggests, but none the less from the ideas which Bryan had himself formulated for the solution of domestic (labour) disputes.

It may, on the one hand, be held to be significant that Bryan had originally advocated the plan in relation to domestic (labour) disputes and only later thought of applying the principle to international relations. It may thus be said that there was an element of domestic analogy in Bryan's own thinking, and that therefore the Bryce group proposal, which reflected Bryan's ideas, involved the domestic analogy, albeit indirectly.

On the other hand, it may be objected that the argument that the

Bryce group were indirectly resorting to this analogy unduly expands the range of circumstances under which this analogy can be said to be used. This is a reasonable criticism, and alerts us to the important fact that what is to count as a case of the domestic analogy is itself a function of the historical development in the institutionalization of international society. If the kind of arrangement contained in the Bryan treaties were well-established between many sets of states, an attempt to unite all these states under one system, incorporating the arrangements in question, and perhaps extending it to some other states, would probably not impress us as an instance of the domestic analogy.

Nevertheless, in reality, the Bryan treaties had been a relative innovation in the international sphere, and could hardly be classed as among the distinctive institutions of international society. Moreover, the Bryce group's inclination not to bring in the domestic analogy in explaining their plan could be interpreted as being based on a tactical concern. Any impression that the structure of the proposed international body is in some way analogous to a domestic legal system could be exaggerated and used against it by conservative opponents. The argument that the new international body is 'like a state', and that therefore to become one of its members means the loss or infringement of 'sovereignty' is a weapon which those who endeavour to create such an institution will not wish their opponents to employ against them.²⁷ It was probably such a consideration that had led the Bryce group to refrain from explaining their proposal along the lines of the domestic analogy, although this analogy was perhaps in the back of their minds.²⁸

The idea of a cooling-off period, contained in a number of influential proposals at the time, became incorporated in Article 12 of the Covenant of the League of Nations.

The element of the domestic analogy was present also in proposals for regular conference. For example, a British Foreign Office Memorandum of November 1918 and General Smuts' plan were both inspired by the conference system of the British Empire.

The Foreign Office Memorandum suggested that a standing conference, equipped with a permanent secretariat, should be established as a central organ of the League of Nations for a frank interchange of views between the Governments. The foreign secretaries of the Great Powers were to meet annually, and those of all the signatories were to meet every four or five years.²⁹

According to Zimmern, who in his The League of Nations and the Rule of Law devoted a chapter to the discussion of this Memorandum, its proposal for regular conference was inspired by the model of the British War Council and Imperial Conference.³⁰ Since the Memorandum had in fact been written by none other than Zimmern himself we can take his remark here as authoritative.³¹ The proposal that the foreign ministers of the signatories should meet every four or five years is said by Zimmern to be 'like the British Imperial Conference', and the Memorandum itself also remarks that 'as in the case of the Imperial Conference' a report of the proceedings of the conference, with confidential matters omitted, should be issued subsequently.³²

The War Council, which Zimmern mentions as a chief source of inspiration for the proposed system of regular conference, had been transformed in 1914 from the Committee of Imperial Defence. The latter, established by Balfour in 1904, was a co-ordinating body for inter-departmental matters relative to defence, consisting of the Prime Minister and any other persons he chose to invite to its meetings, and was equipped with a permanent secretariat. In 1911, it was enlarged to include the Prime Ministers of the self-governing Dominions. During the Great War, this

British institution served as a model in the creation of the Supreme War Council of the Allied Powers.³³

General Smuts, whose plan attracted much attention on the eve of the Paris Conference referred to the conference system as being 'in vogue in the constitutional practice of the British Empire', and took this, rather than a 'super-State', federation, or confederation of states, as the most suitable model for the League of Nations.³⁴ What he had in mind as the conference system of the British Empire included the British Imperial Conference and presumably also the Committee of Imperial Defence. What Smuts attempted was the further extension of these institutions into a peace-time organization for international co-operation on a wider scale. The idea of regular conference equipped with its own permanent secretariat became the basis of some of the most fundamental Articles of the Covenant.³⁵

Proposals for a security guarantee, and for adopting the principle of the indivisibility of peace were also derived from domestic sources. Here it is necessary to explain the views advanced by President Wilson and Colonel House.

The Great War, in House's opinion, resulted primarily from the lack of an organized system of international co-operation. Soon after the outbreak of the war, which signified to him the bankruptcy of the European diplomatic system, House felt the need to prevent the duplication of the mistake in the New World. He urged the President to take the initiative in developing a scheme for the preservation of peace in the Western Hemisphere. What House had in mind was a loose league of American states to guarantee security from aggression and to ban the private manufacture of weapons. Taken in conjunction with the Bryan treaties which had by then been concluded, House thought that

the proposed scheme would be sufficient to preserve peace on the American continent, and that it would also serve as a model for the European nations when peace had been restored.³⁶

According to Colonel House, Wilson, at House's suggestion, wrote down the basic principles of the proposed Pan-American Pact in two points:

1st. Mutual guaranties of political independence under republican form of government and mutual guaranties of territorial integrity.

2nd. Mutual agreement that the Government of each of the contracting parties acquire complete control within its jurisdiction of the manufacture and sale of munitions of war.³⁷

House himself did not explain how Wilson and he arrived at the precise wording of the first principle, but it is strongly reminiscent of a passage from the American Constitution (Article IV, Section 4): 'The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion ...' R.S. Baker, President Wilson's biographer, has no doubt that the inspiration for this principle came straight from the American Constitution.³⁸

Here it is interesting to note that Wilson appears at least in principle to have favoured the idea of a United States of the World. According to R.S. Baker, as early as 1887, (that is, about the time of the Lorimer-Bluntschli debate) Wilson had believed that the rapid developments of modern politics would ultimately lead to a 'confederation' of nations; and, in 1915, Wilson wrote to his college friend, Heath Dabney, that he was 'very much interested' in creating a world federation.³⁹ According to the same source, in July 1917, Wilson commented on a former representative from Maryland, David J. Lewis's

plan for 'adapting the federal Constitution of the United States to the purpose of international organization', and is reported to have remarked as follows:

I quite agree with your [Lewis's] general purposes, but I fear that no accomplishment so great as our own Constitution can be hoped for. A most happy combination of historical conditions alone made that achievement possible. What I do hope to accomplish is to establish a structure containing the tendencies which will lead irresistibly to the great end we in common with all other rightly constituted persons desire. But there are going to be difficulties even with this modest programme.⁴⁰

What is implicit in this statement is the idea that, despite its impracticability in the immediate future, the United States of the World on the model of the American Constitution was an essentially correct and desirable goal. What President Wilson had in mind as an immediate post-war goal was the creation of an association of nations which could serve as a realistic first step towards a more perfect union in the distant future.

The Wilsonian conception of post-war settlement, however, appears to have had at least one other source of inspiration, although here we are in the realm of speculation.

In May 1916, at the first Annual National Assemblage of the League to Enforce Peace, Wilson spoke favourably of the idea of a League. In his view, although the United States was not herself a party to the war, the American people were willing to become a partner in an association of nations for peace based on the principle of national self-determination and equality of nations if such an association was to be created after the war. According to him:

... the world is even now upon the eve of a great consummation, when some common force will be brought into existence which shall safeguard rights as the first and most fundamental interest of all peoples and all governments, when coercion shall be summoned not to the service of political ambition of selfish hostility, but to the service of a common order, a common justice, and a common peace.⁴¹

The expression 'common peace' was repeated in a similar context in Wilson's address to the United States Senate on 22 January 1917, and T.T.B. Ryder believes that this term was a translation of the Greek, koine eirene.⁴² According to Ryder's detailed study, this expression was used by the Greeks in the fourth century B.C. to refer to a special type of peace treaty. This type of treaty embraced all the Greek states, regardless of whether they had been belligerents in the war which was to be terminated by the treaty, guaranteed the independence of these states, and was intended to be perpetual in that, unlike other types of treaty, the duration of its validity was not specified.⁴³

Wilson, as an academic, was well versed in the political history of ancient Greece, and it is conceivable that he saw his role as the President of a great power, on the analogy of the King's Peace of 387/386 B.C. or of the Peace of 338/337 B.C. organized by Philip of Macedon.⁴⁴

Wilson's earlier proposal for a Pan-American Pact noted above did not materialize as Chile and Brazil, two of the three South American countries which House had approached, procrastinated until the United States entered the European War in the spring of 1917, when the whole scheme was pushed to one side in the face of the more urgent problems of the day.⁴⁵ However, the idea of security guarantee was incorporated in the plan for the League of Nations, which Wilson had requested

House to draw up in the summer of 1918.⁴⁶ This idea later became the basis of the tenth article of the Covenant itself.

Colonel House's draft also included the idea that 'any war or threat of war is a matter of concern to the League of Nations, and to the Powers, members thereof', which became incorporated in the eleventh article of the Covenant.⁴⁷ It appears that House owed this idea, which might be termed the principle of the indivisibility of peace, to former Secretary of State, Elihu Root.

Root was among those whom House had invited to discuss how best peace could be preserved in the future. The following remarks contained in Root's letter to House are noteworthy for their explicit reliance on the domestic analogy, and merit full quotation:

The first requisite for any durable concert of peaceable nations to prevent war is a fundamental change in the principle to be applied to international breaches of the peace.

The view now assumed and generally applied is that the use of force by one nation towards another is a matter in which only the two nations concerned are primarily interested, and if any other nation claims a right to be heard on the subject it must show some specific interest of its own in the controversy,... The requisite change is an abandonment of this view, and a universal formal and irrevocable acceptance and declaration of the view that an international breach of the peace is a matter which concerns every member of the Community of Nations — a matter in which every nation has a direct interest, and to which every nation has a right to object.

These two views correspond to the two kinds of responsibility in municipal law which we call civil responsibility and criminal responsibility. If I make a contract with you and break it, it is no business of our neighbour. You can sue me or submit, and he has nothing to

say about it. On the other hand, if I assault and batter you, every neighbour has an interest in having me arrested and punished, because his own safety requires that violence shall be restrained. At the basis of every community lies the idea of organization to preserve peace. Without that idea really active and controlling there can be no community of individuals or of nations. It is the gradual growth and substitution of this idea of community interest in preventing and punishing breaches of the peace which has done away with private war among civilized peoples.⁴⁸

Thus one of the main pillars of the League Covenant can be seen to have come, via House, from an elder statesman who wished to see international society organized on the same basic principle as that which underlies the community of individuals.

The House plan also contained an article providing for an international court, but President Wilson, when he revised the plan, omitted this article together with a number of others.⁴⁹ However, an argument in favour of a court of justice came from Robert Cecil, who had been appointed the head of the League of Nations section of the British Foreign Office. Cecil, in formulating his draft proposal, took the aforementioned Foreign Office Memorandum as his basis, and combined with it much of the British semi-official plan which had been prepared by Walter Phillimore's committee.⁵⁰ However, there were some new elements, one of which was the idea of a permanent court of justice. He explained the necessity for a League equipped with such an organ on the analogy of domestic experience, stating that just as the rule of law in England rapidly developed after the War of the Roses because there already existed courts of law, so must a true court be established in order for

international law to become the normal procedure for settling disputes under the League.⁵¹ The idea of a court of justice was incorporated in the Covenant, in accordance with the fourteenth article of which the Permanent Court of International Justice was established at the Hague in 1921.

The constitutional and criminal law analogies also underlay the scheme presented by the Phillimore Committee's French counterpart headed by Léon Bourgeois. He had been an ardent advocate of improved international organization since the time of the Hague Peace Conferences, had represented France there, and was the President of the Association française pour la Société des Nations. In the League of Nations Commission of the Paris Conference, he fought for his convictions persistently, but in vain, against the opposition of Britain and America.⁵²

Bourgeois's ideas were based on his belief that as the rights of man demanded a constitution, so did the rights of nations. In his view, peace was only possible if the rights of nations were protected. Therefore, international peace, just as peace within the state, depended on a 'constitution' defining the law and applying it. But law already existed in the international sphere; what was needed, in his judgement, therefore, was an additional institutional device to turn the international legal system into a true 'constitution'. This, according to Bourgeois, involved not the creation of a 'super-State', but the introduction of obligatory arbitration and organized sanctions to punish disobedience.⁵³

These ideas penetrated his committee's proposal, which envisaged the settlement of all legal disputes by an international tribunal, of all non-legal disputes by an international council composed of the

heads of Governments or their delegates, the enforcement of decision reached by the tribunal or the international council, and the formation of a standing international force at the disposal of the League.⁵⁴

Although Phillimore commented on this proposal that it was sufficiently similar to that of his own committee to enable a meaningful exchange of ideas, it was virtually ignored by the British Foreign Office and President Wilson, and had little influence on the final outcome, the Covenant of the League of Nations.⁵⁵

To the above list of institutional devices invented as parts of the machinery to reduce the freedom of states to resort to war, we may add the mandate system. This was proposed by Zimmern's Foreign Office Memorandum, adopted and adapted by General Smuts and President Wilson, and was eventually incorporated in Article 22 of the Covenant.⁵⁶

The idea of a mandatory, acting on behalf of the League, as a guardian of those peoples and territories formerly governed by certain Empires, combined the ideals of national self-determination and non-annexation of territories with the practical necessity to manage the post-war vacuum created by the demise of these Empires. Indirectly, the system was aimed at the avoidance of friction among the victorious powers in the aftermath of the war.⁵⁷ Although neither Zimmern nor Smuts nor Wilson explained the mandate system in terms of a domestic model, it would appear undeniable that the very concept of mandate derived from domestic sources.

In the international sphere, there were some precedents, prior to the war, where the idea of mandate, and the term itself, were used in regard to the government of certain territories in which the administration of a country was carried on by a person or a state responsible to another body.⁵⁸ However, the legal conception of the mandate originates

in the Roman law, and forms part of the modern Civil Codes based on that law. The term may have seemed natural to General Smuts who was trained in the Roman-Dutch law.⁵⁹ The essential idea of the League mandate, however, is said to be closer to the English conception of trust, that is, 'property held by one person on behalf of and for the benefit of another, for a particular purpose, and subject to a duty to render an account of the administration, when called upon, to a tribunal.'⁶⁰ Moreover, the wording of the several paragraphs of Article 22 of the Covenant suggests very strongly that the idea of mandate was based partly on that of the guardianship of minor persons.⁶¹ Given that the term 'mandate' had at that time no well-established meaning in the practice of international relations while it was, together with 'trust' and 'guardianship', commonly used as a technical term in the domestic legal discourse, it would be reasonable to suggest that the mandate system was yet another instance of the domestic analogy.⁶²

It is clear from the foregoing discussion that the domestic analogy played a significant part in the minds of those academics, publicists, and statesmen who planned for peace during the period of the Great War. Because the idea of a League of Nations was an outcome of communal thinking, and because its final structure was the product of diplomatic bargaining among the governments, it is not possible to state in any simple terms how the use of the domestic analogy influenced the shape of the new body. Its supporters saw it in different lights, gave it a different meaning and justified it in different terms. But it is difficult to deny that one of the main themes of this communal thinking was the idea which stressed the need to make international society more analogous to domestic society by transferring some of its legal institutions and principles to the international sphere.

It is interesting to note that, whereas the nineteenth century writers we discussed in Chapter III were invariably concerned with the problem of international legislation, and put forward projects for an international legislature in minute detail, the writers of the Great War period were less concerned with that aspect of international organization. In advancing their proposals for the reorganization of international society, the main concern of the thinkers of the Great War period was to devise a system of law whereby contestants would be forced to attempt to solve their disputes peacefully before resorting to war. The defence of the law was their major preoccupation.

Of course, it is not altogether true that the drafters of the Covenant ignored the aspect of international legislation entirely. Some of the major issues which the Third Hague Conference was expected to deal with were to some extent covered by the League Covenant itself.

Thus Article 14 provided for the submission by the Council to the League of plans for the establishment of a Permanent Court of International Justice, and this came into existence in 1921. The Council was also charged with the duty by the eighth article of the Covenant of formulating plans for the reduction of national armaments for the consideration and action of the Governments. Furthermore, Article 19 provided that the Assembly might from time to time advise the reconsideration by the Members of the League of treaties which had become inapplicable.⁶³ However, in contrast to the nineteenth century writers, it was not the chief concern of the drafters of the Covenant to create a central international body whose function it was to pass law at regular intervals like domestic legislatures.

Admittedly, the American League to Enforce Peace did propose a regular meeting of states to formulate and codify international law as part of their project.⁶⁴ But the Bryce group proposal did not insist

on this point, nor did the Phillimore plan, which played an important role in the creation of the League of Nations.⁶⁵ General Smuts suggested that one of the functions of his proposed Council should be to formulate general measures of international law for the approval of the Governments, but no similar provision is found in the House plan or the Wilson drafts.⁶⁶

David Hunter Miller, the American legal adviser, in commenting on Wilson's second draft, suggested that an article be added to provide for legislation in international law, but this was not incorporated in Wilson's subsequent drafts.⁶⁷ Cecil's Draft Sketch of a League of Nations contained a suggestion that there might be a periodical congress of delegates sent by the Parliament of the States members of the League to take over the role of the Hague Conference, but this was excluded from his Draft Convention of 20 January 1919.⁶⁸ Neither the so-called Cecil-Miller draft nor the Hurst-Miller draft contained provisions for international legislation or codification as such.⁶⁹

Given that all the proposals and drafts by those groups and individuals contained provisions for legal means of settling disputes and for sanctions against Covenant-breaking states, the general lack of interest among them in the problem of codification and legislation is striking, especially when compared with nineteenth century writers.

Given the historical background both in the domestic and in the international sphere, however, the difference in the focus of attention seems understandable. The nineteenth century was a period of relative peace in Europe, where, in the domestic realm, there was generally a marked interest and advance in the sphere of legislation and law-making machinery. At the same time, in the international sphere, there were many areas of uncertainty in the law. Thus, whatever else might have been needed, it seemed obvious to the nineteenth century writers that an

international legislation of some kind would have to be created. By contrast, for the writers of the Great War period, it was the absence of the machinery which could ensure the peaceful settlement of international disputes that had caused the catastrophe they were witnessing. In short, the general bias in the use of the domestic analogy in the period of the First World War was due to the predominant interpretation of the experience of the war itself.

Chapter VI The Effect of the Failure of the League on Attitudes
 towards the Domestic Analogy

The League of Nations, which came into existence in January 1920, was an association of sovereign states, established 'to promote international co-operation and to achieve peace and security.'¹ It acted also as an agency for the enforcement of certain provisions of the peace treaties and supplementary agreements.² Although the League, even in matters of peace and war, obtained some measures of success, especially in the first decade of its life-time, it could not withstand the worsening conditions of the 1930s. By 1940 only one Great Power was left in the League, Britain, and thirty-one smaller powers.³

In the chapter entitled 'The Lessons of the League' in his A History of the United Nations, Evan Luard remarked:

All those involved in the deliberations [on how best to structure the world after the Second World War] had lived through the painful and disillusioning history of the League. All had shared, at least in some measure, the hope that that institution, revolutionary in its original conception, would be a means of abolishing war from the earth and substituting the saner procedures of international conciliation. Instead they had seen that brief and inglorious organization prove totally ineffectual.⁴

We need not enter the debate here as to whether the League's history truly deserves to be labelled one of 'failure'. Suffice it to note, for our purpose, that its inability to cope effectively with the deteriorating international conditions in the thirties has been treated by a significant set of writers on international relations as indicating

its failure.

Since the League of Nations, as we saw in Chapter V, was a clear attempt at ordering the world along the lines of the domestic analogy, the failure of the League might be expected to have produced, or reinforced, the opposition to this analogy particularly among the more articulate portion of public opinion. It is our primary aim here to examine this hypothesis with reference to a number of well-known writers on international law and relations who witnessed the League's inadequacies and eventual collapse. In particular, we shall examine whether, according to these writers, the 'failure of the League' signified the 'fault of the domestic analogy', and if not, what criticisms were given to the particular forms of domestic analogy as embodied in the League Covenant.

The writers who considered the problem of world order against the background of the League's failure included the following four major types though these are not exhaustive: those who clung to the notion that despite its 'inglorious history' the League embodied an essentially correct answer to the problem of world order; those who saw the failure of the League as resulting not from its structure but from the inherent instability of the international system as such; those who criticized the League for its dependence on outdated liberalism; those who saw in the League's inability to maintain world order the superiority of the pre-1914 system of international law in the area of the control of force. In the following, we shall examine these four groups of thinkers in turn.

Not all those who conceded the League's failure accepted the idea that it was based on an inherently wrong approach to the problem of world order. An example is found in the writings of Leonard Woolf.

As a Fabian, Woolf was among those who actively supported the

League-of-Nations idea during the First World War. He had tenaciously adhered to the view that the League embodied an essentially correct approach to the problem of world order in the face of its failure to preserve peace.⁵

He maintained that the problem of international order was not sui generis.⁶ There was no reason why, in his view, the interests of nation-states were inherently incompatible.⁷ Such an idea, to Woolf, was nothing but a 'realist' dogma, and he wrote, '[a] priori there seems to be no reason to believe that power has a different nature and reality in international society from what it has in national society or that it is not equally amenable to elimination and control in both.'⁸ To him, war was therefore not a fixed and immutable feature of international life. He stated:

Whether we have war or whether we have peace depends not upon the inevitability of war, the utopianism of peace, or the 'reality' of power, but upon the place which we assign to national power and force in our lives....⁹

Woolf was particularly anxious to show that E.H. Carr's attack on the League approach was mistaken. The idea of the League, Woolf insisted, was not formulated by an a priori reasoning, which Carr saw as a mark of utopianism, but was grounded in reason and experience — experience which mankind had gained in the domestic sphere through thousands of years with regard to the control of force. Because war was to him nothing but the use of force by a group of individuals against another, Woolf saw no reason why the same kind of method as employed in controlling the use of force by one individual against another, or one class of individuals against another within the domestic sphere could not be

applied to the control of war.¹⁰ The League of Nations did fail, Woolf conceded. But, to him, this no more proved that the League was based on an inherently wrong approach to the problem of world order than the failure of appeasement induced Carr, who gave a theoretical justification of it, to say that it was intrinsically utopian.¹¹

The main cause of the League's failure, according to Woolf, was that there was not enough psychological motivation on the part of its members to uphold its principles.¹² But, he thought, another great war, which they were experiencing, might be enough to teach them a lesson.¹³

There were, Woolf admitted, certain modifications to be made to the League system. In particular, he argued for a two-tier organization, consisting of the world peace system and regional collective security system. The former was to be similar in its structure and functions to the League, except that the members were not to be obliged to come to the rescue of a victim of aggression unless the victim was a co-member of a regional collective security system.¹⁴ But these were points of detail. In the main, he thought, the answer given in 1919 was still a valid one.¹⁵

Woolf, and a number of other thinkers who shared his view, did not argue for the merger of the existing sovereign states into a world federation.¹⁶ To them, the problem of world order could be handled within the framework of the sovereign states system if the system could be equipped with those institutions derived by analogy from the domestic sphere. There were, however, those who went further. To these thinkers, the sovereign states system was itself the cause of instability and war. Partial solutions, such as the collective security system, would not solve the problem. Therefore, what was needed was a world state. Among the writers who adhered to such a radical view were Georg Schwarzenberger, Frederick Schuman, and Hans Morgenthau, whose ideas

we shall set out below.

In his William Ladd: An Examination of an American Proposal for an International Equity Tribunal, first published in 1935, Schwarzenberger did not in fact go very much further than suggesting the necessity for an international equity tribunal to operate alongside the Permanent Court of International Justice within the framework of the League of Nations.¹⁷ In the following year, in The League of Nations and World Order, he wrote a critique of the League, but he did not go so far as to suggest a world federation as the correct alternative.¹⁸

By 1941, however, when the first edition of his Power Politics appeared, with a subtitle, An Introduction to the Study of International Relations and Post-War Planning, he was no longer satisfied with the idea of a reformed League.¹⁹ By now, a confederal approach was not radical enough for him.²⁰ 'Power politics, international anarchy and war are inseparable', and war's 'antidote is international government', he wrote.²¹ He made it clear that by 'international government' he meant a 'super-State or world State', and for its constitution he considered federation as most suitable as it would balance the requirement of authority and liberty.²²

However, in his judgement, an effective federation would be possible only among those national communities which shared the values of democracy and social justice.²³ Thus, he suggested, post-war reconstruction required the establishment of an international community over as large an area as possible.²⁴ This community was to be organized as a federation with a necessary minimum of supra-national government.²⁵ The responsibility for moving the world in this direction lay, he concluded, with those national communities in which democracy and social justice had become a reality, which, in his view, were also

Christian communities.²⁶

Schwarzenberger's International Law and Totalitarian Lawlessness, published in 1943 is also noteworthy. By this time, the disgust with the cynical disregard of international law on the part of Germany, Japan and Italy had led him to suggest that these states be banned from international society as 'outlaws'. Although in his legal reasoning he characterized 'outlawry in international law' as an act of reprisal by withdrawal of recognition against unlimited lawlessness comparable to that of pirate states, the source of his inspiration was found in the institution of outlawry in various municipal legal systems of the past.²⁷

Frederick Schuman was also a federalist as shown by the first edition of his International Politics (1933). Later, in 1946, he was to publish an article, 'Towards the World State', and in 1954, he dedicated a substantial book on the problem of world government under the title, The Commonwealth of Man: An Inquiry into Power Politics and World Government.

In his work of 1933, Schuman stressed the extent to which international politics was a competitive struggle for power.²⁸ War was an incident of this struggle, and could not be eliminated by attempts at disarmament, arbitration, adjudication, conciliation, collective security, or the outlawry of war, pure and simple.²⁹ Left to its own device, the international system would face a catastrophe in the form of the collapse of the social and economic foundations of the Western culture as the result of self-seeking nationalism, imperialism and militarism of the nation-states.³⁰ The future therefore depended on the political unification of the world, he maintained.³¹

Schuman acknowledged that a world state could not be established in any foreseeable future, and stressed that political unity must therefore

'be achieved by institutionalized collaboration between States, by the gradual strengthening of the bonds of an "international government" resting upon States and gradually welding them together into a world-wide political community of interests.'³² He was, however, critical of those advocates of international government who emphasized the aspect of machinery and paid little attention to the more fundamental problem of national attitudes, interests and values.³³ He was fully aware that 'the whole weight of the past, the whole force of habit and tradition [stood] in the way of the transformation'.³⁴ Yet, he concluded as follows:

If those in authority fail to achieve a new orientation, they will not merely be endangering their own positions in western society, but they will be jeopardizing the very survival of western culture. This responsibility is overwhelming in its implications. These implications will be appreciated and will be acted upon within the next decade, or catastrophe will become inevitable.³⁵

It should be added here that in the post-war (Second World War) essay noted above, Schuman substituted 'the immolation of modern civilization in a vast [nuclear] holocaust', which he predicted 'with almost mathematical certainty' if the present system were to continue, for his pre-war prognosis of the inevitable collapse of the Western culture, and argued again for the political unification of the world through federation.³⁶ In the same article, he came very close to drafting a blue-print for a world federation on the basis of the United Nations Organization which had by then come into existence.³⁷ Faced with the apparent unrealizability of his goal, he wrote in his The Commonwealth of Man (1954): '[I]f the World Government remains

unrealized] mankind must be judged to be not seriously concerned about its own salvation, or the meaning of Man to himself.'³⁸

Like Schuman, Hans Morgenthau was also in favour of the idea of a world state. A lawyer by training, he had written on the theme of the limitations of the judicial settlement of disputes in international relations.³⁹ This work, published in 1929, formed the basis of a chapter on the same theme in his Politics among Nations.⁴⁰ This book did not appear until 1948, and Morgenthau included in his discussion the rising tension between the United States and the Soviet Union. Nevertheless, the book developed from lectures in international politics he had delivered at the University of Chicago since 1943, and consequently the experience of the first half of the twentieth century, especially the period leading to the Second World War provided a significant portion of his empirical material.⁴¹

In this book Morgenthau stated that '[t]wo world wars within a generation and the potentialities of mechanized warfare have made the establishment of international order and the preservation of international peace the paramount concern of Western civilization.'⁴² These goals, however, could not easily be achieved. Arguing along lines similar to Schuman's, Morgenthau arrived at the conclusion that the only road to peace was the creation of a world state. In his judgement, 'the argument of the advocates of the world state [was] unanswerable', and '[t]here [could] be no permanent peace without a state coextensive with the confines of the political world.'⁴³

Morgenthau, however, stressed that under the prevailing moral, social and political conditions of the world, the world state could not be established.⁴⁴ A world community must antedate a world state.⁴⁵ On the question of community-building, Morgenthau quoted David Mitrany and gave some support to the view that a world community could grow

through a gradual erosion of national loyalties encouraged by increased functional cooperation in the UN Special Agencies.⁴⁶

However, Morgenthau warned that functional co-operation would not succeed where nations were in conflict.⁴⁷ Therefore, in the end, the creation of a world community presupposed 'the mitigation and minimization of international conflicts so that the interests which unite members of different nations [might] outweigh the interests which separate them.'⁴⁸ For this goal Morgenthau suggested the pursuit of skilful diplomacy divested of a crusading spirit, and based on the realistic calculations of national interest.⁴⁹ This, in his view, was the first step in the long road to peace and order in the world community organized as a world state.

It is to be noted that among the three adherents of the world-state idea discussed here, Schwarzenberger attached more significance than did the other two to the drafting of federal blue-prints; Schuman was more concerned to stress the magnitude of the disaster which he saw as lying ahead than to engage in the drafting of federal schemes; and Morgenthau found it more important to spell out what should be done in the immediate future than to frighten the readers into supporting the cause of federalism. Despite these differences, these writers all accepted the view that, whether or not immediately realizable, world government was in principle the most appropriate mechanism for the maintenance of world order.⁵⁰

Whether these writers should be regarded as resorting to a stronger form of the domestic analogy than did reformed-League advocates, such as Woolf, or whether, on the contrary, their commitment to the world-state idea should be treated as an instance of the rejection of this analogy will depend on how the term 'domestic analogy' is defined. We have already discussed this point in some detail in Chapter II, and

we need not repeat the argument.⁵¹ What is clear is that these three writers, together with a number of others who argued along similar lines, were objecting to the form of the domestic analogy as embodied in the Covenant of the League of Nations.

This was true also of the third group of thinkers, who criticized the League for its reliance on nineteenth century liberalism. Among these critics were E.H. Carr, J.L. Brierly and David Mitrany.

To the student of International Relations, Carr is well-known for his criticism of utopianism. He was indeed severely critical of international constitutionalism many variations of which we have seen in this thesis. He was generally sceptical of an approach to the problems of international politics which tried to seek a 'set of logically impregnable abstract formulae', and, in particular, he dismissed the attempt to strengthen the rule of law in international society by increasing the formal power of its judiciary.⁵²

Despite his attacks on utopianism, Carr in turn offered a number of prescriptions in his war-time publications. These included The Twenty Years' Crisis (1939), The Conditions of Peace (1942), and Nationalism and After (1945). In all these, Carr stressed the bankruptcy of nineteenth century liberalism, and lamented its application to the international sphere in the peace settlement of 1919.⁵³

Nineteenth century liberalism held that the liberty of individuals could be secured by a liberal democratic constitution based on the separation of powers and representative government; it left the economic well-being of individuals to the working of an invisible hand, which, on the basis of the assumed harmony of interests, was supposed to produce well-being for each and all. When transposed to the international level, liberalism meant that an international government or

organization be modelled more or less along the lines of a liberal democratic constitution, with nation-states as its constituent units, while leaving economics to its own device through the institution of free trade. The liberal concern for the rights of individuals, and freedom from constraints, when translated into international theory, produced the idea of national self-determination, and the doctrine of the fundamental rights and obligations of states.

Carr rejected this line of approach since he believed that nineteenth century liberalism had been shown to be inadequate even in the domestic sphere.⁵⁴ According to him, the transition from the nineteenth century bourgeois democracy to the twentieth century mass democracy meant that the function of the state had to transcend the mere protection of the political liberty of propertied individuals, and encompass an attempt to equalize well-being and raise the living standards of the masses. Planned economy and 'social service' state were in his view the twentieth century imperatives in the realm of domestic politics.⁵⁵

Such a perception, combined with his dislike of rationalism, led Carr to produce a vision of future international co-operation different from the proposals of the kind advanced by the old-fashioned liberal, and legalistic, thinkers of his time, as well as by their nineteenth century predecessors.

Carr's suggestions for the future included prudential realism in foreign policy with regard to the problem of peaceful change between 'have' and 'have-not' states, functional internationalism in European co-operation, and economic planning at the international level. We shall examine these in turn.

First, Carr rejected a judiciary and legislature as a means for peaceful change in international relations. He nevertheless suggested that an instructive analogy might be found in domestic society.⁵⁶

This was the way in which in some countries the turbulent relations between capital and labour had eventually produced on both sides a willingness to submit their disputes to various forms of conciliation and arbitration. This, according to Carr, had resulted in creating 'something like a regular system of "peaceful change".⁵⁷ Such a development had been possible through contest and compromise, and Carr noted, the ultimate right to resort to the weapon of the strike had never been abandoned except under the repressive regimes.⁵⁸ He considered whether a parallel development was possible in the international sphere between the satisfied and dissatisfied nations.

His conclusion was a tentative one. Whether such an analogy was valid or not was not something which could be answered in an a priori fashion. Such a question, in his view, would have to be settled by the test of experience.⁵⁹

But if a parallel development were to take place, it would have to be the result of a long period of experience in which statesmen would learn to bargain without fighting. And such a development would be possible, Carr thought, only if statesmen did not lose sight of the element of power and that of morality. They would therefore have to yield to a threat when the prospect of war was hazardous. Carr's model here was an employer who conceded the strikers' demands by pleading inability to resist, and a trade union leader who called off an unsuccessful strike pleading that the union was too weak to continue.⁶⁰ Moreover, in Carr's view, the statesmen would have to learn to give in when the demands faced were reasonable. He considered this as analogous to the peaceful solution of industrial disputes through 'a spirit of give-and-take and even of potential self-sacrifice' on the basis of the mutually perceived justice and reasonableness of the claims.⁶¹

Thus, skilful diplomacy, on the model of skilful bargaining in industrial disputes, which took full cognizance of the reality of power, and yet did not lose sight of the reasonableness of the claims, however difficult in practice, was, in Carr's opinion, the only realistic means for peaceful change in international relations.⁶²

Here it may be suggested that Carr's commendation of prudential realism, while explained in terms of a domestic analogue, was not in fact based on analogical reasoning. Like C.A.W. Manning's remark, noted earlier, that the effective functioning of a social system presupposed a sufficiently prevalent disposition among its units at least to tolerate it, the idea that prudential realism was a key to success in peaceful change may be regarded as an axiomatic statement.⁶³ There is some truth in this interpretation: if the avoidance of war was a defining condition of 'prudential realism', and if every government acted prudentially and realistically by this criterion, then war would necessarily be ruled out.

This, however, does not seem to be the true import of Carr's message. What he was suggesting was that statesmen should try to combine the considerations of power and morality as best they could, and that this would make the world a little more peaceful place to live in. If this interpretation is accepted, then Carr's commendation of prudential realism will not be treated as a logically impregnable abstract formula. If so, the strength of his commendation would depend on the persuasiveness of his empirical evidence.

It may, however, still be insisted that his empirical evidence need not have come from the domestic sphere. Indeed it can be admitted that prudential realism is not a social technique which is distinctive of domestic society. Morgenthau, for example, suggested certain guidelines for diplomacy designed to mitigate international conflict, and these were

substantially similar to Carr's idea of prudential realism. But, unlike Carr, Morgenthau tried to show the effectiveness of his suggested guidelines in the light of various examples from diplomatic history itself, and not by any domestic analogues.⁶⁴ However, given that Carr himself explained his prescriptions here in terms of what he regarded as a parallel experience in the domestic sphere, it would perhaps be unnatural to deny that his proposal was based on a domestic analogy.

Second, Carr argued that under the twentieth century conditions of industrial production and military technique, the nation-state was no longer an appropriate unit for the assurance of military security and economic well-being. But he was equally critical of the idea of a universal political organization based on a well-defined constitution. What he favoured was regional co-operation in Europe, with regard to urgent, and practical matters, such as relief, transport, reconstruction and public works.⁶⁵ He considered that international co-operation in these areas could be developed on the basis of the 'so-called "technical organs" of the League', which, in his view, displayed a far greater vitality than its political organs, and also on the basis of the existing machinery of Allied war-time co-operation in various fields.⁶⁶ In short, he adhered, at least partly, to the 'functional' approach. This approach is usually associated with the name of David Mitrany whose ideas will be discussed shortly.

In line with functionalism, Carr maintained that the question of the shape and size of the requisite international institution should be determined by the end in view.⁶⁷ What is noteworthy is that he explained the functionalist vision of the multiplicity of overlapping international agencies along the lines of pluralism, as follows:

In the national community the concentration of all authority in a single central organ means an intolerable and unmitigated totalitarianism: local loyalties, as well as loyalties to institutions, professions and groups must find their place in any healthy society. The international community if it is to flourish must admit something of the same multiplicity of authorities and diversity of loyalties.⁶⁸

It is clear that in Carr's view the liberty and well-being of the men and women of Europe could be best protected if they were to be governed by many functionally differentiated international institutions just as in the domestic sphere the power of government should not be concentrated in one body.

It is of great interest to note here an incidental remark David Mitrany made on the doctrine of pluralism. According to him, there was a significant revulsion in philosophical outlook which marked the post-war (First World War) period. This was the revulsion against the doctrine of sovereignty. He wrote:

The doctrine of state sovereignty is now staggering under a double attack. It is being assailed from within by the pluralist school of political thinkers, and at the same time the external side is being courageously assailed by a growing number of international jurists.⁶⁹

No doubt, Carr was not in agreement with those 'courageous' jurists.⁷⁰ On the other hand, his accommodation of the pluralist doctrine in his second approach to the problem of world order indicates that his proposal contained an application to the international sphere of what was at that time regarded as an important doctrine within the sphere of domestic politics.

His third approach to future world order was closely linked with the second, but it is here that his rejection of nineteenth century liberalism in the domestic sphere clearly affected his international thinking. In his opinion, the 'substitution of the "service state" for the "nightwatchman state" meant that, internationally also, the truncheon [would have to] be reinforced by the social agency and subordinated to it.'⁷¹

In his Nationalism and After, however, Carr perceptively remarked that in the period after the First World War, it was as a means of enhancing their national strength that the policy of planned economy was substituted for laissez faire in major countries. In his view, planned economy was therefore 'a Janus with a nationalist as well as a socialist face', and the 'socialization' of nationalism was accompanied by the 'nationalization' of socialism.⁷² It was clear to him that internationally disruptive tendencies were inherent in the juxtaposition of a multitude of planned national economies.⁷³

This did not lead Carr to say that economic planning would have to be abandoned. He argued that the internationally disruptive tendencies resulting from the co-existence of planned national economies should be mitigated by 'a reinforcement of national by multinational and international planning'.⁷⁴

A line of argument in many ways similar to Carr's was put forward at about the same time by an eminent international lawyer, J.L. Brierly. Like Carr, he was against an a priori reliance on the domestic analogy and criticized the view that all disputes could be settled by compulsory arbitration.⁷⁵ In his judgement, the judicial machinery was already far ahead of international organization on any other side, and it was not likely that it would need any major amendment.⁷⁶

While being critical of the domestic analogy, Brierly, like Carr, conceded that municipal law sometimes confronted situations which were fundamentally similar to those which were normal in international law. This was so, according to Brierly, whenever municipal law had to deal with demands by large groups and factions rather than by individuals. Thus industrial disputes and civil strifes were to domestic law what international disputes and wars were to international law.⁷⁷

Being more legalistic than Carr, however, Brierly stressed that even in those states where revolutions and civil wars were quite as endemic as war was in international society, 'none of them ever [accepted] the view that for law to go on forbidding them [was] so unrealistic that it might as well admit the legality of actions which experience [had] shown it [was] unlikely to be able to prevent.'⁷⁸ Brierly condemned the defeatist attitude which international law alone took towards the reign of force. It was certain, he wrote, that any plan for strengthening the influence of international law would have to start by forbidding states to use physical force against one another except in circumstances which were to be defined by the law.⁷⁹ Moreover, a general ban on the use of force, unlike the Kellogg-Briand Pact, he thought, would have to be supported by a system of sanctions.⁸⁰ However, he saw no possibility in the near future of establishing anything more centralized than a system of collective security based on the co-operation of the Great Powers.⁸¹

Brierly's advice did not end here. He maintained that Machiavelli's maxim that the foundation of all states was good laws and good arms should be applied to international society. He contended that in addition to the general ban on the use of force backed by a system of collective security, international society would have to concern itself more positively with the general welfare of states. Brierly's main

proposal here was the transformation of international law from the traditional laissez faire system towards a more creative system which would enable states to co-operate more closely for the welfare of their citizens.⁸²

Brierly's prescriptions were therefore more radical than his initial rejection of the domestic analogy seems to indicate. None the less, he was in line with Carr in stressing that the solution of international disputes could not be left to the judicial methods alone, and that a system of collective security would have to be underpinned by a great degree of co-operation between states in the economic and social fields. This undoubtedly was a reflection of the transition which had taken place within the domestic sphere from old liberalism to the doctrine of the welfare state.

The same transition provided a foundation also for Mitrany's functionalist approach to international co-operation. In his view, the difference between national government and international government was a matter of scale. The latter dealt with those things which could not be handled well, or without friction, except on an international scale. But the purpose of the two were the same: equality before the law, economic well-being and social justice.⁸³

Mitrany criticized the League of Nations for being essentially an application of the philosophy of laissez faire in international society. He remarked strikingly: 'It is no use putting a policeman at the street corner to keep the traffic in order and to watch for burglars if at the same time the water and food supply for that street is being cut off.'⁸⁴ The Covenant was concerned primarily with defining the formal relationships of states, in a negative sense, and only vaguely with initiating common activities, he noted. The economic, financial and other sections

of the League were mere secretariats, and so in fact was the International Labour Organization.⁸⁵ What he wished to see instead was executive agencies with autonomous tasks and power. They would not merely discuss but would do things jointly, he speculated.⁸⁶

Here it is important to note Mitrany's own account of the two sets of experience which were vital in the making of his approach. Both these experiences were from within the domestic sphere, and Mitrany had studied them with great interest.

The first of these he encountered when as an Assistant European Editor of the Carnegie Endowment's project, he edited European contributions to the economic and social history of the First World War. His study of the various manuscripts revealed to him that, under the impact of the new kind of warfare, which had made economic resources and industrial potential a decisive factor, the main belligerents, no matter how great the historical, constitutional and social variations, responded to the practical war-time needs in similar ways everywhere, by improvising similar and novel executive and administrative arrangements. This was a remarkable confirmation of the functionalist thesis that under given conditions there was a close working relation between the function of government and the structure of government, and that needs breed institutions without rigid advance planning.⁸⁷

The second came from the United States, in the form of President Roosevelt's New Deal and the Tennessee Valley Authority, whose birth and progress Mitrany observed closely as a visiting professor at Harvard University. According to Mitrany, the 'New Deal was a functional evolution all along the line'.⁸⁸ The TVA's central purpose was 'water control, with electric power as a corollary, affecting a river system that spread over seven of America's "sovereign" states', and which presented 'problems and opportunities too big for individuals or local

governments to handle'.⁸⁹ This, he witnessed, transformed the 'Federal Government' into a 'national government' without any change in the text or forms of the constitution.⁹⁰ This was possible, he thought, because the TVA 'was a new administrative but not a new political dimension'.⁹¹ He described the experience of the TVA further as follows:

Each and every action was tackled as a practical issue in itself; no attempt was made to relate it to a general theory or system of government. Every function was left to generate others gradually; and in every case the appropriate authority was left to develop its functions and powers out of actual performance. ... It has been a purely functional development at every point.⁹²

Mitrany considered such a pragmatic approach, as opposed to the method of constitution-making, which he considered as a nineteenth century preoccupation, as an appropriate mode of international co-operation in future. Moreover, his concern for the international management of welfare issues, as in the case of Carr and Brierly, was a clear reflection of the change in perception which had taken place within the sphere of domestic politics as regards the proper function of the government.⁹³

An important question arises here as to whether these three writers can be said to have resorted to the domestic analogy when, influenced by the change in the domestic political concern, they advanced proposals in favour of the international management of economic and social welfare. The answer to this will depend, as indicated in Chapter II, crucially upon whether any analogical reasoning was involved in their thought.⁹⁴

The answer in fact seems to be in the negative on the whole. Admittedly, Brierly did argue partly along the analogical lines that

as domestic government was concerned with the general welfare of citizens so international society, through its laws and institutions, would have to be concerned more positively with the general welfare of states.⁹⁵ Mitrany's use of the TVA as a model may also count as an instance of the domestic analogy. The place of the domestic analogy in the functionalist line of thought regarding community-building will be examined briefly a little later. However, to the extent that the three authors can be interpreted primarily as stressing the need for international co-operation for the satisfaction of the welfare needs of the individual men and women of Europe, or of the whole world, their thinking can be said not to involve analogical reasoning: what they stressed was the necessity for upgrading the level of management from national to international for the achievement of welfare goals in separate national communities. True, all these writers considered international co-operation in these areas as a means of ensuring peace among states, but the line of reasoning they adopted appears different from the domestic analogy proper.⁹⁶

Thus, for example, Brierly argued that international law would have to concern itself with the issue of human rights. He preferred a relatively modest approach in this field, and suggested an international convention obliging states to incorporate in their own municipal laws a procedure for protecting certain basic rights of their own subjects.⁹⁷ He considered that such an agreement would contribute towards the protection of basic rights, such as the freedom of speech, of the press and of thought, within separate national communities. This, according to Brierly, was in turn an indispensable condition of peace among them for it was through the infringements of such basic rights that totalitarian governments manipulated their peoples into fighting an aggressive war.⁹⁸

The aim of Brierly's proposal here was therefore at least partly 'international'. Yet his reasoning was clearly not analogical. Analogical reasoning would have led him to suggest that as domestic constitutions often contained the declaration of the basic rights of citizens so would international law have to clarify the basic rights of states. This was not Brierly's idea here. His point was that the protection of basic rights of citizens would have to be reinforced by an international instrument clarifying the duties of states in this respect.

The point that an institution proposed may have been inspired by a domestic organ, but that the argument which supports the proposal may not be analogical is also well illustrated by comparing strikingly similar passages from Immanuel Kant and E.H. Carr. As we already quoted in Chapter I, Kant stated as follows in his Idea for a Universal History from a Cosmo-political Point of View:

What avails it to labour at the arrangement of a Commonwealth as a Civil Constitution regulated by law among individual men? The same unsociableness which forced men to it, becomes again the cause of each Commonwealth assuming the attitude of uncontrolled freedom in its external relations, that is, as one State in relation to other States; and consequently, any one State must expect from any other the same sort of evils as oppressed individual men and compelled them to enter into a Civil Union regulated by law.⁹⁹

And now wrote Carr in Nationalism and After, arguing for the necessity of reinforcing national by international economic planning:

The pursuit of "free competition", of an economic principle of all against all, inevitably tends to create those extreme

inequalities and forms of exploitation which offend the social conscience and drive the less privileged to measures of self-defence, which in turn provoke corresponding counter-measures. By the end of the 19th century this process had led, as it was bound to lead, to the progressive development of combination at every level and in every part of the system, culminating after 1914 in the most powerful combination yet achieved — the modern socialized nation.¹⁰⁰

Yet, what avails it to labour at the arrangement of a Commonwealth', one almost imagines Carr muttering to himself as he continued:

But a further stage has now been reached. What was created by a cumulative process of combination between individuals to protect themselves against the devastating consequences of unfettered economic individualism has [through the process of 'nationalization' of socialism] become in its turn a threat to the security and well-being of the individual, and is itself subject to a new challenge and new process of change.¹⁰¹

What is striking is not only the remarkable resemblance of the two passages, but also the fact that whereas Kant had, in the passage cited above, talked in terms of the State in its external relations with others, Carr was seeing the hazardous impact of international economic anarchy with reference to the individual men and women living in separate national communities. While Kant's argument was analogical, Carr's clearly was not. Kant, while starting from the individual in his theorizing, nevertheless personified the State; Carr, by contrast, took the individuals as the units of his concern even in matters of international organizations.¹⁰²

Mitrany, too, as we saw, considered national and international institutions as working in concert for the same ends: the difference

was simply a matter of scale. These points, however, should not be taken to mean that Carr, Brierly or Mitrany did not in any way resort to the domestic analogy. They did. Carr had resorted to it in discussing the method of peaceful change, as we noted. Brierly insisted that international law would have to ban the use of force just as any domestic legal systems. Even Mitrany, somewhat unexpectedly, maintained that a 'certain degree of fixity would not be out of place' in those areas related to 'law and order' and 'others of a more formal nature'.¹⁰³ Under this category, Mitrany had in mind a hierarchy of international courts and security arrangements organized on an interlocking regional basis. For the latter, he hinted at the possibility of using the British Committee of Imperial Defence as a model.¹⁰⁴

More fundamentally, there may be said to be an element of domestic analogy in the functionalist argument that just as domestic social order is underpinned by co-operation among its constituent units with regard to their practical needs so similarly world order must be reinforced by international (governmental and non-governmental) co-operation in the areas relative to these needs. To what extent international co-operation in such areas increases world order is uncertain. What underlies the functionalist argument here is the conception (or preconception) of human nature according to which human beings tend to show loyalty towards those institutions which satisfy their needs. To the extent that this untested hypothesis is designed from the start to apply to all human beings regardless of whether they live in the same national community, it is clearly not meant to be an analogical argument. However, those who stress the extent to which the process of community building along the functionalist path, which may be operative within a national community, does not succeed internationally, may tend to regard the argument as involving an unwarranted domestic analogy.¹⁰⁵

It will be recalled that to count as an instance of the domestic analogy the purposes to be achieved by the recommended process have to be primarily 'international' in nature.¹⁰⁶ The difficulty with regard to functionalism is that its purposes appear to be at once 'cross-national', 'transnational' and 'international': 'international' (or inter-state) peace is expected to follow from the emergence of a 'transnational' community (a community of individuals and groups which transcends national boundaries), which in turn is expected to result from 'cross-national' satisfaction (satisfaction in different national communities) of welfare needs of the individuals. At any rate, the functionalist line differs from the domestic analogy in the usual form in that the former, unlike the latter, does not involve the personification of the state.

Our fourth and final group of critics of the League comprised those who saw in its inability to maintain world order the superiority of the pre-League system of international law in the area of the control of force. According to Wolfgang Friedmann, there were some international lawyers who, with the League collapsing and the Kellogg-Briand Pact still-born, took this attitude.¹⁰⁷ Unfortunately, Friedmann did not say who these were, but Edwin Borchard and his mentor John Basset Moore appear to fit this category well. The example of Borchard is particularly striking because of his uncompromising insistence on the superiority of the pre-1914 international law to its post-1919 counterpart which he expressed in numerous writings for over a quarter of a century well into the period after the Second World War.¹⁰⁸ An anonymous reviewer of Neutrality for the United States, which Borchard published in 1937 with W.P. Lage, remarked that Borchard was well known as one of the foremost opponents of the American supporters of the League of Nations and perhaps

of all plans of international re-organization.¹⁰⁹ Similarly, an obituary note for Borchard in the American Journal of International Law (1951) described him as having been 'profoundly sceptical of general international organizations.'¹¹⁰

Borchard was not in fact critical of all aspects of international law developed since the Great War. He was not opposed to adjudication as a means of settling international disputes, although he saw no point in according the power of obligatory jurisdiction to international tribunals, and considered diplomacy as a more important mechanism for adjustment.¹¹¹ Nor was he against a possible development, after the Second World War, of international co-operation in the economic and social fields facilitated by some international institutions, which, if appropriate, he thought, might gradually increase their measure of control.¹¹²

However, he did not see the absence of an international legislature as a major weakness of international law, for states had learnt to co-operate by treaty in hundreds of fields when the need arose.¹¹³ Moreover, he was firmly convinced that the contemporary trend in international law and legal thinking, according to which belligerents were to be divided into aggressors and victims, and the third party was expected to favour, or come to the rescue of, the victim states, was entirely mistaken. He stated:

Many of the political errors of the recent years have been due to the easy assumption that there is a close analogy between the law within a state, whereby the unruly are hailed before the civil authorities, and the international system, in which no one can hail an unruly nation before the bar of justice without producing conflicts.¹¹⁴

Borchard added that the system of collective security was not only

unlikely to work, but also likely to extend and intensify conflicts without in any way resolving their underlying issues.¹¹⁵

What Borchard proposed instead was to return to the system which had prevailed before the First World War. According to him, the nineteenth century was not a period of 'international anarchy', and the Hague Conferences symbolized 'the high-water mark of the trend toward harmony.'¹¹⁶

The reformer of international law, according to him, made a grave error in 1919 by acting in hysteria, mistakenly assuming international society to be amenable to the kind of control operative in the domestic sphere, and ignoring those institutions which 400 years of history had cultivated in the international system. He concluded therefore that there was no way but to return to the pre-1914 system of international law supported by conciliation through diplomacy designed to eliminate the real sources of conflict.¹¹⁷

In presenting the views advanced by Borchard, however, it is important to point out that he was writing primarily from the angle of the United States. Neutrality for the United States shows his adherence to the position that the American national interests, as well as distinctively American contribution to the theory and practice of international relations, lay in her maintenance of strict neutrality vis-à-vis European wars.¹¹⁸ He desired the United States to be a leading neutral power, capable of protecting the rights of other neutral states, and acting as 'the trustee for civilization in a shell-shocked world'.¹¹⁹ Despite this American bias, however, it is also clear that Borchard considered the older system of international law to be more conducive, than the twentieth century system, to the maintenance of order in the international system as a whole.¹²⁰ Thus his line of argument was diametrically opposed to that of Leonard Woolf with whose ideas we

began this chapter.

In the next chapter, we shall examine which of the four lines of thought identified in this chapter contributed to the birth of the United Nations, paying special attention to the role played by the domestic analogy in the establishment of this new world organization.

Chapter VII The Domestic Analogy in the Establishment of the United Nations

In Chapter VI we saw four major patterns of thought emerge against the background of the perceived inadequacies and the eventual collapse of the League of Nations. To recapitulate, these were: (1) a reformed-League idea (e.g., of Woolf), which held that a new organization incorporating the basic features of the League, with certain necessary improvements made, should be established after the war; (2) federalism (e.g., of Schwarzenberger), a radical view, which stressed the necessity to replace the sovereign states system by a federal union, though not necessarily encompassing the whole world at the initial stage; (3) the approach (e.g., of Mitrany) which stressed the importance of international co-operation in the economic and social fields; and (4) the view (e.g., of Borchard) that in the area of the control of force international law should revert to the pre-1914 system.

These were not in fact exhaustive of all the ideas which developed in the period regarding how best to rearrange the framework of the states-system. For example, Carl Schmitt, a German legal theorist, notorious for his support of Hitler, formulated in 1939 the idea of non-intervention between a number of blocs, each led by a Great Power, as a basis of world order. What he envisaged was a reciprocal adoption, by each of the Great Powers, of the principle of inter-bloc non-intervention on the model of the Monroe Doctrine. This was a barely disguised attempt to justify and protect German preponderance in Europe and was based on the Nazi doctrine of Lebensraum and Herrenvolk.¹

None the less, the four approaches examined in the previous chapter are particularly noteworthy because they have provided a basis of contemporary theory and practice of international relations.

Clark and Sohn's World Peace through World Law shows that the idea of improving on the League, and now on the United Nations, still continues to find supporters.² While a world federation may no longer be taken seriously as a practical option, Schuman's idea, underlying his commitment to the federal goal, that the international system is inherently unstable as a consequence of its fragmentation into sovereign states is a widely accepted assumption, and has been elaborated further by Kenneth Waltz, for example, in his Man, the State and War and Theory of International Politics. Moreover, Morgenthau's idea that, given the unattainability of a world state in the foreseeable future, the only practical alternative is found in the pursuit of skilful diplomacy has found great many supporters among the contemporary theorists and practitioners of international relations.

Mitrany's functionalism has been seen by a number of international relations theorists as underlying the movement towards unity in Europe, although he is himself well known for having criticized regional integration as an attempt to create a larger sovereign state in one part of the world.³ The concern for economic and social welfare of men and women living in separate national communities, which underlay the writings of Mitrany, Carr and Brierly, is now in the forefront of international relations theory, as witnessed for example by Charles Beitz' Political Theory and International Relations, and is on the agenda of practical politics.⁴

At the progressivist extreme, we find Richard Falk's A Study of Future Worlds, which combines in an eclectic fashion a number of approaches noted above, while at the conservative end, Borchard's stress on the pre-1914 system of international law in the area of the control of force has found an elaborate re-statement in the writings of Hedley Bull.⁵

These contemporary developments in the theory and practice of international relations, however, have taken place against the background of the continued existence of the United Nations. Although it may not have lived up to the expectations of some of the drafters of its Charter, this remains the nearest analogue of a written constitution in international society.

As is well known, the Charter of the United Nations was signed at the end of the United Nations Conference on International Organization held at San Francisco in 1945. Like the League of Nations, the United Nations is an association of sovereign states organized for the purpose of international peace and security, but the goal of economic well-being and social justice is given a more prominent place in the Charter than in the Covenant.⁶ The proposals discussed at the San Francisco Conference of 1945 as the basis of the Charter had been prepared at Dumbarton Oaks in the previous year by the United States, Great Britain, the Soviet Union and China. Some further discussion on the structure of the new world organization was made at Yalta before the final conference at San Francisco.

In this chapter, we shall examine which particular lines of thought that emerged against the background of the League's inadequacies and failure had influenced the making of the Charter, and pay special attention to the part played by the domestic analogy in the birth process of the United Nations. It is, however, not our purpose here to give a detailed account of the conferences which led to the creation of the new world organization.

Of the four approaches enumerated at the beginning of this chapter, (2) and (4), the radical and conservative extremes, had little direct influence on those government officials who played a major part in the establishment of the United Nations.

It should not be ignored, however, that arguments for federalism were widely canvassed in the initial phase of the Second World War. The frontal attack on state sovereignty was seen as a new panacea for world ills. This violent flirtation with the idea of federal union, however, was a symptom of despair, a psychological escape from the war. After 1940 this tendency declined both in numerical support and propagandist activity. During 1943 and 1944, opinion veered away from federalism and swung towards a more favourable view of the revival of the League of Nations.⁷

The idea of reviving the League of Nations itself, however, was rejected at an early stage as being out of the question by those who directly participated in official post-war planning. Cordell Hull, who as the Secretary of State took the initiative in planning for post-war organization in the United States, remarks in his memoirs without any further explanation: 'As to whether to revive the League of Nations or set up a new international organization, we decided in favour of the latter.'⁸ This decision was taken between the spring and summer of 1943, and by 'we' Hull meant the Political Subcommittee of the non-partisan Advisory Committee on Postwar Foreign Policy.⁹

It is generally understood that the reasons for not reviving the League itself were threefold. By 1942, as H.G. Nicholas puts it, 'the League reeked with the odour of failure'.¹⁰ The Soviet Union would have been too proud to consider rejoining the League after having been expelled from it over the Russo-Finnish war in the dying days of that institution. And in the United States it was commonly felt that it would be more prudent to seek public support for a new organization than to revive the old controversy over her entry into the League.¹¹

A reformed-League idea, therefore, became the single most significant force in the process of planning and negotiations which led eventually

to the adoption of the Charter in 1945. This is not to say, however, that those who worked for the foundation of the United Nations never considered their effort as being aimed at the ultimate ideal of a world federal union. Some appear to have done so.

A clear indication of an attachment to the ultimate goal of a world federation is found in none other than President Roosevelt. According to Thomas Greer, who studied Franklin Roosevelt's ideas closely, the President believed that 'at some distant time a world federation would evolve' and stressed that 'the conception of the United Nations was not that of an ultimate organization'. It was, in Roosevelt's view, only a stepping stone to greater security, and towards the greater unification of mankind.¹² This is reminiscent of Woodrow Wilson's idea noted in Chapter V.

The unconventional first words of the Charter, 'we the peoples of the United Nations', were derived from the federal Constitution of the United States, and they might also be taken to indicate the drafters' attachment to the ultimate goal of a world federation. Some might of course have read such an idea into these words. Senator Sol Bloom, a member of the U.S. delegation at the San Francisco Conference, at whose insistence the wording was adopted, certainly wished to impregnate what was essentially a loose association of sovereign states with a democratic sentiment, and a democratic ideal may be said to be more closely linked with a federal structure than a confederal or looser bond.¹³ Whether Bloom himself saw this new association as a first step towards a closer union, however, is uncertain from his autobiography.

If the radical approach of federalism had only a negligible and indirect influence on the creation of the United Nations, the conservative outlook of the kind expressed by Edwin Borchard also had little direct

impact on the formation of the new organization. He was clearly against the tide of the mid-1940s in the United States inasmuch as it was one of the central concerns of the governmental planners of postwar arrangements to create an effective system of sanctions against aggressor nations and to secure American co-operation in such a system. Borchard, by contrast, was an isolationist, and favoured the traditional conception of war as embodied in the positive international law of the previous century, which saw no legal distinction between aggressors and victims, or to use the terminology of Hans Kelsen, 'delict' and 'sanctions'.¹⁴

In this connection, it is pertinent to note the following observation by Evan Luard on Article 51 of the Charter which provides for the right of self-defence, individual and collective:

It is arguable that [the insertion of this article at the San Francisco Conference] brought a significant alteration in the emphasis of the Charter taken as a whole. ... [The United Nations] might now become a system in which breaches of the peace were met in the first place by action taken by individual states or groups of states, while only at some subsequent stage would the Security Council be called on to take action if necessary. In other words, it made it substantially ... more likely that conflict situations would be dealt with in the traditional way, as for hundreds of years before.¹⁵

In a similar vein, Alfred Verdross argued as follows:

Since enforcement action under the Charter is impossible against a great Power, reactions against such a State, if guilty of an act of aggression, are not governed by the Charter, but by general international law. According to the spirit of Article 51 of the Charter, it is true that

measures of individual and collective self-defence are intended to be only provisional, until the Security Council takes the necessary steps to restore the peace. But if the Security Council is paralysed, these measures change their character. Nothing remains but collective self-defence, or the old measures of self-help. In such a tragic situation they replace the new system of collective security under the authority of a central organ of the international community.¹⁶

Thus, according to Verdross' interpretation, the institution of the veto enables the re-introduction of the old conception of self-help and war through Article 51, while according to Luard this Article tends by itself to resurrect the old system of dispute settlement. Josef Kunz has also advanced an argument similar to that of Verdross.¹⁷

It is important, however, not to confuse consequences with intentions. Whatever the legal and political implications of Article 51, the reason for its adoption was primarily to placate the anxiety of the Latin American states to protect their right to use force in collective self-defence without prior authorization by the Security Council.¹⁸ This, it may be argued, would amount to the retention of the old conception of war. But Article 51, as is well known, delimits the legitimate use of force in self-defence to those cases where an armed attack occurs against the member-states. This article, despite its reference to the right of self-defence as 'inherent', cannot therefore be taken by itself to preserve to the member-states the right of self-defence under general international law, let alone resurrect the nineteenth century institution of war as a whole.¹⁹ At any rate, there is no indication in historical sources, such as Ruth Russell's A History of the United Nations Charter, that this article was inserted at the San Francisco Conference because the member states preferred the nineteenth century

conception of war, and its concomitant institution of the laws of war and neutrality, to the contemporary trend towards collective security set by the Covenant and the Kellogg-Briand Pact. Moreover, crucially for our argument, a French proposal at San Francisco to specify in the Charter that 'the status of neutrality is incompatible with membership in the Organization' was accepted in principle as inherent in the Charter system.²⁰ Thus while Article 51 may have opened the door for a revival of the traditional method of dealing with international conflicts, it was not the intention of the drafters of the Charter to follow the lines persistently advocated by such conservative writers as Borchard, and to reintroduce the nineteenth century system of the laws of war and neutrality.

Even with respect to the veto, it is uncertain how far the power accorded to the permanent members of the Security Council reflected a general belief in the superiority of the old-type international law and of the method of conflict resolution reflected in it. True, the idea of the Concert is implicit in the principle of the Great Power unity. But the veto appears primarily to have been a concession made to the reality of the might of the Great Powers who each wished to preserve their freedom of action in joining a new world organization.

Stalin wished to avoid repeating in the United Nations the Soviet experience of expulsion from the League.²¹ The United States Senate, Roosevelt feared, would not ratify the Charter if the veto power could not be secured.²² Churchill, Harry Hopkins suggests in his memoirs, was also in favour of the veto as a means of preventing any encroachment on the British Imperial interests.²³ It appears primarily to have been the coincidence of these wishes and fears, rather than coherent adherence to the theory advocated by writers like Borchard, which led to the adoption of the veto in the Charter of the United Nations.

In addition to the reformed-League idea, which was a predominant factor in the formation of the United Nations, the third approach noted above, which stressed international co-operation in the economic and social spheres, was also influential in postwar planning.

In comparison with Woodrow Wilson's 'Fourteen Points', the main concern of which was to establish international order on the basis of national self-determination, the Atlantic Charter, drawn up by Roosevelt and Churchill in 1940, is noteworthy for the stress it placed upon international co-operation for 'economic advancement and social security'.²⁴ According to Thomas Greer, Roosevelt had accepted the view in 1937 that the best chance of peace lay in a co-operative effort to solve the social and economic problems of the day.²⁵ In line with such a belief, and apparently also in accordance with the view that habits of co-operation should expand gradually through institutionalized collaboration on practical issues, Roosevelt decided that first steps should be taken by a series of conference on food and agriculture, monetary relations, and other economic and social subjects.²⁶

Thus, at Roosevelt's insistence, a plan was developed early in 1943 for the convocation of a conference on food and agriculture at Hot Springs, Virginia, which led to the establishment of the Food and Agriculture Organization.²⁷ This was followed in July 1944 by the United Nations Monetary and Financial Conference at Bretton Woods in New Hampshire, which led in December 1945 to the creation of the International Monetary Fund and the International Bank for Reconstruction and Development. Similarly, an international conference on civil aviation held in Chicago in 1944 led to the establishment of the International Civil Aviation Organization provisionally in 1945 and permanently in 1947.²⁸ The United Nations Educational, Scientific, and Cultural Organization was formally agreed upon in November 1945, and

was established in the following year, while the World Health Organization was created by the United Nations Organization itself in 1948.²⁹

In the meantime, there was also a move in the International Labour Organization, which had survived the collapse of the League, to expand its role in economic and social affairs, and, in particular, to concern itself with the problem of unemployment. The United States, however, strongly opposed such a move in view of her other proposals for dealing with the general question of international economic co-operation. In the event, at its 1944 Philadelphia Conference, the I.L.O. adopted a declaration, which among other things pledged the full co-operation of the organization with other international bodies which would also be working for effective international and national action to achieve general objectives of full employment, higher standards of living and other social and economic goals.³⁰

In view of the fact that a number of 'specialized agencies' were being negotiated and established in the economic and social spheres, the planners of the postwar general organization acted on the assumption that provisions would have to be made to co-ordinate these agencies as well as the technical organizations active before the war, such as the I.L.O.³¹ This was in line with the Bruce Report of August 1939, whose main proposal was to establish for the League of Nations a Central Committee for Economic and Social Questions. Though the war in Europe prevented the implementation of this Report, the Central Committee was to exercise control over the economic and social agencies of the League.³² The planners of the new organization in effect put the Bruce Report into practice in suggesting the establishment of the Economic and Social Council as one of the principal organs of the United Nations.³³

The way these 'specialized agencies' of the United Nations emerged has been compared by Evan Luard to the manner in which 'the British Empire is supposed to have done, in a fit of absence of mind.'³⁴ The creation of these agencies, however, may more appropriately be compared to the setting up of numerous agencies in the United States under Roosevelt's 'New Deal' policy.³⁵ It will be recalled that David Mitrany, whose idea may be said in effect partly to have been followed in the creation of the UN specialized agencies, had himself been much inspired by the 'New Deal' policy in developing his approach.³⁶

It is uncertain, however, how far American proposals for new international agencies were consciously derived from domestic sources. Indeed it is doubtful that proposals for the specialized agencies involved the use of the domestic analogy, although there may have been some exceptions and also domestic experience may have provided some useful guidelines.³⁷ The idea which underlay the establishment of these agencies was that in social and economic matters an efficient handling of the problems required upgrading the level of management from national to international. This form of reasoning, as we saw, is different from domestic analogy proper.

The stress placed on international co-operation in economic and social affairs was an important feature of postwar planning. Another innovation, which the planners of the new organization considered as vital, was in the area of enforcement. They in effect followed an advice given by Brierly, according to whom, as we saw, Machiavelli's maxim that the foundation of all states was good laws and good arms should be applied to international society.³⁸ And it is here, in the ideas about enforcement, that reliance on the domestic analogy was most conspicuous. The analogy used was that of a police force as shown by Roosevelt's

term, 'Four Policemen'.

Roosevelt wished to establish an enforcement agency consisting of the United States, the Soviet Union, Great Britain and China as one of the central organs of the new institution 'with power to deal immediately with any threat to the peace or any sudden emergency'.³⁹ In explaining his ideas to Stalin at the Teheran Conference of November 1943, the President cited the Italian attack on Ethiopia in 1935 as an example of the League's failure to deal promptly and forcibly with an act of aggression. The President remarked that had the Four Policemen existed at that time it would have been possible to close the Suez Canal and thereby prevent Mussolini from attacking Ethiopia.⁴⁰

Later, Roosevelt stated in his speech to the Foreign Policy Association: 'The Council of the United Nations must have the power to act quickly and decisively to keep the peace by force, if necessary. A policeman would not be a very effective policeman if, when he saw a felon break into a house, he had to go to the Town Hall and call a town meeting to issue a warrant before the felon could be arrested.'⁴¹ The 'Town Hall' here, however, was a metaphor for the United States Congress, not a central organ of the proposed United Nations.⁴²

From the viewpoint of the domestic analogy, it is interesting to note Cordell Hull's remark that Roosevelt often expressed his views on international relations in terms of the situation in the United States. For example, the President said that he wished to have the United Nations located somewhere 'in the nature of an international District of Columbia'.⁴³ When confronted with the Soviet demand at the Dumbarton Oaks Conference that a member of the Security Council, even when involved in a dispute, should be entitled to vote, Roosevelt is reported by Hull to have said to Ambassador Gromyko that 'when husband and wife fell out with each other they stated their case to a judge and abided

by his ruling: they did not vote in the case.⁴⁴ Hull continues: 'This principle, that any party to a dispute could be heard but could not vote, [the President] said, had been imbedded by our forefathers in American law.'⁴⁵

In spite of these few examples, an explicit reliance on the domestic analogy is in fact extremely rare in the birth process of the United Nations. This is in clear contrast to the case of the League of Nations where, as we saw, there were abundant instances of this analogy in explicit forms. This is hardly surprising since the major powers, the United States and Great Britain in particular, had commonly accepted that a new organization to be established after the war would have to be something resembling the League of Nations. Therefore, inevitably, in formulating their ideas about the new organization they consciously built on the League. Since they were not creating a new organization from nought there was no need to conceptualize it in terms of domestic models unlike in the case of the establishment of the League of Nations.

Thus, for example, Ruth Russell's detailed account of the creation of the United Nations reveals that the United States Department of State planners, who had decisive influence on the eventual outcome, consistently referred to the League of Nations Covenant as a basis, and tried to reform it in whatever direction they considered as appropriate.⁴⁶ In Great Britain, too, the importance of the Covenant as a basis for any future security organization was fully acknowledged. Thus Churchill, while himself emphasizing the importance of regional security arrangements, warned against casting aside 'all the immense work' accomplished by the League of Nations.⁴⁷ And a Cabinet memorandum of July 1943 entitled 'United Nations Plan for Organizing Peace' stated: 'It is improbable that the League of Nations can be revived in its old form, but it is highly desirable that some international machinery, embodying

many of the good features of the League, should be established on the conclusion of hostilities.⁴⁸

The birth of the United Nations Charter thus gives a very clear illustration of the tendency for the domestic analogy not to be used explicitly when a proposal for a new organization can be conceived of as a modified version of an institution already existent in the international sphere.

Despite the fundamental agreement on the need to endow the new League-like organization with the effective power of enforcement against aggressor nations, there were some initial disagreements among the leading figures over the extent to which the new institution should be based on the regional principle. Prime Minister Churchill held that Great Britain, the United States, Russia, and possibly China, should form a Supreme World Council together with certain other powers. Subordinate to this, he argued, there should be three Regional Councils, for Europe, for the American Hemisphere and for the Pacific, respectively.⁴⁹ The European Council, he urged, should be organized as a 'really effective league, with all the strongest forces concerned woven into its texture, with a High Court to adjust disputes, and with forces, armed forces, national or international or both, held ready to enforce these decisions and prevent renewed aggression and the preparation of future wars.'⁵⁰ The European Council, he suggested elsewhere, should be 'a form of United States of Europe' along the lines suggested by Count Coudenhove Kalergi.⁵¹ The Council was to consist of twelve or so states and confederations, the latter comprising Danubian, Balkan and Scandinavian blocs. France was to be strengthened, while Prussia was to be divided from the rest of Germany. Bavaria, Churchill thought, might join the Danubian Confederation. The members of the World Council, he proposed,

should sit on the Regional Councils in which they were directly interested, and he hoped that the United States would be represented in all three Regional Councils.⁵² Churchill remarked that 'the last word would remain with the Supreme World Council, since any issues that the Regional Councils were unable to settle would automatically be of interest to the World Council.'⁵³ However, he also stated that he attached great importance to the regional principle. According to him, '[i]t was only the countries whose interests were directly affected by a dispute who could be expected to apply themselves with sufficient vigour to secure a settlement.'⁵⁴ Such a consideration, it will be recalled, was contained in Leonard Woolf's suggestions discussed in the previous chapter.⁵⁵ James Brierly had also made an identical point in The Outlook for International Law.⁵⁶

President Roosevelt's initial ideas about the postwar organization is a little unclear. His early essay, 'A Plan to Preserve World Peace', submitted in 1923 for the American Peace Award, shows that he broadly endorsed the principles of the League of Nations.⁵⁷ However, by the beginning of the Second World War, he was in favour of the Anglo-American policing of the world, and after the Pearl Harbor attack, he talked of the four powers policing the world against the renewal of aggression.⁵⁸ According to Hull, in the spring of 1943, Roosevelt still favoured a four-power establishment to enforce peace. All other nations, including France, were to be disarmed. Hull wrote: 'At that time he did not want an over-all world organization. He did favour the creation of regional organizations, but it was the four big powers that would handle all security questions.'⁵⁹

Hull contends that while he himself did not object to regional and other special arrangements supplementary to the general international organization, he considered the formation of a powerful world-wide

association of nations as of supreme importance. He suggests that he and his associates presented their arguments against regionalism in various meetings at the White House, and as a result, the President, by the summer of 1943, began to turn towards their point of view.⁶⁰

According to Harry Hopkins, however, the President, and the Under Secretary of State, Welles, in their meeting with the British in March 1943, were already emphatic that the United States could not be a member of any independent regional body such as a European Council, that they felt that all the United Nations should be members of one body for the purposes of recommending policy, and that this body should be world-wide in scope. They also held that regional councils should have advisory powers and that the real decision should be made by the United States, Great Britain, Russia and China.⁶¹

At any rate, by the time Roosevelt explained his conception of the postwar international organization to Stalin at the Teheran Conference of November 1943, the President seems to have moved towards the idea of a global international organization. It was to consist of three main bodies. First, a world-wide Assembly of all the members of the United Nations, which would meet at various places at stated times for the discussion of world problems and for the recommendation of solutions. Second, an Executive Committee, to consist of the Big Four, together with the representatives of a number of regions. The Committee was to deal with all non-military questions such as economy, food and health. The third body was the Four Policemen, an enforcement agency.⁶² Stalin indicated that he preferred the idea of regional organizations, but Roosevelt replied that the United States would be unlikely to wish to participate in a purely European Council.⁶³

We noted above Hull's version of how he and his associates persuaded Roosevelt to accept the need for an over-all global institution by the

summer of 1943. In Britain, C.K. Webster played an important role in postwar planning as a member of the newly established Research Department of the Foreign Office, and later seconded to Gladwyn Jebb of the Economic and Reconstruction Department.⁶⁴ Webster reveals in his diary his strong opposition to the regional principle. His opposition to the Churchillian regional approach is clearly stated in one of the papers which Webster prepared. He wrote: 'A World Council with final responsibility for the preservation of peace in every part of the world is of greater importance than any regional organization such as the "Councils of Europe and Asia"'.⁶⁵ Webster was indeed extremely scathing about Churchill's conception as the following remark in his diary reveals: 'The PM talked the vainest nonsense advocating among other things a World Court to settle all disputes i.e. a sort of equity tribunal like the New Commonwealth of which he is President. The regional councils with nothing to do and the 3 Powers running round first to the Council of Europe, then Asia, then Pan America. It would be exceedingly funny if it were not so tragic.'⁶⁶ In the event, as Webster shows, at the May 1944 Dominion Prime Ministers' Conference, Churchill was confronted by concerted opposition to his ideas, and was forced to accept the plan prepared by the Foreign Office for the Conference. Webster had played a substantial part in drafting this plan.⁶⁷ It is noteworthy that in his diary he refers to this plan as 'my plan', and also comes very close to claiming the authorship of the Charter itself.⁶⁸ Across the Atlantic, Cordell Hull was praised by Roosevelt as the 'Father of the United Nations'.⁶⁹ Indeed, by the summer of 1944 there was no fundamental difference between the official American and British lines. Webster described the American proposals for the Dumbarton Oaks Conference as 'simply a reformed Covenant',⁷⁰ and in essential respects so also was the British plan.

The history of the Dumbarton Oaks Conference, and the San Francisco Conference need not be dealt with here, since the outline of this history is readily available in many works on the United Nations, and the detailed analysis of the kind contained in Russell's work is beyond the scope of the present discussion.⁷¹ At this stage in the emergence of the Charter, the general framework had been agreed on, and the discussion tended to be on matters of detail. Even with respect to the veto, the controversy over which was finally settled while the powers met in San Francisco, there was agreement from the start that none of the Great Powers should be subjected to enforcement measures by the Security Council.⁷² At any rate, in its essential respects, the final outcome remained the body which the four powers had conceived at Dumbarton Oaks, and this in turn, following the American line, was closely based on the reformed-League idea.

Thus, in the place of the Council of the League was established the Security Council, and the Assembly was replaced by the General Assembly, while the new Secretariat remained, as in the League, permanent and international, under an elected Secretary-General. In addition, in the place of the Permanent Court of International Justice was created the International Court of Justice. These were virtually identical in structure and functions, but while the Permanent Court was not actually a League body in that the members of the League were not automatically parties to the Statute of the Court, the International Court of Justice was made an integral part of the United Nations. As we noted, the Economic and Social Council was added in line with the Bruce Report of 1939 which, had it not been for the war, would have led to the establishment of a comparable body under the League. And the League's Mandates Commission found its U.N. counterpart in the Trusteeship Council.⁷³

There were some significant differences between the Covenant and the Charter, however. Here we may focus on the issue of the control of force since this was the aspect with respect to which the makers of the Charter were most anxious to make progress beyond the Covenant on the basis of closer approximation to domestic society.⁷⁴

Whereas the Covenant did not prohibit resort to war completely, the Charter bans the threat and use of force by member-states against the territorial integrity and political independence of any state, or in any other manner inconsistent with the purposes of the United Nations. Moreover, whereas under the League each member retained the competence to decide whether the conditions for an enforcement action existed, under the Charter this competence is vested in the Security Council. In the League, each member was obliged to take non-military sanctions, and authorized to resort to military measures when it decided that a member-state had resorted to war in breach of the Covenant. By contrast, in the United Nations, the Security Council makes binding decisions on what enforcement measures, military or non-military, should be taken when it determines that there exists a 'threat to the peace, breach of the peace, or act of aggression'. But the Security Council are not required to determine the existence of these conditions in the light of whether any state is in breach of the law, unlike under the Covenant, where sanctions were to be directed only against those states resorting to war unlawfully. Therefore, enforcement measures under the Charter, unlike those under the Covenant, cannot necessarily be interpreted as having the character of 'sanctions' against 'delicts' or unlawful acts.⁷⁵

The Security Council was to be equipped with Military Staff Committee composed of the Chiefs of Staff of all the permanent members. This body was to make advance plans for the organization and deployment of military

forces which member states would place at the disposal of the organization, and when the Council acted, the Committee would serve as its strategic adviser.⁷⁶ Thus the United Nations was to be equipped with something close to what the French wished to see built into the League system.⁷⁷ But already in April 1947 the Military Staff Committee reported to the Security Council its inability to agree on the armed contributions that permanent members should make. By August 1948 the Committee announced the virtual cessation of activity.⁷⁸ Roosevelt's 'Four (and now Five) Policemen' never came into existence.

Another important difference is that the League principle of unanimity, both for the Assembly and the Council, was abandoned in the Charter. But precisely because the League of Nations was a decentralized system the effectiveness of the League did not depend upon its organs being able to reach decisions, but on the observance by the individual members of their obligations under the Covenant. By contrast, since under the Charter enforcement action can only be taken if the Security Council so decides, it was necessary to provide against the possibility of deadlocks by introducing some form of majority voting. But the Charter could do this only at a very high price, the Great Power veto on non-procedural issues.⁷⁹

Indeed, the institution of the veto has been criticized as having made the United Nations more backward than the League. James Brierly, one of the critics, has remarked: 'we must realize that what we have done is to exchange a scheme [i.e., the Covenant] which might or might not have worked for one which cannot work [in those circumstances in which there is a real threat to world peace].'⁸⁰ In his view, 'we have returned ... to the idea which underlay the Concert of Europe in the nineteenth century.'⁸¹ The United Nations, which is apparently more centralized than the League, and can be regarded as attempting

to transform the structure of international society one step closer to that of domestic society, was made from the start to depend on the age-old principle of the unity of the Great Powers.⁸² In the more sympathetic words of C.K. Webster, the Charter embodies an attempt at 'harmonizing the Great Power Alliance theory and the League theory'.⁸³ In the last years of the Second World War there was still enough hope for continued solidarity among the Great Powers allied against the Axis Powers to enable a distinguished historian-diplomat to make such a remark with confidence and pride. It is ironic that Carl Schmitt's idea noted at the beginning of this chapter, to which the liberalism and universalism of the Charter are opposed, has come to resemble what might be seen as an unwritten code of conduct of the superpowers in the postwar era.⁸⁴

Against the background of the continued existence of the United Nations, the latter part of the twentieth century has seen a phenomenal increase in the number and types of international institutions. But the investigation into the ways in which the domestic analogy has shaped postwar institutions must be left to another study. Instead, we shall now move on to an assessment of a number of different approaches underlying the numerous proposals which we have discussed so far in this thesis.

Chapter VIII An Assessment of the Proposals: Part One

A detailed examination of some of the well-known proposals for world order, produced between the early nineteenth century and the middle of the twentieth century, has revealed a number of noteworthy features.

First of all, we have witnessed a remarkable tendency among the publicists whom we have studied to employ as their models their own indigenous constitutions, or those of which they have first-hand knowledge. Thus, we argued, Saint-Simon's model for a re-organized Europe may well have been the Charte Constitutionnelle of 1814. In the case of William Ladd, there is little doubt that the principle of the separation of powers, which he saw as a distinctive feature of his plan, was a product of the constitutional history of the United States. Likewise, James Lorimer's scheme for an international government incorporated the basic structure of the English Parliament, and J.C. Bluntschli appears to have modelled his project for a unified Europe on the German Imperial Constitution of 1871.¹

At the beginning of the present century, Walther Schücking used as his models for what he proposed to call the 'Union des Etats de la Haye' (or the Hague Union) various constitutional instruments of Germany, such as the German Act of Confederation of 1815, the Vienna Final Act of 1820, and the German Imperial Constitution of 1871.² As we noted, ex-President Taft, who headed the League to Enforce Peace, argued for the creation of a world court on the model of the United States Supreme Court. President Wilson and Colonel House incorporated in their pan-American project a provision which they most certainly copied from the United States Constitution. A similar provision was

included in their League plans, and this later became the basis of the tenth article of the Covenant. Robert Cecil referred to English legal history in support of his proposal for an international court, and the Conference system of the British Empire inspired Alfred Zimmermann and General Smuts in their respective League proposals.³ The Committee of Imperial Defence was mentioned as a potential model for an international institution for the maintenance of law and order even by David Mitrany.⁴ And President Roosevelt, in explaining to the Soviet Ambassador at the Dumbarton Oaks Conference the idea that a party to a dispute can be heard, but not vote, characterized it as a principle 'imbedded by our forefathers in American law.'⁵

However, the tendency to present a detailed blue-print for an ideally organized world along the lines of a specific constitution appears to have declined in the twentieth century insofar as we can judge from our examples. There are various reasons for this.

First, as we noted, since about the turn of the century, gradualism became predominant among the writers on future world order. As was shown by the case of Schücking, this did not necessarily mean that the goal of a closely integrated world was abandoned altogether. But instead of working out the constitutional details of a perfectly organized world society, leading writers on world order began to concentrate on how to build gradually on the foundations which had come to exist in the international system.⁶ Moreover, as was shown by the case of Oppenheim's pre-1914 view, some writers considered it unnecessary to develop international law beyond a certain limit in its gradual approximation to municipal law. In the case of Oppenheim, this threshold lay at the level of introducing organized sanctions into international law. This was because he considered the growth of liberalism within the domestic sphere as having made states so law-

abiding as to make unnecessary an international mechanism of law-enforcement.⁷

Second, the growth of international law and institutions since the turn of the century meant that the need to add to the existing system became less strongly felt. Indeed, as was shown by the ideas of Thomas Baty, some writers insisted that international law was already perfect as it stood.⁸ Moreover, even where the need to add to the existing system was recognized, a schemer could formulate his project on the basis of what already came to exist in the international sphere rather than, as in the nineteenth century, borrowing institutions ready-made from the domestic sphere. This point is illustrated well by the pre-1914 proposal of Otfried Nippold. The stage in the development of international institutions at which he produced his scheme was such that he could present his project as a systematization of the existing international methods of settling disputes rather than as one involving the transfer of domestic institutions.⁹ The case of the emergence of the United Nations Charter provides an even more striking example. As we saw, when plans for a new organization were advanced during the Second World War, not many schemers resorted to the domestic analogy explicitly, apart from a relatively frequent use of the police analogy by President Roosevelt in particular. What the planners of the United Nations did was to use the League of Nations as a prototype.¹⁰ Of course, the very act of using the League as a prototype meant that the planners of the United Nations were resorting to the domestic analogy indirectly and implicitly in many ways. Had the League not existed, those who contributed to the drafting of the Charter would have had to resort to this analogy far more explicitly and directly.

Third, constitutionalism itself has become less fashionable in the twentieth century among the writers on international relations. Thus,

the setting up of a constitutional machinery at the international level, unlike in the case of a number of well-known nineteenth century writers, was no longer treated as a panacea for, or even a necessary condition of, world order. A constitutional approach was considered by David Mitrany, for example, as inadequate and misguided.¹¹ Moreover, E.H. Carr's critique of 'Utopianism', which appeared in his influential work, The Twenty Years' Crisis, intensified the opposition to a legalistic approach to international relations, and, with it, any attempt to draw up a constitutional blue-print of a future world.¹² The functionalist approach, which Mitrany advocated in opposition to old-style constitutionalism, and which Carr supported in his writings, appears to have underlain the creation of various international institutions in the mid- to late 1940s. Among them are FAO, IMF, IBRD, ICAO, and UNESCO.¹³ However, scepticism among leading academic writers about the value of constitutionalism was not influential enough to prevent the creation of the United Nations on the model of the League of Nations. The need for a reformed League was taken for granted by the United States Department of State and the British Foreign Office both of which exerted decisive influence in the shaping of the new world organization.¹⁴

One observation which should be added here is that those who produce a scheme for world order, based in some way upon a domestic model, do not necessarily admit that there are elements of domestic analogy underlying their projects. This might be because the elements of this analogy in a given project are negligible. However, as we tried to argue in the case of the Bryce Group proposal for a League of Nations, a tactical concern might be added to this. If a project could be explained without reference to the fact that it aimed to transplant institutions from the domestic soil, it might be made to look more viable in the international environment.¹⁵

In this respect, it is also interesting to note that our nineteenth century writers appear themselves to have been less than fully candid about their real models. Saint-Simon said his model was the English Constitution. There is no mention in his essay of the French Charte Constitutionnelle which, in our view, is just as likely a model. Ladd said of his Court and Congress of Nations that they found their closest working models in the Court and the Diet of the Helvetic Union presumably, as we indicated, in order to stress the viability of his project. Lorimer's characterization of his international government that it was to fulfil the functions similar to those of the Delegations System of the Austro-Hungarian Empire is inaccurate, and was perhaps meant to play down the ambitiousness of his scheme. Bluntschli's suggestion that the German Imperial Constitution was unsuitable as a model for European unification may have been due to his concern to protect the scheme against the charge of parochialism.¹⁶

While therefore there may be various reasons why a schemer avoids modelling his project on a specific constitution, or plays down the extent to which his project is inspired by one, it is noteworthy that ideas for world order advanced by a number of writers examined in this thesis reflect the contemporary domestic political concern of their countries, and others similarly situated.

Thus a close examination of the proposals of Saint-Simon, William Ladd, James Lorimer, J.C. Bluntschli, E.H. Carr, James Brierly and David Mitran reveals that their suggestions were significantly influenced by the political concerns and ideas of their respective countries, and others in similar positions, in the period of their writing. It is of great interest to note that political theories which underlay the proposals of those writers show a historical transition from the theory of the mixed state (in the case of Saint-Simon),

through the theory of the separation of powers and representative government (Ladd, Lorimer and Blutschli), to the idea of planned economy and welfare state (Carr, Brierly and Mitrany). It is tempting to suggest here that the proposals of these writers reveal that, as the domestic society has become more democratized, and the idea of bourgeois democracy has become challenged, or superseded by the idea of mass democracy, international ideas themselves have shown a parallel transition.

Two qualifications are necessary here, however. First, there are expected to be many proposals which will not fit this pattern. Thus the parallelism of the two realms of thought cannot be advanced as a general proposition in a statistical sense. What we can say about those writers' proposals is that together they form a set of important historical signposts. However, secondly, it will be objected that it is illegitimate to string together a history of one nation in a particular period (say, post-Napoleonic France) and a history of another nation in another period (say, mid-nineteenth century America), and to construe a universal history out of such manipulation.¹⁷ This is an important qualification to bear in mind. It will be meaningful to argue that parallelism obtains in the two realms of thought with respect to the writers noted above, and others like them, only to the extent that a degree of cross-national unity can be assumed in the history of Western political thought, encompassing that of France, America and Germany since the early decades of the nineteenth century. These qualifications, however, do not undermine the power of the examples discussed to illustrate the ways in which domestic political ideas can exert influence upon proposals for world order.

Another important feature revealed by our study is the influence of international circumstances or events upon the character of proposals.

Very clear-cut instances of this are found in the writings of the Great War period. The examples of Oppenheim, Nippold and Liszt are particularly striking. It will be recalled that before their experience of the War they were all opposed to the idea of organized sanctions in international law. But both Oppenheim and Nippold openly admitted that the experience of the War had made them abandon their pre-war confidence in the law of nations without organized sanctions. Liszt changed his attitude in the same way. The idea that the freedom of states to resort to war would have to be legally restricted, and that coercive measures were as necessary in international law as in municipal law became the guiding principle of the period. This convergence of opinion could not be understood without reference to the Great War itself, which was commonly interpreted as having resulted from, among other things, the anarchical structure of international relations.¹⁸

When compared with the convergence of opinion in the Great War period in favour of coercion in international law, it is noteworthy that, before the War, there was no strongly felt urge, among the writers on international law and relations, to argue for the introduction of organized sanctions to the international sphere. In line with gradualism, writers such as Schücking and Lawrence envisaged the establishment of an international police in the distant future. But neither of them appears to have thought of an enforcement agency as a necessary condition of world peace. As we saw, Oppenheim and others were strongly opposed to such a device. This degree of complacency was undoubtedly a reflection of the relatively peaceful character of international relations at that time. Moreover, as we tried to argue, gradualism predominant in the period was no doubt itself partly due to the gradual progress which international law began to make at the turn of the century.¹⁹

Thus the perception of peace and progress at the turn of the century produced confidence in the relatively anarchical system of international law, while the Great War brought about a sudden revision of this attitude. As we saw in some detail, the League of Nations, established in reaction to the War, embodied several ideas derived primarily from domestic sources.²⁰

It is interesting to observe, however, that there were some writers whose views on world order were relatively unaffected by the experience of the Great War. Thomas Baty and Philip Marshall Brown continued to stress the anarchical nature of international law as being not only its unique, but also commendable, feature.²¹ Throughout the period of the League, and well into the second half of this century, Edwin Borchard steadfastly clung to the view that the makers of peace at the end of the Great War had acted in hysteria, that the pre-1914 system of international law was superior to the post-1919 counterpart with respect to the control of force, and that the laws of war and neutrality were a distinctive institution of international society which should not be interfered with by a misguided use of the domestic analogy.²²

Such a perception of international law and relations had existed in an embryonic form among certain classical writers on political philosophy and the law of nations, and became influential particularly before the outbreak of the First World War as the doctrine of the 'specific character of international law'. It is interesting to note that this doctrine finds its counterpart in the view of certain writers on International Relations who stress the uniqueness of international society as the central feature of their subject-matter. Among them are such influential writers as C.A.W. Manning, F.S. Northedge and Hedley Bull who are responsible to some extent for the negative attitude towards the domestic analogy prevalent among the contemporary students of

International Relations.²³

The foregoing summary indicates that in order to understand ideas for world order it is important to know the domestic and international backgrounds against which proposals are formulated. These factors influence, though they do not determine, each author's attitude towards the domestic analogy, and the overall character of his project. Some writers, however, are relatively insulated from the changing circumstances in the domestic and international spheres. Dominant political ideas, or immediate international experience may not critically influence their views on how best to organize the world. They tend to see relative permanency in the nature and scope of international problems, and in the ways they could effectively be handled. Baty and Borchard exemplify such an attitude. But even these writers were not totally insensitive to the transition which they perceived in the domestic and international spheres. Thus Baty defended his opposition to the idea of an international legislature on the basis of his belief that even within the domestic sphere legislatures were increasingly under attack.²⁴ And Borchard, despite his thorough-going opposition to any move towards the creation of an international government, still conceded that functional organizations might increase their role in the period after the Second World War.²⁵

The interpretations of domestic and international backgrounds on the basis of which ideas for world order are formulated can be diverse. This was clearly the case with various opinions expressed in the face of the failure of the League of Nations. All those whom we examined in Chapter VI had acknowledged that the League had failed in its primary purpose. Yet some, like Leonard Woolf, insisted that one instance of failure was insufficient to prove any approach intrinsically wrong. Some, like Schuman, thought that the League failed because it

did not go far enough, while others, like Borchard, argued that it was bound to fail because it had gone too far, in the direction of municipal legal order. Yet others, like Mitrany, saw in the League's failure the reaffirmation of the bankruptcy of laissez faire liberalism. A causal analysis and prescriptions went hand in hand in each of these cases.

The approach most influential in the creation of the United Nations, however, was the reformed-League idea. Just as the shock of the Great War had produced the view that international law must be equipped with some form of coercive machinery, so the experience of the Second World War provided the leading politicians and government officials with a further confirmation of the view that international society must be organized in such a way as to respond effectively to any aggressive behaviour by its members. It is, however, to be noted that while the drafters of the Covenant put a great deal of stress on the idea of 'cooling off', those of the Charter were more concerned with the creation of a machinery which could respond in a forthright manner to an act of aggression. This is no doubt a reflection of the fact that while there was a strong impression particularly in Britain, that the July 1914 crisis could have been defused, and the Great War averted, had the Great Powers been able to confer on the issues of the day, a predominant opinion during the Second World War blamed for what had developed the lack of early and decisive response to the aggressive policies of the Axis Powers.²⁶ The makers of the Charter in effect attempted to create what the French were eager to build into the League, a form of international police.²⁷ However, the attempt to make the constitutional structure of international society a little closer to the domestic system than had been achieved by the Covenant was to a great extent counter-balanced by the institution of the veto.

As we noted, Brierly, for example, saw in this the return of the nineteenth century principle of the Concert of Europe.²⁸

How are we to discuss the merits of those numerous proposals which we have seen so far? The foregoing study shows the recurrence of broadly similar ideas across different historical periods as well as the diversity in the character of proposals reflecting historical changes. Rather than examine them individually, it is more sensible to conduct our discussion in terms of some classificatory scheme. However, a system of conjointly exhaustive and mutually exclusive categories is difficult to devise in relation to the material in hand. Yet a comparative analysis of a large number of ideas for world order which have emerged since the early part of the nineteenth century up to the middle of the twentieth century reveals that they are clustered around five ideal-types. These are Type I ('confederal'), Type II ('anarchical'), Type III ('democratic confederal'), Type IV ('world state') and Type V ('welfarist'). In the remaining part of this chapter, we shall examine Types I and II, the 'confederal', and 'anarchical' approaches. Types III, IV and V will be discussed in the next chapter.

Both the Type I ('confederal') and Type II ('anarchical') approaches support the idea that the sovereign states system should remain intact. They are concerned primarily with the issue of creating order in the relations of states. And they accept in principle the idea that the official intercourse between states be conducted by those representatives of states who act under instruction from the executive branches of their respective governments. These features of the two approaches are criticized by the other three, more radical, approaches (Types III, IV and V) as will be shown in the next chapter.

The difference between Type I and Type II is that, while the supporters of the Type I ('confederal') approach argue in favour of the domestic analogy, those of Type II, the 'anarchical' approach, are strongly critical of it. The Type I approach suggests the creation of a confederation equipped with a government for its sovereign members. Hence the label 'confederal'. By contrast, the Type II approach prescribes the maintenance of international order through the operation of those institutions, such as diplomacy, war and neutrality, which are claimed to be indigenous to international society. The supporters of this approach consider international society as capable of sustaining order without a government. Hence the label 'anarchical'.

The Type I approach advocates a confederal solution, but many proposals for the development of international law and organization do not go so far. Those proposals which fall short of advocating a confederal union of states, but nevertheless favour the domestic analogy, can be regarded as 'negative surrogates' of Type I.²⁹ At the same time, it is important to note that even those who favour the Type II approach, and are critical of the domestic analogy, would not deny that there existed some institutions, rules or practices which were necessary or desirable both for the domestic and international spheres.

To say that there are some institutions, rules or practices of this sort, of course, is not necessarily the same as endorsing the domestic analogy as we defined the term in this thesis. This is because, in order to count as resorting to this analogy, the institutions, rules or practices in question must belong primarily to the domestic sphere.³⁰ Thus, to suggest, for example, that pacta sunt servanda is necessary both for the domestic and international spheres is not an instance of the domestic analogy. This rule was already accepted in international relations between sovereigns before these relations came to be treated

clearly separately from domestic affairs, and therefore it cannot be regarded as belonging primarily to the domestic sphere.³¹

Because the Type II approach does not say that there are no institutions, rules or practices which are necessary or desirable both for domestic and international systems, the Type I and Type II approaches are not disparate, unconnected positions. Rather, they can be seen as forming two ends of a spectrum. Between the two ends we find those proposals which are the 'negative surrogates' of Type I, with varying degrees of concession made to the domestic analogy.

It was somewhere along this spectrum that Oppenheim drew a sharp demarcation line between the 'legal school' and the 'diplomatic school'. It will be recalled, however, that Oppenheim, who stood at the 'diplomatist' end of the 'legalists', and Nippold, who was apparently at the 'legalist' end of the 'diplomatists', were very close in their views about the desirable content of international law.³² This example reinforces our view that the Type I and Type II approaches should be regarded as forming a continuum rather than separate circles, so to speak. In the following, therefore, we shall assess the merits of various proposals along what we shall term the 'Type I - Type II spectrum' rather than attempt to separate them into two classes with the view to determining their relative values.

Proposals along the 'Type I - Type II spectrum' suggest the creation of one or more of the following three types of institution : a machinery for the peaceful solution of international disputes, a mechanism of law-enforcement, and a law-making assembly. Thus, closer to the 'confederal' end of the spectrum. William Ladd proposed the establishment of the first and third types of institution, and Oppenheim, after the experience of the Great War, added the second. Many plans of the Great War period stressed the vital necessity of the first two types,

while in the period of the League of Nations writers often debated on whether the problem of peaceful change should be solved by the third type. Towards the 'anarchical' end of the 'Type I - Type II spectrum' are ideas of Nippold, Baty and Stengel, whose views we examined in Chapter IV as representing Oppenheim's 'diplomatic school'. These writers, however, either proposed, or at least did not object to having, some form of machinery for the peaceful solution of international disputes.

The argument in favour of setting up a machinery for the peaceful solution of international disputes, especially when the proposal is of a more far-reaching kind, usually takes the form that just as a court is indispensable for the peaceful solution of disputes between individuals so a comparable body should be established in international society to settle disputes between states. However, a proposed court may be a court of arbitration or a court of justice. It may or may not be equipped with the power of compulsory jurisdiction. It may be a single court, or may be part of a hierarchy of courts. There is therefore a great variety here, and supporters of different types of proposal are in some cases in deep disagreement with each other.

Thus, for example, Nippold maintained in his proposal before the Great War that arbitration, mediation, and inquiry by commission would be sufficient for the peaceful settlement of international disputes, if a general treaty could be concluded obliging states to resort to one of these methods. By contrast, Oppenheim insisted that a court of justice was an essential ingredient of world order. This, according to him, need not be equipped with compulsory jurisdiction from the start, but states would eventually agree to it, and would also welcome the creation of appeal courts.³³

Nippold's defence of his position was rather dogmatic. He subscribed

to the definition of international law as law between sovereign states whose binding nature derived from the coincidence of the will of states. Therefore, just as an international legislature capable of making laws against the will of a state would be contrary to the definition of international law, so, he maintained, would be an international court of justice where decisions were made by judges not appointed by the disputing states themselves. To be consonant with the definition of international law, he thought, the judges would have to be chosen in accordance with the will of the contesting states, and he therefore considered arbitration as a procedure suitable to the law of nations.³⁴

Unlike the case of Nippold, Thomas Baty's argument in support of arbitration, as against adjudication, was not derived from the definition of international law. He argued that there was no point in creating an elaborate machinery unless there was a strong commitment on the part of the member-states to make it operative, and that in the final analysis the effectiveness of an international machinery would have to depend on the extent to which states took heed of world public opinion in support of the machinery. The more legal freedom the machinery would leave to states, the more censure a delinquent state would receive, in his judgement. Therefore, he favoured a very open-ended general treaty which obliged states in a dispute, unresolved by diplomacy, simply to find an arbitrator in whom they would have confidence to come to a just decision.³⁵

As we saw, Karl von Stengel's position was even more conservative. In his view, states should preserve the legal freedom to go to war when diplomacy failed to solve their differences. Although his own position was rooted in German nationalism, a general proposition could be extrapolated from it as to how the world should be organized.³⁶

Because of their minimalist character, Stengel's prescriptions can be regarded as standing very close to the 'anarchical' end of the 'Type I - Type II spectrum'. Here states can resolve their disputes by diplomacy, arbitration, or by war. The problem is how far the legal freedom of states to resort to war should be restricted. Those who favour the nineteenth century system of international law like Borchard would not go very much further than Stengel in this respect. Borchard was not opposed to an international court of justice, but did not support the view that compulsory jurisdiction could contribute to the peaceful settlement of international disputes.³⁷ Hersch Lauterpacht, at the other extreme, argued strongly in favour of the compulsory adjudication or arbitration of all disputes unresolved by other peaceful means, and wished to see international law take the same resolute attitude to violence as any municipal legal system would.³⁸ Such a line of thought was denounced by E.H. Carr as 'utopian', but Brierly, himself sceptical of the value of compulsory jurisdiction by an international court, nevertheless insisted that there should be a legal ban on the use of force by states.³⁹

The central question here is, therefore, whether or not an international court of arbitration or justice should, and could profitably, be equipped with compulsory jurisdiction, and whether there should be a legal prohibition on the use of force by states other than as a means of law-enforcement and self-defence. Stengel, Carr and Borchard replied negatively, Baty and Brierly positively in part, and Lauterpacht answered emphatically in the affirmative. How might we choose between these different opinions?

One thing that is clear is that whether international law should incorporate compulsory jurisdiction and whether it should prohibit the use of force by states cannot be answered dogmatically with reference

to the supposed 'nature' of international law. Those who see international law as a unique kind of law, having a 'specific character', tend to speak negatively of the domestic analogy, and are opposed to those who see the anarchical structure of international law as a historical condition, and its gradual approximation to municipal law as constituting progress. But the question of whether the decentralized state of international law is unique and commendable, or primitive and deplorable, cannot be answered a priori in terms of some preconception about the essence of international law. What we need to do is to see what persuasive empirical argument might be advanced in favour of, or against, the transfer of a given institution from the domestic to the international sphere. Terry Nardin has criticized certain international lawyers, such as Hersch Lauterpacht, who confuse the conceptual question of what principles international law ought to embody in order to satisfy the definition of law, and the empirical question of what principles it should contain in order to contribute effectively to world order.⁴⁰ It is important to note that this error is committed not only by those, like Lauterpacht, who insist that international law, in order to satisfy the definition of law, must emulate the standards of municipal law, but also by those, like Nippold, who insist on the uniqueness of international legal order.

As regards the incorporation of the principle of compulsory jurisdiction into international law, there are at least three grounds for criticism.

In the first place, while it is true that all international disputes are justiciable, they are not necessarily profitably so from the viewpoint of their solution. They are justiciable in the sense in which Lauterpacht insisted them to be so, namely that there is nothing in the nature of any international dispute which makes it intrinsically non-justiciable: an international court, just like any municipal court, can

in principle either pronounce on the merits, or definitely dismiss a given claim on the ground that it is not entitled to protection and enforcement by the law.⁴¹ However, while law can give an answer to every dispute, not all disputes can effectively be resolved thereby.

This point was clearly argued by Hans Morgenthau.⁴² According to him, international disputes are of three types: 'pure disputes', 'disputes with the substance of a tension', and 'disputes representing a tension'.

As an illustration of 'pure disputes', Morgenthau refers to a hypothetical case where the United States and the Soviet Union are in disagreement over the exchange rate between dollars and rubles for the diplomatic personnel of the two countries. It is conceivable that despite the existence of a tension between them, the two states treat the dispute as a separate issue, that is to say, as an issue which has no relation to the sources of their tension. In such circumstances, the dispute, according to Morgenthau's terminology, is a 'pure dispute'.

As an example of 'disputes with a substance of a tension', Morgenthau uses another hypothetical, but perhaps a little more realistic, case, namely a dispute over the interpretation of the Potsdam Agreement. He explains this as follows:

One of the main issues of the tension between the United States and the Soviet Union is the distribution of power in Europe. The Potsdam Agreement is a legal document that endeavored to settle the aspects of that issue connected with the occupation and administration of Germany by the Allies. The subject matter of the Potsdam Agreement, then, is identical with a segment of the issue that constitutes the subject matter of the tension between the United States and the Soviet Union. A dispute over the interpretation of the Potsdam Agreement has a direct bearing upon the over-all power relations between

the United States and the Soviet Union. An interpretation favorable to one nation will add so much power to one side and deduct that much power from the other side, since the issue is one upon which the power contest between the two countries has seized as one of its main stakes.⁴³

As an illustration of 'disputes representing a tension', Morgenthau returns to the aforementioned case between the United States and the Soviet Union concerning the exchange rate of dollars and rubles for the diplomatic representatives of both countries. While it is conceivable that such a dispute takes place without any relation to the tension between them, it is also likely that the two states, so keenly engaged in a contest of power, seize upon this dispute and make it the concrete issue by which to test their respective strength. In such a case, the subject matter of the dispute has still no relation to the subject matter of the tension. Yet the dispute fulfils a symbolic and representative function in relation to the tension between the contestants.

It is unclear whether these three types are meant to be classificatory categories or ideal-types. But undoubtedly it is only where a given dispute falls into the first type, or closely approximates it, that a legal settlement can be of much use. In the second and third types, the contestants are not seriously interested in being offered a legal answer to the question involved. On the contrary, one of the contestants will be seriously interested in challenging what the law has to say. As Morgenthau puts it, a court is, in a sense, itself a party to such a dispute.⁴⁴ One of the weaknesses of the argument in favour of compulsory jurisdiction therefore is that it depicts all international disputes as if they were analogous to a dispute between two citizens regarding some private property. Many cases of international dispute are so unlike this paradigm that an argument built upon it, even implicitly,

is of doubtful value.

A second argument against compulsory jurisdiction is that it may not be effective unless backed by a system of sanctions, and may lead to unfair consequences unless accompanied by a system of peaceful change. According to this argument, therefore, compulsory jurisdiction on its own does not go far enough in the direction of a domestic model, and partial reliance on the domestic analogy is useless or worse than useless.

Lauterpacht, without showing any persuasive grounds, simply asserted in his work of 1933, The Function of Law in the International Community that the absence of centralized sanctions would reduce, but not substantially impair the function of judiciary, equipped with compulsory jurisdiction, as an instrument of peace.⁴⁵ He was more seriously concerned to refute the other suggestion that, due to the absence of an international legislature, an international tribunal might perpetuate injustice by giving effect to an existing international legal right. In the work of 1933, however, he argued that the judicial process was not as rigid as was suggested by this criticism, and that there were certain means of peaceful change already available within the existing system.⁴⁶ He believed that the existing tendencies in the political integration of the community of states pointed to the future establishment of an effective international legislature. This would relieve obligatory judicial settlement of the strain imposed by the present imperfection of the legislative process. None the less, he wrote, 'it is improvident to reject a working minimum because the maximum cannot as yet be obtained': the rejection of obligatory arbitration or adjudication, in his view, would in the last resort amount to a sanction of the reign of force.⁴⁷

Lauterpacht's argument that the absence of centralized sanctions would reduce, but not substantially impair, the function of judiciary

endowed with compulsory jurisdiction is too wishful. It is difficult to subscribe to such a position unless one believes optimistically in the capacity of law to determine states' behaviour even against their power and desire. Lauterpacht's argument that it would be improvident to reject a working minimum because the maximum could not yet be obtained presupposes that a judiciary endowed with compulsory jurisdiction would constitute a 'working minimum'. While his implicit assumption that the minimalist goal of the avoidance of the reign of force should precede the maximalist goal of the creation of just peace might be accepted, there is still no good reason to suppose that a judiciary endowed with compulsory jurisdiction would actually constitute a 'working' system in the absence of organized sanctions.

A third ground for criticism is that compulsory jurisdiction, when ineffective, may in fact make the situation worse. John Westlake had argued that between unfriendly nations an arbitration treaty without reservation was undesirable since it would not only be ignored by one party, but also it might add a charge of bad faith to the original source of difference.⁴⁸ While we should not exaggerate the impact of this undesirable side-effect since it is difficult to establish its magnitude, we should at least bear this point in mind.

These considerations lead us to the view that the transfer of the principle of compulsory jurisdiction from the domestic to the international sphere, by itself, will not be a desirable move unless some drastic change can be made to the political conditions of the world at the same time.

As regards the legal prohibition on the use of force by states, at least three lines of argument have been advanced against it by those who stand close to the 'anarchical' end of the 'Type I - Type II spectrum'.

In the first place, the legal ban on the use of force is said inescapably to be ineffective in the world of states where there is only a limited amount of trust, and abundance of military capability. Moreover, the argument runs, we need to be concerned with the undesirable side-effect of having such a ban. One of the side-effects is said to be that under the system of international law based on the prohibition on the use of force, each contestant will necessarily see the other as the violator of this prohibition, and as a result the conflict will intensify because both sides assume themselves to be legally in the right, and become more uncompromising.⁴⁹

Secondly, the system of international law based on the ban on the use of force is assumed to be at least hostile to, if not necessarily logically incompatible with, the institution of neutrality, and to encourage states to adopt the policy of 'qualified' neutrality in favour of what they consider as the victim state. However, the argument runs, this tends to expand the conflict either because the belligerents may retaliate against those 'neutral' states who discriminate against them or because the 'neutral' states in their support of the victim state may themselves decide to join in the war to suppress the delinquent state. Because there is no assurance that 'neutral' states would agree on which of the belligerents is legally in the right, the conflict can expand into a confrontation between the two camps supporting the original belligerents. This is said to be another negative side-effect of the ban.⁵⁰

Thirdly, it is suggested that the legal ban on the use of force will deprive states of the traditional methods of maintaining international order and achieving a degree of justice.⁵¹

These considerations, however, require a careful re-examination.

As regards the first of the three criticisms noted above, while it is clear that a legal ban on the use of force is bound to be violated in

some cases, it will be a little unrealistic to suggest that it has absolutely no impact at all on the behaviour of states. If it is admitted that it will have some impact on their behaviour, the question then is whether the positive impact of cutting down the frequency of the use of force is outbalanced by the negative side-effect of making the contestants more uncompromising. Self-righteousness can be expected of any state in a dispute whatever its international legal commitments, and it will be exceedingly difficult, if possible at all, to determine how far this tendency is attributable to the particular content of the law under which it lives. Those who insist that a legal prohibition on the use of force will inevitably make the contestants more intense and entrenched in their hostility appear to argue without any empirical evidence, and are therefore suspected of dogmatism.⁵²

The second criticism noted above is a standard defence of the nineteenth century system of the law of neutrality, and is used by various writers, such as Edwin Borchard, and, more recently, by Hedley Bull. Morgenthau has used a similar line of argument in his criticism of the collective security system.⁵³

The argument appears reasonably persuasive, but exaggerates the firmness with which neutrality is established as an institution of international society. It will be recalled that Borchard exalted this institution as one which 400 years of history had cultivated in the international system, and which was eminently more suitable to the international environment than was a League-type institution based on the domestic analogy.⁵⁴ James Brierly, however, was critical of those who considered neutrality as a well-established and well-adapted international institution.

According to Brierly's analysis, the institution of neutrality does not possess the kind of inevitable permanency in the international

system which writers like Borchard attributed to it. Brierly argued that neutrality was very much a product of the circumstances of the nineteenth century. These circumstances included: the existence and growing influence of a power which favoured neutrality, namely the United States; the relatively peaceful character of the nineteenth century in which most states were inclined to regard themselves as more likely to be neutral than belligerents if war should break out; and a temporary balance between the political division of Europe and the means of warfare which had made respect for neutrality and the efficient prosecution of war consistent with one another.⁵⁵ However, the institution of neutrality was already precarious when it was supposed to have reached its high water mark at the turn of the century. Brierly wrote:

In the nineteenth century ... would-be neutral states did enjoy a fair degree of security against the risk of being drawn into war against their will and merely to suit the interests of a more powerful neighbour, and it was easy to attribute to the laws of neutrality a security which they really owed to contemporary, and as we can now see also temporary, conditions. When the process of building up these laws had culminated in the Hague Conferences of 1899 and 1907, they doubtless looked to the casual observer a solid and imposing structure. Yet for all its impressive façade the cracks in the edifice had begun to appear even before the turn of the century. In the practice of nations at war neutrality had never been quite so strictly applied as the books said that it ought to be and were inclined to assume that it was; it was often not truly impartial, but 'qualified' or 'benevolent', much as it had been in the eighteenth century and as it is again today. ... [Moreover,] the right of a state to be neutral in the war of other states, if it so chose, had again become insecure. The German General Staff is believed to have adopted the Schlieffen Plan in or about 1897, and by that plan German armies were to pass

through Belgian territory in the event of a war with France; so that even while the lawyers were talking at The Hague it seems likely that the Chancelleries of Europe knew that in the next war Germany, if it suited her, would violate the neutrality of a little state which she had herself guaranteed.⁵⁶

Because of these considerations, and because of the experience of two world wars in one generation, Brierly, writing in the middle of the twentieth century, saw neutrality as having been a transient and obsolete institution. It is open to debate whether his perception was itself a short-sighted one. Yet Brierly's argument does point us to the important fact that those who support the institution of neutrality as against those institutions based on the domestic analogy must argue their case in the light of the particular historical conditions of international society rather than treat neutrality as a permanently best-adjusted, unique institution of that society. If, in future, the rules in the United Nations Charter concerning the use of force continue to work semi-effectively, states may tend to adopt a policy of 'qualified' neutrality. On the other hand, the danger of escalation into a nuclear holocaust may increase the number of states who wish to stay out of an ongoing war, and this may result in the growth in the power and influence of neutral states — something which Brierly in the middle of the twentieth century did not envisage.

A third argument against the legal ban on the use of force by states was that such a ban would deprive them of the traditional means of maintaining international order and achieving justice. This cannot entirely be the case since even under the system of international law embodying a ban on the use of force it will still be legitimate to resort to force in self-defence or as a means of law-enforcement against the violator

of the ban itself. However, to the extent that a legal ban encompasses preventive war, anticipatory self-defence, intervention for the maintenance of the balance of power, use of force for just change, and humanitarian intervention, it may be suggested that the ban interferes with the mechanism of the balance of power, or rules out one effective means of achieving justice.

Indeed, circumstances are conceivable where a reasonably persuasive case can be made to the effect that, despite its illegitimacy from the viewpoint of the United Nations Charter, force was used in a manner of anticipatory self-defence, producing thereby a satisfactory outcome from the viewpoint of the balance of power and international order. Circumstances are also conceivable where the use of force by a state against another might have been defended on the grounds of justice. The American naval blockade of Cuba in the Missile Crisis may be counted as an instance of the former, and India's use of force against Goa, or Tanzania's intervention in Amin's Uganda are possible instances of the latter.

However, even if such interpretation of these three cases were accepted, it would still be open to question whether these and other possible exceptions were significant enough to make it advisable to do away with the general ban on the use of force altogether.

The foregoing discussion shows that none of the three lines of argument against the legal prohibition on the use of force is overwhelming. None the less, it will have to be conceded that international society will not necessarily turn into chaos simply because the legal ban on the use of force is lifted, or exceptions are made in the case of anticipatory self-defence and so on. It may seem difficult not to suppose that a legal prohibition on the use of force contributes to the sustenance of the climate of opinion which sees peace as the normal condition of

international life and the use of force as an exception. But even in the nineteenth century when states enjoyed unrestricted legal freedom to resort to force, war was not thought to be the normal, let alone permanent, state of affairs in the life of states.⁵⁷

Since we cannot show conclusively that we should prefer the nineteenth century system of international law to what has developed in this century in the area of the control of force, there is a clear case for continuing with what we now have. At any rate, it is unrealistic to assume that we can go back to where we were in 1914 since the idea that states do not have unrestricted legal freedom to resort to force has become part of the orthodox diplomatic assumptions of our century. It must however be acknowledged that the system under which states have lived since the end of the Great War has shown itself to be largely unworkable with respect to law-enforcement.

The mechanism of law-enforcement is a second of the three types of institution we set out to consider. Collective security and international police are the two noteworthy institutions of this kind proposed by those who stand close to the 'confederal' end of the 'Type I - Type II spectrum'. It is doubtful whether those at the 'anarchical' end of the spectrum have a coherent conception of law-enforcement in international relations since, according to their view, states are to be legally free to resort to war for purposes other than law-enforcement. However, the argument against collective security and international police is overwhelming.

For collective security to work, every member of the system must be ready to react quickly, through diplomatic, economic or military means, even against its perceived short-term interest, on the principle of the 'indivisibility of peace', to defend the status quo against any other state in the system who attempts to violate it. Moreover, for such a

system to work, there must not be a sharp disparity in the military capabilities, or economic vulnerability, among the member-states. Nor must there be any special historical enmity or friendship between particular states. The mode of aggression prevalent in the system must be such that it is relatively easy to determine whether or not violation has taken place, and who the violator is in each instance. Furthermore, the state of military technology and the level of armament must be such that it is possible for a violator to be met by a quick, overwhelming response. These conditions, which encompass attitudinal as well as objective factors, are virtually impossible to obtain or endure in the real world.⁵⁸ Moreover, when those factors which make the collective security system operative do not exist, the system may also be counter-productive in that it may interfere with the working of the balance of power system.⁵⁹

As for an international police, it presupposes such a high degree of trust among states that it is difficult to imagine how it can be created for a foreseeable future. Even when it has been created, its effectiveness as a means of maintaining international order is in grave doubt unless comprehensive disarmament has also been achieved. Even then, an international police will have to cope with the kind of problem which, within the domestic society, are normally dealt with by the military rather than the police, namely the suppression of violence committed by a large and organized group against the authority of the state. Therefore, unless the police are equipped with considerable military strength, its effectiveness will be in doubt, but the more formidable its strength, the more difficult it will be to keep it under political control to secure its impartiality.

If the idea of communal law-enforcement at the international level appears so obviously inappropriate, how is it that so many thinkers

have supported it? Blind reliance on the domestic analogy, in the absence of international experience, seems to be the answer. Moreover, this form of domestic analogy was influential during the period of the Great War and its aftermath because, as we saw, the War was interpreted as having resulted from, among other things, the anarchical structure of the international system. The shock of the First World War was particularly pronounced precisely because of the pre-1914 confidence in the power of the old-style international law to maintain world order. There is therefore some truth in Borchard's scathing remark that the peace-makers of the Great War period acted in hysteria. When international experience had been gained through the failure of the League of Nations, writers like Borchard merely saw their view reaffirmed. However, some League supporters, like Woolf, insisted that one instance of failure was insufficient to prove any approach intrinsically wrong. His conviction was based on the belief in the correctness of the domestic analogy which he claimed was derived from 4,000 years of experience. The following passage from his The War for Peace explains the idea underlying collective security or international police so well that it may be quoted at length:

To prevent war is a problem of politics and government, not essentially different from the problem of preventing duelling or cock-fighting or of regulating the relations between the inhabitants of Middlesex and those of Surrey. It may be easier to prevent cock-fighting than war or to regulate the relations between Middlesex and Surrey or England and Scotland than those between France and Germany. But there is nothing in the last problem which makes it essentially different from the others. To alter the international system so as to prevent war is simply a problem of human government; if the object is attainable,

it can only be attained, like the objects of Bismarck, by applying reason to experience.

The idea that experience is not available from which we may learn what we shall have to do in Europe if the existing state of affairs is to be altered and wars prevented is ridiculous. It was mentioned above that a Civil Servant in Asia, as an officer of the British Government watching to see that a murderer was hanged by the neck until he was dead in accordance with the law, might be conscious that 3,800 years ago the officers of the Government of Sumer and Akkad were doing exactly the same thing not so very far away. That means that for 4,000 years, at least, human beings have had experience of communal government. All that time they have been posing themselves problems of government, and solving them or failing to solve them. What are these problems of government? They are simply questions of how the relations between individuals and groups shall be ordered and controlled - relations between individual and individual, between classes, nations, races, between groups living in villages, towns, districts, states, or continents. This experience is so ancient and so catholic that there is nothing which we cannot learn from it about human government if we wish to do so. And among the things which we could most certainly learn from all this experience is what we must do in the year 1940 if we wish to prevent another European war.⁶⁰

Woolf's argument is noteworthy since it so eloquently discloses the problematic assumptions of his type of approach, which, as we saw, contributed to the formation of the United Nations. In the first place, the punishment of a murderer is treated as if it were a central problem of government. And, secondly, the problem of maintaining order between two individuals is seen to be identical to the problem of maintaining order between two large, organized groups of individuals.

The weakness of the first assumption is revealed by Inis Claude who characterizes it as a 'schoolboyish' view.⁶¹ The error of the second assumption has been noted by many, including Claude, Carr and Brierly.⁶²

As these writers have pointed out, individuals, when united, acquire strength qualitatively different from what they each enjoy, and the central task of a government is to cope, not with individual robbers, but with the demands, often illegal, made by various strong groups within the state. If 4,000 years of domestic experience can tell us anything about how to create order in international society, in these writers' view, it is how some states were more successful than others in avoiding a civil war, rather than how they have dealt with murderers.

The foregoing discussion shows that even if there is a case for having a legal prohibition on the use of force in international society, we cannot expect this to be backed by a mechanism of communal law-enforcement, such as collective security. Woolf, taking note of the failure of the League, therefore suggested that law-enforcement should be organized on the regional basis.⁶³ The regional principle was also strongly supported by Winston Churchill. Needless to say, this principle is based on the assumption that the world can be divided into regional sub-systems in each of which we can expect a degree of solidarity comparable to that which obtains within the domestic sphere, and sufficient to make collective enforcement of law operative. This appears a somewhat less unrealistic assumption to make than the idea that all nations of the world had an equal interest in fighting against aggression in any part of the world. Even then, it is difficult to find a region of the world in which collective security is workable, given the conditions spelled out earlier for its effective functioning. There are some regions, North America or Scandinavia, for example, where social cohesion between states is very strong. But in these areas, sometimes called 'security

communities', a collective security system is not likely to be necessary.⁶⁴

There remain proposals for a law-making assembly yet to be discussed. As in the case of William Ladd's Congress of Nations, the proposed law-making assembly may be no more than a regularized form of diplomatic conference, one which writers at the turn of the century, like Oppenheim and Schücking, wished to see the Hague Conference develop into.⁶⁵ There will be little harm in such an arrangement, though the fixity of procedures and membership might be thought undesirable. In fact, so long as the idea of having a conference to conclude treaties of general interest is accepted and practised by international society, there may be little need to insist on having a single assembly. Borchard, for example, did not see the absence of an international legislature as a major defect of international law, for he believed that states learnt to co-operate by treaty in hundreds of fields when the need arose.⁶⁶ This is the line adopted by those who stand close to the 'anarchical' end of the 'Type I - Type II spectrum'.

Without a doubt a periodic meeting of the representatives of states is valuable, and the United Nations General Assembly has already become a quasi-legislature in some writers' judgement.⁶⁷ It may therefore be asked whether a full-fledged international legislature capable of making international law without the unanimous consent of the member-states is still to be desired.

As far as we can tell from our examples, an international legislature was predominantly a nineteenth century concern, no doubt reflecting both the awareness of the uncertainty and incompleteness of international law in many areas, and the confidence in the power of domestic legislatures to create harmony within the borders of states. In the League period

and thereafter, an argument in favour of an international legislature has tended to come from those who see in it the only satisfactory solution to the problem of peaceful change.⁶⁸

Legislatures can be oppressive, as Baty so outspokenly pointed out.⁶⁹ Indeed it is often said in praise of international law that the absence of a legislature is paradoxically a source of its strength.⁷⁰ On the other hand, it cannot be ignored that the voluntaristic character of international law contributes to the perpetuation of unfair or unjust arrangements in international relations. These arrangements could be modified through diplomatic and other methods short of 'legislation', but there are some writers, like Hersch Lauterpacht, as in his lecture of 1937, who would profess not to be satisfied with anything less.

In order to avoid the tyranny of the legislature, Lauterpacht suggested, among other things, that the vested rights of states would have to be made to yield 'only to such an overwhelming impact of justice and expediency as [would be] expressed by a practically unanimous vote of the other members of the community'.⁷¹ Moreover, Lauterpacht was aware that peaceful change by international legislation would be precarious and unreal unless it formed part of a system of collective security 'conceived as a system of collective repression of unlawful war'.⁷² He went further still and wrote: 'An international system of peaceful change ... runs the risk of being unreal unless it forms part and parcel of a comprehensive political organization of mankind'.⁷³

Lauterpacht, at this stage, was no longer so optimistic as he was in 1933 when he published The Function of Law in the International Community.⁷⁴ He doubted whether such an organization would ever be created. In a desperate but austere mood, he concluded his lecture with the following remarks:

[A]s a student of ethics and politics I would risk the assertion that we are not at liberty to regard international legislation in its true meaning as an infinite ideal. It may not be compatible with the dignity of human life to act on any other assumption than that reason and order are bound to prevail not only ultimately but in our own day.⁷⁵

Andrew Linklater has argued in his work Men and Citizens in the Theory of International Relations that mankind ought to transcend primitive tribalism and modern nationalism, and progress towards the ultimate goal of the universal moral community in which men treat one another as moral equals by virtue of their humanity.⁷⁶ This universal moral community will have its appropriate institutional expression as a global legal and political system.

Linklater, while characterizing this ultimate system as a replacement for the sovereign states system, does not appear to equate it with a world state. In his judgement, this global system ought to restrict the freedom of states to resort to force, govern international relations by consent, permit humanitarian intervention, replace the balance of power with a 'more centralised and principled form of international government', protect the economic and social rights of individuals and enable the equalization of wealth and resources between societies.⁷⁷

However, such a system must be an institutional expression of the underlying change in men's moral outlook from particularism to universalism. Without the universalist moral outlook prevailing, a comprehensive political organization of mankind will be unrealizable or inoperative.

Lauterpacht's concession that the system of peaceful change will be

unworkable unless it is backed by collective security seems to indicate that he was advocating the creation of an international government prior to the requisite transformation in the moral beliefs underlying the foreign relations of states. Although a new institution may help sustain a new moral outlook, the former by itself cannot be expected to bring about the latter. Moreover, a collective security system, as we argued, is not a suitable means of law-enforcement in international relations. For these reasons, Lauterpacht's prescriptions are of doubtful value.

The foregoing examination of the proposals along the 'Type I - Type II spectrum' leads us to the following conclusion: (1) that the transfer of the principle of compulsory jurisdiction from the domestic to the international sphere is not desirable in the present circumstances; (2) that, none the less, the legal ban on the use of force may continue to operate with some positive consequences; (3) that those who reject the domestic analogy and favour the institution of neutrality may exaggerate the firmness with which that institution had been established in international society; (4) that the collective enforcement of law through a system of collective security or international police is based on a misguided use of the domestic analogy, and is likely to be either unworkable or unnecessary; and (5) that a full-fledged international legislature requires for its operation a significant shift in the moral outlook of mankind from national particularism to universalism.

Chapter IX An Assessment of the Proposals: Part Two

In this chapter, we shall discuss the remaining three types of approach. The supporters of Types III, IV and V attempt to overcome what they see as the limitations of those proposals which are placed along the 'Type I - Type II spectrum'. These proposals, we saw, accept the sovereign states system as the appropriate structure for the world. They are concerned primarily with the issue of creating order in inter-state relations. And they accept in principle the idea that the official intercourse between states be conducted by those representatives of states who act under instruction from the executive branches of their respective governments.

Indeed even the more far-reaching schemes along the 'Type I - Type II spectrum' accept that a law-making assembly should consist of such representatives, and that a mechanism of law-enforcement should operate in accordance with the views expressed by the executive branches of the governments of the member-states. Also with respect to the peaceful solution of international disputes, these schemes expect the executive branches to play a major role since only those disputes which diplomacy fails to solve are to be brought to a court.

The Type III ('democratic confederal') approach subscribes to the confederal alternative, and might therefore be seen as a variation of Type I. However, the supporters of Type III stress that their proposed confederations should reflect more closely than do ordinary confederations the wishes of the peoples divided into separate states. For this purpose, they advocate a confederal union of states closely controlled by the legislative branches of the member states.

Indeed the adherents of Type III are critical of any proposal along

the 'Type I - Type II spectrum' since they see it as leaving too much power to the executive branches of the national governments. This they consider as contrary to democracy, which they wish to extend, since in their view (representative) legislatures more closely reflect the popular will than the (often autocratic or authoritarian) executives.

Murray Forsyth has remarked that confederations tend to be 'anti-democratic' since their law-making congresses are not closely controlled by the national parliaments.¹ Type III attempts to overcome this, and hence the label 'democratic confederal' to refer to this approach. 'Populist confederalism' may also be a suitable term.

The Type IV ('world state') approach, as the label indicates, objects to the sovereign states system as such (which is accepted by Types I, II and III), and suggests a radical transformation of the present system into a single polity, federal or unitary.

The Type V ('welfarist') approach is critical of the tendency of the proposals along the 'Type I - Type II spectrum' to be concerned primarily with the narrow objective of securing orderly relationships between states. It also objects to the constitutional approach common to Types I, III and IV. It argues instead for multiplying and reinforcing those international institutions which are concerned with the welfare of men and women living in separate states, gradually and pragmatically in accordance with the rising needs.

In the following we shall examine in turn various proposals approximating these three ideal-types, 'democratic confederal', 'world state' and 'welfarist'.

The Type III ('democratic confederal') approach is exemplified well by James Lorimer's project. It will be recalled that his proposed international parliament was bicameral, and its two houses were to

consist of those who were sent by the legislatures of the member states. Unlike, for example, Ladd's Congress of Nations, which is placed along the 'Type I - Type II spectrum', the members of Lorimer's international parliament were not to act under instruction from the executive departments of their respective national governments. Lorimer's critic, Bluntschli also allowed the principle of popular representation to guide him in his own proposal, but, we noted, to a lesser extent than in the case of Lorimer.² At the beginning of the twentieth century, Schücking, inspired by the German experience, and Bluntschli's example, suggested that at a later stage in the development of his 'Hague Union', a second chamber might be added to the periodic Hague Conferences. This was to be composed of delegations from the parliaments of the contracting parties, and they were to vote without instructions from home, though they were expected as a rule to represent the presumed will of their respective national parliaments.³ A more radical suggestion that a periodical congress of delegates sent by the parliaments of states might take over the role of the Hague Conferences was contained in Robert Cecil's Draft Sketch of a League of Nations.⁴

The principle of popular representation incorporated in Type III can be interpreted in a number of ways. Lorimer interpreted it primarily as a means of the democratic control of international affairs, believing that an international government left to the co-operation of the executive branches of national governments would be untrustworthy, and that matters of inter-state relationships should be subjected to public scrutiny.⁵ Schücking stressed the principle of popular representation as a means of closer integration than could be expected of ordinary international organizations. He wrote:

Pacifism has ... proceeded from the people and not grown up in the cabinets of ministers; on the contrary, official diplomacy is at the present day frequently just as much opposed to it as were the diplomats of the individual German states at one time to the demand for a great united German nation. Professional diplomacy works under far too many restrictions to be able to carry through by itself the work of the organization of the civilized world. Within the last few decades the impression has often been produced ... that, when war has been about to break out and all sensible persons on both sides were agreed that an understanding must be reached, the diplomats, as the saying goes, 'could not yet find a basis of agreement,' and in the meantime millions were lost upon the stock exchanges and the whole economic life crippled! It is characteristic of our time that the governed, who have already obtained with the help of parliamentary institutions a decisive influence in domestic politics, are now seeking means of publicity committees, &c., to exercise an influence over foreign politics, and it seems to me it can only serve to bring nations closer together if the Hague union also were to take into account these efforts. It was not without reason that ... in all the projects for the reorganization of the deplorable conditions of the old German Confederation, a national parliament was proposed, because it was seen that such a parliament would furnish the force needed to overcome the difficulties and differences of opinion common to diplomats as representatives of states.⁶

As this quotation amply indicates, the Type III approach is very much an outcome of the rise of parliamentary democracy in the domestic sphere and of the desire of the progressive thinkers of the late nineteenth century and the early twentieth century to expand the realm of democratic control. However, the inclination to see peoples as a progressive, universalist force still continues, and is found in the writings of Richard Falk, for example. Although he is not in full agreement with

the constitutional approach of the kind adopted by Lorimer or Schücking, he nevertheless endorses the view that non-governmental groups and individuals should actively participate in the articulation of the international normative standards.⁷

To the extent that Type III, like Type I, envisages a confederal union of states, arguments against those proposals which are located close to the 'confederal' end of the 'Type I - Type II spectrum' apply equally well to those which belong to or approximate Type III. However, there remains a question specific to this type. It is whether in setting up an international organization states should introduce the idea of popular representation rather than base it solely on the orthodox international principle of representation by diplomatic agents.

Gladstone had long ago put forward a standard defence of the orthodox method of diplomacy when he stated that diplomatic negotiations would be obstructed if they were publicized at every stage, and that the representatives of the people and the people themselves were often more impulsive than the executive.⁸ According to Gladstone, what was needed was not merely the improvement of the machinery by which the central authority controlled its diplomatic agents, but the improvement of the central authority itself, namely the 'formation of just habits of thought'.⁹ By this Gladstone meant the cultivation of the idea that 'every other State, and every other people [stood] on the same level or right as ourselves'.¹⁰

Lorimer, however, commenting on this, maintained that 'the chief obstacle to the formation of "just habits of thought" on international questions, [was] the secrecy which [covered] them, till, by assuming the character of faits accomplis, they [had] lost all practical interest for the public'.¹¹ He continued:

[I]t is to ignorance of foreign affairs thus engendered that we must ascribe those alternations of indifference and passion which impel the most cultivated nations, like "dumb, driven cattle," to rush blindly into disastrous wars, and to maintain those still more disastrous warlike preparations which sap the resources and threaten the very existence of civilization. If, in place of sending one plenipotentiary to determine the policy which it should adopt in accordance with the views of the executive department at home, each of the six great Powers were to send, say twenty, and the smaller Powers a corresponding number of representatives of the national will, to discuss international politics annually, and bound itself by treaty to shape its policy in accordance with the results of their deliberations, as ascertained by a general vote, I believe that a means of international education, and an element of international conciliation, would be thereby called into activity, the importance of which it is scarcely possible to exaggerate.¹²

In short, Lorimer's argument here was that popular representation in international government would lead to international education of peoples, and that this in turn would contribute to international conciliation. A major presupposition here is that when educated, peoples would become more co-operative towards one another.

As we noted, Schücking assumed that peoples were on the whole more progressive and universalist than the executive branches of their governments. But he was also aware that in some cases the reverse was true. Yet he clung to the view that a second international legislative chamber consisting of the delegations from the parliaments of the member-states would be desirable. His point here, however, differed from Lorimer's. Schücking explained his ground as follows:

[S]ince the governments belonging to the [proposed Hague

Union] are in every case republican or constitutional in character, it is not enough that the representatives sent by the executive department to an international conference at The Hague be in accord, but in all important matters the government of each individual state will be bound by the approval of its own parliament, and in consequence in each state the case may occur in which a national opposition to the new international rules may make itself felt. ... In this case it is conceivable that the organs of the executive department might subsequently find that the parliamentary forces of the country were simply unwilling to co-operate in respect to the concessions which national law must make to international law. Such conflict of opinion between the executive and legislative departments in respect to the problems of internationalism can not only render futile the whole work of future conferences but can throw a very unfortunate apple of discord into the domestic life of the state. Accordingly, it would be actually much better if from the start a delegation from the home parliament were invited to co-operate with the world parliament in the legislative functions of the [proposed Hague Union].¹³

The reasoning underpinning Type III is therefore more complex than it might at first appear. Moreover, it is to be noted that the idea underlying this type of approach is not quite as utopian as it might seem. It is, albeit in a diluted form, embodied in the European Parliament. The idea that those other than the official representatives of the executive departments of member-states should participate in the decision-making process of an international organization is incorporated in the International Labour Organization, and underlies the consultative status accorded by the United Nations to various non-governmental organizations.¹⁴

Does the Type III approach indicate how international institutions

should be arranged in future?

It can be said that Gladstone's defence of the orthodox principle, noted earlier, as Lorimer himself acknowledged, is a weighty one. Lorimer's counter-argument seems to exaggerate the extent to which the education of peoples in international affairs depends on, and can be achieved by, the adoption of the Type III approach, and the degree to which peoples, thus educated, can contribute to international conciliation. Schücking seems to be overly concerned with the antagonism between a popular legislature and the executive department (no doubt reflecting the circumstances of Germany in his time), and at the same time seems too optimistic about the extent to which a bicameral international legislature can contribute to harmonizing their relationships. Both these writers appear to exaggerate the virtues of the Type III approach, while they remain overly pessimistic about the extent to which international co-operation can be achieved by international organizations constituted in the orthodox fashion.

The democratic principle which underlies Type III is appropriate where there is a strong sense of unity among the peoples concerned. Indeed it may be argued that this principle is workable only where there is a people, as opposed to peoples, capable of sustaining unity whatever the outcome of the ballot box. Where, as in the European Communities, there is a sufficient degree of unity among the peoples of a given region to make a supranational institution operative, there is a case for accommodating the democratic principle in its organization. Indeed, given the supranational legislative competence of the European Communities, it may be necessary that Community policies be scrutinized by a Parliament elected in such a way as to reflect the wishes of the peoples closely.

However, where the sense of unity is relatively weak, an institution embracing different peoples must be correspondingly more de-centralized in its organization. In such a context, if there is to be a legislative or quasi-legislative assembly within that institution, it cannot but be expected to approximate a diplomatic conference in its structure. It is unlikely that in this sort of circumstance delegations of national legislatures, taking decisions by a majority vote, as Lorimer had envisaged, can be viable or useful, for we cannot expect a sufficient degree of unity among the separate national communities to make democracy operative.¹⁵

Thus the appropriateness of the Type III approach would appear to depend on how closely integrated a given institution is to be, and this in turn would be a function of how much solidarity there already exists between the peoples to be embraced by the institution concerned. Within a relatively closely integrated community of nations, as in the case of the European Communities, the degree of popular representation may be permitted to approach what Schücking or Bluntschli envisaged in their bicameral proposals. Alternatively, as the example of the International Labour Organization shows, an institution specific in its scope might allow participation by those other than government representatives.

However, 'democratic confederalism' as an approach to order at the global level cannot be accepted. The approach, applied to this level, commits the error of attempting to transfer a domestic political principle to the domain where the conditions are either unsuitable or as yet not ripe enough. This error the 'democratic confederal' approach shares with those proposals based on the domestic analogy standing close to the confederal end of the 'Type I - Type II spectrum'.

If Type III attempts to overcome the limitations of Types I and II by introducing 'democratic confederalism' into the relations of states, the Type IV ('world state') approach in turn objects to Types I, II and III for their common acceptance of the division of the world into sovereign states. The Type IV approach is critical of the sovereign states system itself, and suggests a radical transformation of the present system into a single polity, federal or unitary. Hence the label 'world state'.

Saint-Simon's proposal approximates Type IV. Those critics of the League of Nations who accepted the world state as the ideal solution to the problem of world peace, among whom we counted Schwarzenberger, Schuman and Morgenthau, may be said at least in principle to endorse the ideas embodied in this type of approach. It will, however, be recalled that unlike Schwarzenberger and Schuman, Morgenthau treated a world government not as a means by which to improve the conditions of the world but as an ideal end state.¹⁶

Saint-Simon described his proposed body as an organization similar to a federal community united by common institutions, subject to a common government which was in the same relation to the different peoples as national governments were to individuals.¹⁷ This he said was the only approach which could effect a complete cure to the problem of Europe. In a similar vein, Morgenthau maintained that there could be no permanent international peace without a state coextensive with the confines of the political world, and said that the idea of a world state rested upon an analogy with national societies.¹⁸ Inis Claude, while not subscribing to world state as a necessary or sufficient means of the management of power, none the less described the theory of world

government as essentially analogical.¹⁹ Similarly, Hedley Bull talks of the domestic analogy as supporting the idea of a world government.²⁰

However, the Type IV approach can be said to be based on this analogy only if a broader definition of this analogy is adopted. By this definition, the 'domestic analogy' is an argument according to which domestic-type institutions should be employed to govern the relationships of communities at present divided into sovereign states. On the other hand, if it is insisted that the 'domestic analogy' means that domestic-type institutions should be employed to govern the relations of sovereign states as such, a Type IV approach cannot be said to involve this analogy.

Because of this ambiguity, it is conceivable, for example, that those who claim to be opposed to the 'domestic analogy' turn out to favour vastly different solutions. Thus, on the one hand, some writers may say that the domestic analogy is mistaken, and subscribe to the view that the sovereign states system should be abolished, and replaced by a world state. On the other hand, some writers may say the same thing, but mean quite the opposite, namely that the sovereign states system should remain intact, and be organized by its own unique institutions dissimilar to those of domestic society. In discussing the domestic analogy, therefore, it is important to separate its two basic forms, corresponding to its narrower and broader definitions.

However, a terminological debate need not detain us here. A more important question is what argument may be advanced in favour of a particular alternative such as the Type IV approach. The argument along the Type IV lines that there cannot be true co-operation between sovereign states was advanced most vividly by Saint-Simon in a passage which merits lengthy quotation:

A congress is now assembled at Vienna. ... The aim of this congress is to re-establish peace between the powers of Europe, by adjusting the claims of each and conciliating the interests of all. Can one hope that this aim will be achieved? I do not think so, and my reasons for so predicting are as follows. None of the members of the congress will have the function of considering questions from the general point of view; none of them will be even authorized to do so. Each of them, delegate of a king or a people ... will come prepared to present the particular policy of the power which he represents, and to show that this plan coincides with the interest of all. On all sides, the particular interest will be put forward as a matter of common interest. Austria will try to argue that it is important for the repose of Europe that she should have a preponderance in Italy, that she should keep Galicia and the Illyrian provinces, that her supremacy in the whole of Germany should be restored; Sweden will demonstrate, map in hand, that it is a law of nature that Norway should be her dependency; France will demand the Rhine and the Alps as natural frontiers; England will claim that she is, by nature, responsible for policing the seas, and will insist that the despotism which she exercises there should be regarded as the unalterable basis of the political system.

These claims, presented with confidence, perhaps in good faith, in the guise of means to ensure the peace of Europe, and sustained with all the skill of the Talleyrands, Metternichs, and Castlereighs, will not, however, convince anybody. Each proposition will be rejected because nobody, apart from the mover, will see in it the common interest since he cannot see in it his own interest. They will part on bad terms, blaming on each other the lack of success of the assembly; no agreement, no compromise, no peace. Sectional leagues, rival alliances of interest, will throw Europe back into this melancholy state of war from which vain efforts will have been made to rescue her. ... Assemble congress after congress, multiply treaties, conventions, compromises, everything you do will lead only to war; you will

not abolish it, the most you can do is to shift the scene of it.²¹

With such a pessimistic estimate of the degree of co-operation attainable within the system of sovereign states, it is not surprising that Saint-Simon should have suggested its radical transformation. When re-organized according to his plan, Europe will not do away with nations, but these will no longer be divided into sovereign states. Consequently, while the relations between nations are part of the concern of the proposed European Parliament, its members will not represent separate sovereign states. In the case of Saint-Simon's project, we noted, they were to represent transnational social classes of Europe as a whole.²²

Saint-Simon did not seriously confront the problem of how such a radical transformation was possible when by his own account no real co-operation was to be hoped for between sovereign states. Naturally, an agreement would have to be reached between their governments in order to create the type of organization which he had favoured, yet he had himself argued that no substantial agreement was possible between them. He suggested, however, that because France and England were both equipped with a liberal constitution they could unite themselves to form a kernel of European unity.²³ Implicitly therefore he was committed to the view that between liberal states international co-operation was possible. Despite this, he did not spell out the full implications of this crucial assumption in his work of 1814. It will be recalled here that nearly a century later Oppenheim, impressed by the degree of co-operation between liberal states, argued strongly against a radical departure from the existing system.²⁴

Saint-Simon in fact soon grew out of his infatuation with the

'English-type' constitution, and developed the doctrine of 'industrialism'. According to this doctrine, the decision-making function of a society should be transferred from the political institution of the state to an administrative body consisting of the able members of the 'industrial' class, namely those who were engaged in production as opposed to those who were idle parasites of a society.²⁵ He considered that national bellicosity was the remnant of the feudal policy of the state, and believed that there would be no conflict between the industrialists of different countries.²⁶ What form of institutional framework was desirable at the international level when a plurality of European states developed the industrial-administrative system within, Saint-Simon did not answer.

Emile Durkheim, however, has suggested that Saint-Simon never in fact abandoned the fundamental position expressed in the 1814 proposal that the national governments and the common European government must be homogeneous, and that they must therefore be based on the same institutional principles. Thus, in Durkheim's view, Saint-Simon would have argued that the common parliament of Europe should be recruited in accordance with the rules set out for the national councils, and that it should administer the common affairs of Europe in the spirit of industrialism, thereby placing the constitution of European Confederation in harmony with the national governments.²⁷

By contrast to the case of Saint-Simon who envisaged growing ideological unity among nations, Morgenthau wrote against the background of the apparent division of the world into two ideological camps.²⁸ Morgenthau saw little hope of real co-operation between them, and suggested that prudential diplomacy, devoid of the spirit of ideological crusade, would be the first necessary and practical step towards a more co-operative world in which alone moves towards closer

integration of the existing states might be contemplated.²⁹ However, he left unanswered whether, or for what purpose, international society would still require a radical transformation into a world state when the relations between existing sovereign states had become relatively peaceful and co-operative in accordance with his prescriptions, which included the expansion of 'functional' co-operation among friendly nations.³⁰

It is a common characteristic of those who see in Type IV the best approach to the political organization of mankind that they are extremely pessimistic about the degree of co-operation realizable within the system of sovereign states: they see this system as unstable, destructive, and incapable of realizing true harmony. Along with Saint-Simon's argument quoted above, Frederick Schuman's pessimistic prognosis will also be recalled in this context. In his judgement, all states-systems of the past had collapsed, and the Western states-system was destined in the near future to destroy itself with or without nuclear weapons unless radical change could be achieved through the political unification of the world under one government.³¹

These characterizations of the states-system may be said to exaggerate its defects. 'Le Congrès ne marche pas, il danse' is indeed a well-known description of the Congress of Vienna, yet most of the demands which Saint-Simon had attributed to Austria, Sweden, France and England in the passage quoted earlier were in the end conceded to them through diplomatic bargaining.³² Saint-Simon seems not to have seen that between sovereign states there could be such a thing as 'reciprocal' interest in contradistinction to 'common' interest. Schuman's prognosis, even more pessimistic than Saint-Simon's, may in the end turn out to have been accurate. There is no doubt that in the latter part of the twentieth century mankind lives under the

constant threat of its own annihilation. The point, however, is whether the situation would be improved, and annihilation avoided, if the world was united under one government.

In considering such a question, we must make sure to avoid circularity. By the phrase, 'united under one government', we cannot mean 'united so effectively under one government as to rule out the real likelihood of any major disturbance'.

Walter Schiffer's argument that an international organization, such as the League of Nations or the United Nations, could not work unless states were reasonable, and that if states were reasonable there would be no need for such an organization, may apply equally well to a world state.³³ If the peoples of the world were so hostile to one another as to require coercion by the world government, then the world state would be in constant danger of a global civil war. If, on the other hand, the peoples of the world were so reasonable towards one another as not to require coercion then they could live in harmony even without a world government.

This line of argument might be thought a little too crude and dismissive. Can it not be said that a world state can contribute to the achievement of peace and security more effectively than can the states-system, and that the danger of a global civil war is relatively small?

One writer, Henry Osborne, according to Inis Claude, has said that civil war is not inherent in the state but that war is inherent in inter-state relations if those relations are based on national sovereignty.³⁴ It is unclear what is meant by the phrase 'based on national sovereignty' here. However, it is plainly untrue that civil war is not 'inherent' in the state. It is just as 'inherent' in the state as (international) war is in the states-system. This is so in

the sense that the conceptual or logical link between 'civil war' and 'the state' is just as certain as that between 'war' and 'the states-system'. By definition, it is only within a state that a 'civil war' can be said to take place, and the logical possibility of 'civil war' can never be ruled out within a state. Likewise, by definition, '(international) war' can take place only between sovereign states, and its logical possibility can never be ruled out within the states-system whatever its legal structure.

If Usborne's point is that war is more 'probable' within the states-system than civil war is within the state, then the answer will have to be that the 'probability' of a civil war varies from one state to another, and that in some states it is considerable. Moreover, one cannot expect from the world as a whole a much higher degree of social cohesion than one expects from a relatively poorly governed community where civil war is a real threat.³⁵

Those who are critical of the states-system, and who implicitly or explicitly favour the world state as an ideal solution, tend to see in the notion of 'state sovereignty' the source of irreconcilable conflict. It is undeniable that the conception and the organization of the state such that it can command the allegiance of its citizens is itself a necessary condition of war: no war is possible between two sets of individuals unless each set is socially cohesive. And if by 'sovereignty' is understood the ability (either in a normative or factual sense) of a society to command the allegiance of its members, it is clear that 'sovereignty' is a necessary condition of war. It does not follow from this, however, that between 'sovereign states' there cannot be any co-operation. Indeed, co-operation between two sets of individuals, too, will require 'sovereignty' in this sense.

It may be thought that it is in the nature of 'state sovereignty' that when State A's policy goal clashes fundamentally with State B's policy goal, they will not seek a compromise solution. This type of statement can be true only if 'state sovereignty' has been defined in advance to make it true.³⁶ While it is undoubtedly the case that some states pursue fundamentally irreconcilable goals, such as the exclusive possession of an identical piece of territory, it is not true that all sovereign states always pursue irreconcilable goals.

It may of course be objected here that two states can fight over an identical piece of territory precisely because a piece of land cannot simultaneously belong exclusively to two states, and that the abolition of the idea that a piece of territory can be governed exclusively by one of the contenders will rule out the possibility of such a dispute. A world state would be a means to such an end. But if two states are genuinely concerned to establish an exclusive sovereignty over a piece of territory, rather than concerned merely to frustrate each other's policy, it is not likely that the abolition of the idea of exclusive sovereignty as such can satisfy either of them.

But is there not a definite limit to international co-operation because of state sovereignty? Those who support the Type IV approach will think so. However, in answering this question, it is vital to separate two questions. One is a conceptual question as to whether there is a definite limit beyond which institutional arrangements, facilitating international co-operation, cannot go without contradicting the 'sovereignty' of the member-states. The other is a factual question as to whether a given set of states may come to accept such institutional arrangements. An affirmative answer to the first question might be used as a political weapon against the supporters of such institutional arrangements by those who are opposed to their

creation. But there is nothing in the fact that State A and State B have certain international legal rights, or enjoy international legal freedom in certain areas, that make it impossible for them to alter their circumstances. They can even decide to conclude a treaty to merge into one state, thereby doing away with their legal independence altogether. Thus when those who support the Type IV approach are sceptical of the extent to which co-operation is possible between sovereign states, what they are pointing to is the tendency of states jealously to protect their existing legal rights, freedoms and independence, and not the limitations logically inherent in the notion of sovereignty itself. Of course it has to be admitted that this tendency is in turn cultivated and reinforced by the division of mankind into separate sovereign states, but it is impossible to see how a world state can ever be established through consent if states are so jealous of their legal rights, freedoms and independence as to make international co-operation such a difficult task as is suggested by some adherents of the Type IV approach.

One observation which may be added here is that those supporters of the Type IV approach, who are pessimistic about the degree to which co-operation is possible between states because of their 'sovereignty' may be using domestic analogy of a kind we have not examined in this thesis. This is the idea that the word 'sovereignty' means the same thing when transferred from the sphere of domestic politics to the international sphere.

Inside the state 'sovereignty' may be regarded as an attribute of its government, and may be taken to mean 'supreme political authority'. But, when the same word is used in the external relations of states, the word is being used as a predicate of the states themselves. It is clear that an adjective may point to different qualities when it is

predicated to different entities, and this rule applies to the adjective 'sovereign'. When it is used as a predicate of a state, it refers not to the status of 'supreme political authority', but to that of 'constitutional independence'.³⁷

It may be partly because they ignore this point, and assume the word 'sovereignty' to have identical meaning domestically and internationally that those supporters of the Type IV approach are so pessimistic about the degree of co-operation realizable between sovereign states: between 'supreme political authorities' only conflict is possible, since none of them will accept the legitimacy of the others. Whether or not such an error can be said to involve 'domestic analogy' depends on how the term is defined. The definition adopted in this thesis does not cover such an instance.

None the less, the adherents of the Type IV approach can be said to resort to the domestic analogy in the sense specified in Chapter II when they assume that the maintenance of order at the world level requires the reproduction of those political institutions found necessary for the governance of individuals at the national level. In so doing they underestimate the prospect of co-operation between sovereign states, and are uncritical of the extent to which institutions workable at the national level will be ineffective once extended to cover the whole globe.

There is at least one other line of argument against the Type IV approach which we have not discussed so far. It is that a world state endangers individual and national liberty. As Walter Schiffer put it: 'Single persons who have to fear their rulers have an opportunity to save themselves by leaving their countries; a world state would eliminate this opportunity'.³⁸ And F.S. Northedge, among others, has remarked that the present international system, for all its failings, has produced the least unsatisfactory combination yet discovered of order

in the whole and freedom for the subordinate parts.³⁹ By 'freedom for the subordinate parts', he means 'the liberty to lead our national lives as we think best'.⁴⁰

The potential tyranny of the central government is a problem which the supporters of the Type IV approach would have to consider seriously. Yet it can be said against Northedge's defence of the states-system that it is too sanguine. His is a view which only those who are satisfied with their national regimes can fully endorse. It is oblivious of the fact that in many parts of the world people do not have the liberty to lead their lives as they think best. It also pays insufficient attention to the extent to which the division of mankind into separate political communities institutionalizes such a sanguine outlook on human conditions.

It will be recalled that proposals along the 'Type I - Type II spectrum' are concerned primarily with the issue of creating order in international relations. The Type V ('welfarist') approach, to which we now turn, is strongly critical of this, and argues for strengthening those institutions concerned with the welfare of men and women living in separate states.

Moreover, it will be noted, the institutions envisaged by Types I, III and V (or the 'confederal', 'democratic confederal' and 'world state' approaches) are systematic entities expressed in single blue-prints or well-defined schemes. The same can be said also of some of those 'negative surrogates' of Type I located along the 'Type I - Type II spectrum' closer to the 'confederal' end.

The Type V approach objects to the idea that the desirable goals of mankind can be obtained by a systematic, all-embracing constitutional project. Instead of suggesting a unified scheme,

therefore, the supporters of the Type V approach stress that all forms of institution should be created to cope with multifarious problems requiring international co-operation. It is interesting to observe that in clear contrast to Type IV, the Type V approach is based on the assumption that there is no limit to the range of co-operation within the sovereign states system.

The degree of centralization, membership, representation, decision-making procedure and other structural or procedural aspects of the institutions are to be worked out case by case. However, a Type IV sort constitution in particular is supposed by the adherents of the Type V approach not to come about, if ever, until the final stage in the development of international institutions, and is, at any rate, rejected as an initial means for facilitating co-operation.

It may be thought appropriate to give the label of 'functionalism' to Type V since David Mitrany, who adopted this approach, is associated with that term. However, E.H. Carr commended Type V for its pluralism and pragmatism, and Type V's concern for welfare issues is shared by Carr and Brierly, neither of whom is usually labelled 'functionalist'.⁴¹ Moreover, so-called 'neo-functionalism' will not be excluded from Type V.⁴² Since 'pluralism' has been used in different senses by writers of international relations, such as Bull, Pentland and Pettman, and 'pragmatism' appears a little too value-laden, 'welfarism' has been chosen as a label for the Type V approach here.⁴³ This is consonant with the fact that the circumstances which commonly stimulated Carr, Brierly and Mitrany to adopt the Type V approach was the bankruptcy of laissez faire liberalism in the domestic sphere.⁴⁴

'Welfarism', as it is defined here, maintains that the welfare of individual men and women living in separate states, which it regards as vital, cannot be left to the activities of separate national

governments, that the effective control of welfare issues in many cases requires upgrading the level of management from national to international, but that the institutional structure of international co-operation in this field should be determined pragmatically in accordance with the needs in view. Such a position may be said to be a common denominator of the views held by Carr, Brierly and Mittrany, but does not exhaust them. In particular, Mittrany's 'functionalist' assertion that co-operation along the 'welfarist' lines will lead to the erosion of national loyalties, and hence, to the gradual emergence of a transnational community is not integral to 'welfarism' as such as defined here.⁴⁵ It will be recalled that Types I - V are all 'ideal-types'.⁴⁶ It follows that they are not necessarily identical with any of the approaches adopted by the writers discussed in this thesis.

Consequently, it is not suggested here that what might be termed 'welfare issues' are not included in other types of proposal. Thus, Saint-Simon's European parliament, which we associated with the Type IV approach, was to direct '[a]ll undertakings of common advantage to the European community', including linking of the Danube to the Rhine, and the Rhine to the Baltic, by canals. State education in the whole of Europe was to be under the direction and supervision of the great parliament, which was also to draw up a code of ethics.⁴⁷ Even William Ladd's Congress of Nations, which we located along the 'Type I - Type II spectrum', was expected to settle principles of a 'civil and pacific nature affecting the intercourse of the world and the happiness of mankind'.⁴⁸ The issues to be treated by the Congress were to include, among other things: diplomatic immunity, extradition, the treatment of refugees, slave trade, piracy, the use of railroad and canals, free navigation of bays and rivers, maritime safety and

salvage, copy-rights, postal service, weights, measures and coinage, the right of discovery and colonization, and disarmament. Many of these issues overlap with the concerns of the 'welfarist' writers.

However, what distinguishes Type V is that instead of setting up one supreme legislative authority to make laws for all purposes, it suggests a pluralistic approach. Those states who have a common set of problems are to create their own institutions specifically adjusted to their needs. The membership and shape of each institution are to be determined in accordance with the purposes which it is required to serve. The absence of an overriding authority above these separate institutions is thought to be even advantageous since they can modify their shape in response to changing circumstances without involving a cumbrous process of decision-making at the universal level. Only the members of each institution need to agree to its modification in accordance with its own provisions.⁴⁹

It is important not to mistake the proliferation of Type V institutions for the emergence of a world state. Inter-state relations may begin to take on a more community-like character if these institutions are successful, but this does not produce a single sovereign state at the global level. Mitrany's statement that 'a slice of sovereignty' is transferred from the old authority (the member states) every time a new institution is established is as misleading as his other oft-quoted characterization of 'functionalism' as a 'federalism by instalments.'⁵⁰ In the sense that is relevant to the present context, 'sovereignty' can be said to have been abandoned by the member states only when the mode of obligation and authorization specific to 'international law', which Hans Kelsen called 'indirect obligating and authorizing of individuals', has been superseded by supranational arrangements, and accordingly the constitutional

independence of the member states has been undermined.⁵¹ Since Type V institutions are not necessarily supranational, their expansion in number and scope will not lead to the creation of a world state. Moreover, since membership varies from one institution to another the cumulative effect will be a complex network of legal relationships between states, very different from a tidily organized world federation. It was this schematic tidiness of the federal and other approaches which writers like Mitrany and Carr opposed.

While the proliferation of Type V institutions by itself does not lead to the creation of the world state, it might be thought at least subversive of the sovereign states system because of its concern with the welfare of individuals. One of the major concerns of the Type V approach is indeed the issue of human rights, and Hedley Bull has cautioned that '[c]arried to its logical extreme, the doctrine of human rights and duties under international law is subversive of the whole principle that mankind should be organized as a society of sovereign states', the principle which he in fact endorses.⁵²

However, it is important to note Bull's qualification to this argument. He wrote:

[I]f the rights of each man can be asserted on the world political stage over and against the claims of his state, and his duties proclaimed irrespective of his position as a servant or a citizen of that state, then the position of the state as a body sovereign over its citizens, and entitled to command their obedience, has been subject to challenge, and the structure of the society of sovereign states has been placed in jeopardy.⁵³

What this amounts to is simply that supranational protection of human rights goes against state sovereignty. This is a statement true

by definition.

However, supranationalism is not a necessary ingredient of the Type V approach. Brierly, for example, in suggesting the international legal protection of human rights, specifically rejected the supranational approach as unworkable, and proposed instead a simple convention obliging states to incorporate in their municipal laws certain rights which they would all undertake to maintain for their own subjects, and which each of them would interpret and apply according to its own forms of procedure.⁵⁴ There is nothing in such an approach that is subversive of state sovereignty, and Bull's objections noted above would not therefore apply to it. Type V institutions are thus not necessarily subversive of the society of sovereign states.

There will be little objection to the central argument of the Type V approach that the world state is not likely to be realizable, that nevertheless states can and should co-operate on all kinds of problem, and that in the contemporary world, economic and social welfare of individual men and women living in separate national communities is among the important issues to be dealt with through international co-operation. However, it has to be noted that the Type V approach as such does not clearly state in which specific area states need to co-operate, or can co-operate without engendering counter-productive frictions. Nor does it clarify what form of institutional arrangement is best suited to a given need. There is therefore no guarantee that an institution designed by an adherent of the Type V approach will succeed in enabling the member-states to satisfy their needs. 'Trial and error' is the cost of pragmatism.

Arguments against Type V would gain strength if it were to be identified with Mitrany's doctrine of 'functionalism'.

Mitrany believed that the proliferation of 'functional' institutions would cumulatively contribute to the achievement of international peace through the gradual growth in the awareness of common interest in peace and in the development of the habit of co-operation.⁵⁵ This optimistic expectation is challenged by those who argue that it is within the framework of peaceful relationships that functional institutions can proliferate.⁵⁶ The extent to which, and the process through which successful co-operation within functional institutions can strengthen peace is a much disputed issue among contemporary theorists on international organization.⁵⁷ The following statement by Hedley Bull is noteworthy in this respect:

The expansion of the scope of international law to encompass economic, social, communications and environmental matters represents a strengthening of the contribution of international law to international order in the sense that it provides a means of coping with new threats to international order. The growing impact of the policies of states on each other in these fields is a source of conflict and disorder among them which international legal regulation serves to contain. If international law had not responded to these developments by expanding its scope, the threats to international order arising from the growth of interdependence in the economic, social, communications and environmental fields would be greater than they are.⁵⁸

In clear contrast to Mitrany, the expanding scope of international legal regulation is seen by Bull not as a means of community-building, but as a way of controlling or preventing international conflict which has also expanded in accordance with increased international interdependence. However, Bull's pessimistic, deterministic view is in turn devoid of solid empirical substantiation.

Finally it may be observed that while the 'anarchical' approach which we examined in the previous chapter is supported by those, like Bull, who strongly oppose the domestic analogy, the 'welfarist' approach can be adopted as part of the prescriptions by those who make some concessions to this analogy as well as by those who attempt to exclude it. Thus, James Brierly, while supporting the 'welfarist' approach, also argued in favour of the legal ban on the use of force and some form of collective security, while Edwin Borchard, likewise endorsing the 'welfarist' approach, was strongly critical of both such institutions.⁵⁹ These contrasting cases show that whereas the 'anarchical' approach defines itself in terms of its opposition to the domestic analogy in all forms, the 'welfarist' approach is not so much against this analogy as to some extent independent of the 'domestic analogy debate' itself. This explains why a staunch opponent of the domestic analogy like Bull, while not agreeing with Mittrany's optimism, can still, however negatively, appreciate the merits of the 'welfarist' institutions.

In this chapter, we examined the merits of three approaches to world order: 'democratic confederal', 'world state', and 'welfarist'. The 'democratic confederal' approach may have some merits when applied to the relations of those nations among whom transnational solidarity is exceptionally strong. But as an approach to world order it commits an error of attempting to transfer a domestic political principle to the international sphere where the conditions are unsuitable or not yet ripe. The 'world state' approach also involves the mistake of assuming that those political institutions operative at the national level will be workable at the global level. Moreover, it underestimates the extent to which international co-operation can take place among 'sovereign' states. It was suggested that this underestimation may stem from the

tendency of the adherents of this approach to assume that the word 'sovereignty' means 'supreme political authority' internationally as well as domestically. However, the defender of the states system, such as Northedge, we noted, may exaggerate the virtues of the present system. The 'welfarist' approach, an ideal-type not to be identified with Mitrany's 'functionalism', remains relatively unscathed, but the method of 'trial and error' is the price it pays for its pragmatism.

Conclusion

In the previous two chapters an attempt was made to examine the merits of various types of proposal which emerged since the end of the Napoleonic Wars up to the creation of the United Nations. We conducted our analysis in the light of five ideal-types: the 'confederal', 'anarchical', 'democratic confederal', 'world state' and 'welfarist' approaches.

Putting the five approaches in perspective, we may say that the 'confederal', 'democratic confederal' and 'world state' approaches are based on the view that states in their relations with one another are analogous to the individuals in the state of nature which Hobbes had imagined to be a state of war. These approaches personify states implicitly, and prescribe that states should leave their international state of nature by entering into a social contract writ large.¹

However, states, unlike natural persons, are legal, and hence artificial, entities. Thus two forms of social contract are possible between them. One, supported by the 'confederal' and 'democratic confederal' approaches, is a contract between states which leaves their sovereign statehood intact. The other, as in the 'world state' approach, is a contract which dissolves existing sovereign states into one state. Hence the two basic forms of domestic analogy we have noted.

The 'democratic confederal' approach involves the use of the domestic analogy in the first form, but attempts to extend the principle of popular representation, accepted as legitimate within many states, to the international sphere where, traditionally, problems are handled primarily by diplomats acting under instruction from the executive branches of their respective governments.

The 'welfarist' approach might be thought to be an attempt to ameliorate the harsh conditions of the international state of nature through the proliferation of covenants for limited purposes among interested members. However, in the foregoing, we have considered Type V as an approach to improve the conditions of the lives of individuals separated into sovereign states by expanding the scope of international co-operation. This may or may not lead to the improvement of international conditions.²

In contrast to the 'confederal', 'democratic confederal' and 'world state' approaches, the 'anarchical' approach, as Hedley Bull clearly reveals, is based on the idea that the state of nature among individuals and the state of nature among states are different in character. This line of thought, as we noted, had existed already in Hobbes himself, and was inherited and expanded by a succession of political philosophers and theorists of international law, such as Spinoza, Pufendorf, Wolff and Vattel. Bull's argument closely follows the ideas developed by these earlier thinkers. According to Bull, 'anarchy among states is tolerable to a degree to which among individuals it is not', and 'the fact that states form a society without government reflects features of their situation that are unique'.³

It may be observed that the 'anarchical' approach offers an effective counter-balance to some of the prescriptions based on the 'confederal', 'democratic confederal' and 'world state' approaches which in varying ways are all dependent on the domestic analogy.

However, the 'anarchical' approach is not entirely flawless. Especially when advanced with exaggerated confidence, this approach produces unwarranted conclusions. Thus, as we saw, the argument against the legal ban on the use of force advanced by the supporters of this approach is alarmist to the extent that it is based on the fear of turning the contestants more uncompromising. They also

exaggerate the value of the institution of neutrality and the firmness with which it had been established in international society. Moreover, Northedge's evaluation of the 'anarchical' states-system, we noted, seems too sanguine about the extent to which it enables its constituent units to live 'as they think best'.⁴ The strength of the 'anarchical' approach lies in its critical attitude towards the domestic analogy. But this can in turn harden into a dogmatic premise similar to the doctrine of the 'specific character of international law' influential at the turn of the century. The parallel between this legal doctrine and the 'anarchical' approach should warn us that a puritanical concern to preserve the unique realm of International Relations from contamination through reliance on the domestic analogy may itself turn into futile dogmatism devoid of empirical substantiation.⁵

It may be pertinent to recall here that C.A.W. Manning, determined not to allow the domestic analogy to creep into his argument, apologetically admitted that he was resorting to it 'for once' in the lecture he gave in 1935 at the Geneva Institute of International Relations. Yet, our analysis showed, he was mistaken in thinking that he was resorting to the domestic analogy, and his error was due to his anxiety to separate out what is international from what is domestic. As we pointed out, this might be an instance where Manning's determination to exclude the domestic analogy clouded his analytical power.⁶

The 'welfarist' approach remains relatively unscathed insofar as it is not subject to the kind of criticism directed against excessive reliance on the domestic analogy. This approach is indeed to some extent independent of the 'domestic analogy debate' itself. Yet, as we saw, one of its limitations lies in its inability to spell out in detail what kind of institution is appropriate for a given need.⁷

Moreover, in Mitrany's version of 'welfarism', namely 'functionalism', the approach gains an extra dimension of optimistic expectation about the extent to which 'welfarist' institutions can contribute to world peace. This added element, however, is harder to accept in the absence of further evidence supporting the hypothesis that international institutions, when seen to be satisfying the welfare needs of men and women, will tend to curtail their national loyalties, and that the habits of co-operation will make them ready to co-operate more. This may be a common-sense assumption, but its validity has not so far been fully tested.⁸

Since the 'welfarist' approach rejects the 'world state' alternative,⁹ one important question which arises is how far the former can contribute to welfare and justice in the life of mankind divided into separate states. Do these goals in fact require the transcendence of the sovereign states system? The question is important since if the 'welfarist' approach is shown to produce desired effects fully only through the abolition of the sovereign states system the value of the approach is seriously undermined.

Clearly, however, the 'transcendence of the sovereign states system' in the sense of the structural reform of the present system would not solve the problem of welfare and justice, unless the new arrangement was to be accompanied by what Gladstone had called 'just habits of thought'.¹⁰ By this he meant the cultivation of the idea that 'every other State, and every other people [stood] on the same level of right as ourselves'.¹¹ which may be paraphrased as the growth in the sense of community among mankind. It must, however, be noted that the growth in the sense of community among mankind, or the transition towards the ultimate universal moral community, is itself to some extent hindered by the division of

mankind into sovereign states which tends to reinforce national parochialism.

Some of the measures recommended by the proposals along what we called the 'Type I - Type II spectrum' may encourage mankind to move towards a higher sense of unity. Among them, for example, are the enshrinement in the law of the idea that states do not have unrestricted freedom to use force against one another, the institution of voluntary arbitration and adjudication, and the regular assembly of states to discuss issues of common interest and to articulate the standards of international conduct. Between states which already share an exceptionally high sense of solidarity, as well as democratic values, the 'democratic confederal' approach might help enhance these values and bring the states closer together. 'Welfarist' institutions might also protect or strengthen unity, or act as a symbol of progress towards unity, in a divided world. However, none of these approaches are by themselves sufficient to bring about the change in the moral outlook of mankind from particularism to universalism without which institutions based on the domestic analogy, as well as 'welfarist' institutions, are likely to remain limited in their scope and effectiveness.

It is important to note, however, that even within the present system there are some elements of moral universalism. Without this, the human rights ideology, for example, would not exist, nor perhaps the very notion of the society of states.¹² Yet the area in which the citizens of another country are held to be of equal worth to those of one's own country is severely restricted under the present regime as the North-South problem amply illustrates. The gradual expansion of this area is what constitutes the transition from particularism to universalism.¹³

The ultimate moral community of mankind, in which moral universalism prevails over national parochialism, is therefore one where the area in which the citizens of another state are treated in the same way as those of one's own state has expanded to the full. The last phrase, 'to the full', taken literally, suggests that in the ultimate moral community the citizens of separate states should be treated totally without prejudice to their nationality.

If such a community were to continue to be organized as a system of states, its constituent units would not have the character of those which constitute the present international system. This is because the conception of the state underlying the system would have altered radically from what it is now. States would no longer exercise their legal independence selfishly, but accept it as their principle to act as though they were bound by a supreme legislative authority enacting laws for the common good of mankind.

Even in such a situation, the laws would still have to be made rather than left to the spontaneous concurrence of national wills. Thus a law-making assembly of some form would be required, probably together with certain other elements of an international government.

Whether this new global arrangement can be classified as a world state, in contradistinction to the sovereign states system, in terms of its constitutional characteristics, is an elusive question. This can only be answered if we can work out the requisite degree of centralization for the global system, which it is difficult to do in the abstract. Moreover, it is perhaps possible to envisage a decentralized and pluralistic global association in which the citizen/non-citizen dichotomy is not institutionalized in the same way as it is in the present sovereign states system.¹⁴

Thus in reply to our question as to whether welfare and justice

in the life of mankind can be obtained fully within the framework of the sovereign states system we can tentatively conclude as follows. The realization of welfare and justice in the life of mankind presupposes the prevalence of moral universalism over national parochialism. This will lead to a new global arrangement, which may not necessarily be a world state. If the moral community of mankind takes the form of a states-system, its constituent units will not have the character of those which constitute the present international system. This is because the conception of the state will have altered radically from what it is now. Likewise, if the ultimate end takes the form of a decentralized and pluralistic association of a large number of communities, these will not resemble the present sovereign states.

Whatever the ultimate institutional structure, it seems clear that in the initial stages of the transitional process towards the ultimate goal, the legal freedom of action enjoyed by each state vis-à-vis other states will diminish progressively since each state will share an increasing amount of responsibility for the common good of mankind. Even those currently poor countries, which will be placed at the receiving end of the globally re-distributed wealth, will be subject to the curtailment of their legal freedom inasmuch as the issue of domestic distribution of wealth will in turn be under the surveillance of the international community.

In fact, the knowledge of the ultimate structure matters far less than the awareness of the general direction in which international society must progress. Just as it would be absurd to try to envisage the ultimate state of our knowledge, so it would be unwise to concentrate on the speculation of the ultimate institutional structure of the world. It might, of course, be objected that this analogy is not perfect: whereas the ultimate state of our knowledge, if there can be such a

thing at all, can be known only when we get there, the knowledge of what the ultimate institutional structure should be could contribute to our getting there. This objection, however, ignores the point that the knowledge of the ultimate structure of the world is itself likely to be part of the ultimate knowledge. James Lorimer's claim to solve the ultimate problem of international jurisprudence through the transfer to the international sphere of certain domestic institutions of the nineteenth century liberal type ignores the historical limitations of the answer being given.¹⁵

The idea of the expansion of the area in which the citizens of another state are treated in the same way as those of one's own state was supported by E.H. Carr although what he had in mind was a regional, rather than universal, international co-operation. He wrote, in a striking passage which should be noted as well as his critique of idealism: 'British policy may have to take into account the welfare of Lille or Düsseldorf or Lodz as well as the welfare of Oldham or Jarrow'.¹⁶ He wrote of his own vision as itself a utopia, although he was hopeful that 'a direct appeal to the motive of sacrifice would [not] always fail'.¹⁷ In a world in which a direct appeal even to the motive of enlightened self-interest would not always succeed, the vision of separate nations sharing an increasing amount of responsibility for the common good of mankind would remain realized only to a limited degree for a foreseeable future.

None the less, it seems clear that the move towards the universalist goal is more likely to come from among those national communities which share the values of welfare and justice. In this respect, it is of considerable importance to note Michael Doyle's recent observation that no liberal states have ever been engaged in a war among themselves.¹⁸ Although Doyle's explanation of this striking phenomenon is not adequate

by itself, he considers that three factors have contributed to peace among liberal states: a degree of democratic control of foreign policy; the sharing of values, and mutual trust on the grounds of ideological unity; and vested interest in peace as a result of commercial interdependence.¹⁹ It may be that these circumstances and the expectation of peace contribute to the gradual overcoming of national parochialism among some liberal states, if not necessarily all of them, which may in turn strengthen the chances of co-operation in the realm of welfare and justice.²⁰

* * * *

There are a number of ways in which this thesis can be expanded.

First, the time span. The period covered by this thesis is between 1814 and 1945, or between Saint-Simon's proposal at the time of the Congress of Vienna and the establishment of the United Nations, although ideas expressed after 1945, when relevant to the evaluation of the proposals produced before 1945, have been referred to. A century and a half is a period sufficiently long to provide us with a reasonably wide range of proposals as Chapters III - VII have shown. Moreover, domestic and international circumstances of this period were varied enough to enable us to observe the influence of the changing conditions in the two spheres upon the proposals produced. At the same time, the writers of this period are relatively close to us in terms of their experience both in the domestic and international spheres as well as in the realm of science and technology. This renders their ideas relevant to our present concern in the sphere of international relations.²¹

Nevertheless, the time span can be expanded either into the pre-1814 period or into the post-1945 period or both.

One difficulty involved in expanding the time span into the pre-1814 period is that it becomes harder to identify domestic models which may have inspired the peace-schemers to be examined. Even if we were to go back to the eighteenth century, in order to ascertain whether or not a writer, such as Saint-Pierre, had used any particular domestic model in constructing his project, we are required to know extensively about the constitutional structures of the Powers and Confederations of the period, as well as earlier ones, and this is in itself a considerable task for a researcher.²²

However, it will be of great interest to compare, say, pre-1648 proposals, those between 1648 and 1789, and those after 1814.²³

One difficulty which arises when we move forward into the post-1945 period is that there are so many international institutions, and writings about International Relations that the weight of the material is extremely heavy. We will have to look into European unification, though admittedly this is regional rather than global. Once we allow regional arrangements to enter into our survey there are many other instances. Writings about International Relations are also vast in quantity, and we must certainly include in our discussion the often mentioned World Order Models Project, and probably also the writings on international law inspired by the Yale Law School approach.²⁴

None the less, such an effort will be worthwhile and fruitful in order to assess critically our present state of knowledge and practice. We have approximated this goal to a limited degree by examining in some detail those patterns of thought in International Law and Relations which arose in the face of the felt inadequacies of the League of Nations and its eventual collapse. These patterns of thought, we suggested, provided the bases of post-1945 approaches.

Second, we may expand the scope of analysis by bringing in proposals for world order from outside the liberal (and social democratic), chiefly Anglo-American, tradition. We have included in our survey some German writings, and to a lesser extent French proposals, but we have not taken into consideration ideas emanating from Marxism, Anarchism, or National Socialism. One small exception was Carl Schmitt, a Nazi legal theorist, mentioned briefly. Another exception was Stengel (a German nationalist in the mould of Treitschke,) whose ideas we considered in more detail.²⁵

Moreover, we may include in our discussion ideas about world order coming from the non-Western tradition, such as Confucian or Islamic.²⁶ This will clearly enrich our material, but a thorough investigation concerning such a broad range of ideas is far beyond the capacity of an ordinary researcher.

Third, we may go beyond the institutional form of domestic analogy, to which we have confined our attention, to incorporate in our survey those ideas which concern the transfer of values from the domestic to the international sphere. This requires some explanation.²⁷ Convenient examples to use to illustrate the point here are two contemporary theorists of international relations, Hedley Bull and Andrew Linklater, although writers from earlier periods can be included. Bull's The Anarchical Society and Linklater's Men and Citizens in the Theory of International Relations represent two opposite tendencies in contemporary international theory, conservatism and progressivism, respectively.

It must be stated at the outset that neither of these writers resorts to the domestic analogy in the institutional sense. Bull, as we saw, rejects this totally. Nor is Linklater engaged in an analogically constructed institutional peace-scheming many of whose varieties we have seen.²⁸ Indeed, neither of them resorts to the domestic analogy

as we defined the term in this thesis.

None the less, a close examination of the two writers' books reveals that they both select out as of fundamental importance a certain value or set of values which they see as being pursued and to some extent realized within the domestic sphere. They then go on to argue that the satisfaction of this value or set of values should be regarded as the goal of the community of mankind to be pursued at present by the co-operation of sovereign states. In the case of Bull, the set of values selected are security against violence, observance of agreements and the stability of property. Linklater, by contrast, argues for the expansion of the realm of freedom as a historic goal of mankind.²⁹

In fact, we have seen the 'welfarist' writers resort to the same mode of reasoning: the welfare of individual citizens pursued in separate national communities is transferred by them to the international arena as the goal of the international community.

It should be clear that Bull and Linklater share a method of reasoning with the 'welfarists'. Their differences arise from their disagreement regarding the choice of values. If we go beyond the confines of the domestic analogy in the sense in which we have dealt with this concept in this thesis, and examine various ideas regarding the 'transfer of values', we will open a new field of enquiry.

Although, therefore, there are a number of ways in which this thesis can be expanded, this thesis itself may be said to have made some contribution to the understanding of the nature, the role and the limitations of the domestic analogy.

Chapter I has traced a debate about the domestic analogy between those apparently opposed to it and those apparently in support of it. Since the division of writers into these two camps cannot be accepted

unless what is to count as an instance of the domestic analogy has been clearly defined, we attempted in Chapter II to identify the range and types of proposals which this analogy may be said to entail. Chapters III - VII investigated in detail how the use of the domestic analogy was influenced by the changing conditions in the domestic and international spheres, and how some writers stood above these changes by stressing the unique and relatively unchanging nature of the system of states.

We have not only examined the use of the domestic analogy by those writers whose proposals were not put into practice by the governments of their time, but studied the ways in which the analogy was used by those who, producing their ideas at more pregnant epochs, contributed more directly to the establishment of the two major world organizations of the twentieth century, the League of Nations and the United Nations. It should be noted that our approach was not one of finding 'analogies' or points of correspondence between these institutions on the one hand and a domestic model on the other. What we attempted was to reconstruct the mode of reasoning on the part of those who participated more or less directly in the creation of these institutions, and to examine the part played by the domestic analogy in their thinking.

And, as summarized in the first part of the Conclusion, Chapters VIII - IX investigated in the light of five ideal-type approaches the merits of those proposals which were discussed in earlier chapters. It was shown that proposals involving the domestic analogy are often defective, but that the ideas of those who attempt to reject this analogy are not entirely flawless, and that the 'welfarist' approach, when supported by the expansion of universalism, will become more successful.

Throughout, care has been taken to present the outline of each

proposal accurately, and we have shown the extent to which and the ways in which the domestic analogy influenced the formation of ideas about the conditions of world order. This complements Walter Schiffer's major work, The Legal Community of Mankind in which he showed what made the twentieth century conception of world organization possible. We have provided an explanation of the vicissitude of thought since the early part of the nineteenth century which led eventually to the creation of the two twentieth century world organizations, the League of Nations and the United Nations. It may be that the history of ideas which led to the establishment of these institutions, like proverbial roads to Rome, can be traced back in other ways. This thesis drew special attention to the place of the domestic analogy in that history. The course we took, however, was not one of any number of equally important routes. The domestic analogy was significant in the period of our concern, despite its weaknesses revealed by our analysis, because many travellers we encountered en route themselves relied on this analogy.

NOTES

Introduction

1. H.J. Morgenthau, Scientific Man versus Power Politics (Chicago: University of Chicago Press, 1946) p.113.
2. C. Beitz, Political Theory and International Relations (Princeton: Princeton University Press, 1979) pp.69 & 179.
3. H. Bull, 'Society and Anarchy in International Relations' in H. Butterfield and M. Wight (eds.) Diplomatic Investigations (London: Allen & Unwin, 1966) pp.35-50 at p.35.
4. E.H. Carr, The Twenty Years' Crisis 1919-1939 (London: Macmillan, 1939).
5. See H. Suganami, 'The Structure of Institutionalism: An Anatomy of British Mainstream International Relations' in International Relations Vol.VII No.5 (May 1983) pp.2363-2381.
6. See A. Linklater, Men and Citizens in the Theory of International Relations (London: Macmillan/London School of Economics and Political Science, 1982) p.193; Moorhead Wright, 'Central but ambiguous: states and international theory' in Review of International Studies Vol.10 No.3 (July 1984) pp.233-237 at p.235.
7. Morgenthau, op.cit., p.41.
8. See R. Cobden, The Political Writings of Richard Cobden 2 Vols. (London: Ridgeway, 1867).
9. J.A. Hobson, Richard Cobden, The International Man (London: T. Fisher Unwin, 1918) pp.36-37.
10. See P. Renouvin, L'Idée de Fédération Européenne dans la Pénsee Politique du XIXe Siècle (Oxford: Clarendon Press, 1949) pp.5-6.

11. See A.J. Jacobs, Neutrality versus Justice (London: T. Fisher Unwin, 1917); W. Phillimore, Schemes for Maintaining General Peace, Foreign Office Handbooks No.160 (London: H.M. Stationery Office, 1920) pp.60-64. On Schvan's proposal, however, see A. Schvan, The Foundations of Permanent Peace (London: Richards, 1918) pp.152-153 where he states that a Central World Government would be superfluous.
12. See J. Bryce et al., Proposals for the Prevention of Future Wars (London: Allen & Unwin, 1917) pp.21-22 & 28. The Bryce group conceded that 'it might prove desirable and practicable that the members of the Union should create, concurrently with the setting up of the Council of Conciliation, an international executive authority with power to call into action the forces of the League, when the occasion should arise, and to direct operation in its name.' Ibid., pp.16-17. But such an authority was not envisaged in their project.
13. See W. Schiffer, The Legal Community of Mankind (New York: Columbia University Press, 1954) esp., pp.8-9, 29, 95 & 107-108. Schiffer's treatment of the idea of progress is satisfactory, and accordingly this is not discussed below. See *ibid.*, Part Two.
14. See Schiffer, *op.cit.*, p.95.
15. See M.G. Forsyth et al., The Theory of International Relations (London: Allen & Unwin, 1970) pp.121-125.
16. See Grotius, De Jure Belli ac Pacis Libri Tres, tr. of the text of the 1646 ed. by F.W. Kelsey (Oxford: Clarendon Press, 1925) Bk.I Chapter V Sections I & II; Bk. II Chapter XXV Sections VI & VII.
17. See Chapter V below.
18. Bull, 'Grotian Conception of International Society' in H. Butterfield and M. Wight (eds.) *op.cit.*, pp.51-73 at p.65.

19. See Grotius op.cit., Prolegomena esp., sections 39 & 40; Oppenheim, International Law 2 Vols., 1st ed. (London: Longmans, Green, 1905-6) Vol.I Chapter I, I Section 1.

NOTES

Chapter I

1. See A.M. James (ed.) The Bases of International Order (London: Oxford University Press, 1973) Preface.
2. On the rejection of the domestic analogy by Manning and his followers, see H. Suganami, 'The Structure of Institutionalism: An Anatomy of British Mainstream International Relations'. On Manning's insistence on the separateness of International Relations, see W.T.R. Fox, The American Study of International Relations (Columbia: Institute of International Studies, University of South Carolina, 1968) p.99. On the separateness of International Relations as an academic discipline, see W.C. Olson, 'The Growth of a Discipline' in B. Porter (ed.) The Aberystwyth Papers (London: Oxford University Press, 1972) pp.3-29, and W. Olson and N. Onuf, 'The Growth of a Discipline: Reviewed' in Steve Smith (ed.) International Relations: British & American Perspectives (Oxford: Blackwell in association with the British International Studies Association, 1985) pp.1-28.
3. C.A.W. Manning, 'The Future of the Collective System' in Problem of Peace Tenth Series Anarchy or World Order (London: Allen & Unwin, 1936) pp.152-177 at p.174. Another instance of Manning's use of the term is found in C.A.W. Manning (ed.) Peaceful Change: An International Problem (New York: Macmillan, 1937; Garland, 1972) p.180.
4. See H. Bull, 'Society and Anarchy in International Relations' in H. Butterfield and M. Wight (eds.) Diplomatic Investigations (London: Allen & Unwin, 1966) pp.35-50 at p.35 n.1. H. Bull, The Anarchical Society (London: Macmillan, 1977) p.ix. See also Suganami, op.cit.

5. Bull, 'Society and Anarchy in International Relations' p.35.
6. Bull, 'Society and Anarchy in International Relations'; 'The Grotian Conception of International Society' in Butterfield and Wight (eds.) op.cit., pp.50-73. See also Bull, 'Order vs Justice in International Society' in Political Studies Vol.XIX No.3 (September 1971) pp.269-283.
7. I. Clark, Reform and Resistance in the International Order (Cambridge: Cambridge University Press, 1980) pp.26-27, 33,49 & 56.
8. M. Walzer, Just and Unjust Wars (London: Allen Lane, 1978) pp.58 & 339 n.9. R. Falk, Legal Order in a Violent World (Princeton: Princeton University Press, 1968) p.60 n.27. See also Falk, 'The Interplay of Westphalia and Charter Conception of the International Legal Order' in R. Falk and C.E. Black (eds.) The Future of International Legal Order 4 Vols. (Princeton: Princeton University Press, 1969) Vol.I Trends and Patterns pp.32-70 at p.49 n.65.
9. D. Fromkin, The Independence of Nations (New York: Praeger, 1981) p.45 n.3 & Chapter 4.
10. Emphasis added. Thomas Hobbes, Leviathan (1651) edited and abridged with an introduction by John Plamenatz (London: Collins, 1962) pp.144-145.
11. F. Schuman, International Politics 7th ed. (New York: McGraw Hill, 1969) p.265. Schuman's view of the states system will be discussed in Chapter VI below.
12. See Spinoza, Tractatus Politicus Chapter III, Para. 11, The Political Works, ed. & tr. by A.G. Wernham (Oxford: Clarendon Press, 1958) p.295; Pufendorf, De Jure Naturae et Gentium Bk.II Chapter ii Section 4, tr. of the 1688 ed. by C.H. & W.A. Oldfather (Oxford: Clarendon Press, 1935) p.163; Wolff, Jus Gentium Methodo Scientifica Pertractatum tr. of the 1764 ed. by J.H. Drake (Oxford: Clarendon Press, 1934) Preface; and Vattel, Le Droit des Gens tr. of the 1758 ed. by C.G. Fenwick (Washington, D.C.:

Carnegie Institute of Washington, 1916) Preface. On Vattel's influence on Bull, see Bull, 'The Grotian Conception of International Society', and Suganami, 'The "Peace through Law" Approach: A Critical Examination of its Ideas' in T. Taylor (ed.) Approaches and Theory in International Relations (London: Longman, 1978) pp.100-121 at p.118.

13. See, for example, H. Lauterpacht, The Function of Law in the International Community (Oxford: Clarendon Press, 1933) Chapter XX.
14. Georg Jellinek, Allgemeine Staatslehre 3rd ed. by Walter Jellinek (Berlin: Springer, 1922) p.379.
15. Bull, The Anarchical Society pp.4-5.
16. This point can be inferred from Bull's statement that by 'world order' or 'order in the great society of all mankind' he means 'those patterns or dispositions of human activity that sustain the elementary or primary goals of social life among mankind as a whole'. See *ibid.*, p.20. By 'the elementary or primary goals of social life' he means 'the common goals of all social life', namely the limitation of violence, the keeping of promises and the stabilization of possession. See *ibid.*, p.19.
17. *Ibid.*, pp.53-65.
18. See, for example, an excerpt from Vattel's The Law of Nations in M.G. Forsyth et al (eds.) The Theory of International Relations: Selected Texts from Gentili to Treitschke (London: Allen & Unwin, 1970) pp.87-125 at p.97.
19. Bull, 'Society and Anarchy in International Relations' p.45.
20. *Ibid.*, pp.45-48.
21. The Anarchical Society, pp.65-74 and Part 2.

22. 'Society and Anarchy in International Relations' pp.48-50,
The Anarchical Society, pp.252-254, 261-264, and 283-288;
'The Grotian Conception of International Society' pp.69-73,
The Anarchical Society pp.142-145.
23. The Anarchical Society, Chapter 4 and pp.288-295.
24. J. Lorimer, The Institutes of the Law of Nations 2 Vols. (Edinburgh:
Blackwood, 1884) Vol.2 Bk.V p.186.
25. Ibid., p.190.
26. Ibid., pp.186-187.
27. Ibid., pp.197-216.
28. See, for example, Bull, 'The Grotian Conception of International
Society' pp. 52 & 65.
29. See Oppenheim, The Future of International Law tr. by J.P. Pate
from Die Zukunft des Völkerrechts (1911) (Oxford: Clarendon Press,
1921) pp.21-22. See also H. Lauterpacht, op.cit., p.404, and
Oppenheim, International Law 2 Vols., 1st ed. (London: Longmans,
Green, 1906) Vol.2 pp.55-56.
30. Oppenheim, International Law 2 Vols., 2nd ed. (London: Longmans,
Green, 1912) Vol.1 p.82.
31. Ibid.
32. Ibid.
33. Ibid.
34. H. Lauterpacht, Private Law Sources and Analogies of International
Law (With Special Reference to International Arbitration) (London:
Longmans, Green, 1927) pp.105-106, 161-167.

35. Ibid., pp.166-167.
36. Ibid., p.82, n.2.
37. See Lauterpacht, The Function of Law in the International Community Chapter XX.
38. Ibid., p.432.
39. Manning, 'The Legal Framework in a World of Change' in B. Porter (ed.) op.cit., pp.301-335 at p.319.
40. Falk, The Status of Law in International Society (Princeton: Princeton University Press, 1970) pp.viii-ix.
41. C.B. Joynt and P.E. Corbett, Theory and Reality in World Politics (London: Macmillan, 1978) p.48.
42. See, for example, S.J. Rosen and W.S. Jones, The Logic of International Politics (Cambridge, Mass.: Winthrop, 1980) 3rd ed. pp.472-492.
43. Kenneth Waltz, for example, stresses the importance of the de-centralized structure of the international system as the 'permissive' and 'underlying' cause of war. See his Man, the State and War (New York: Columbia University Press, 1954) esp., Chapter VIII, and Theory of International Politics (Reading, Mass.: Addison-Wesley, 1979).
44. See H. Lauterpacht, Private Law Sources and Analogies of International Law. See also Suganami, 'A Note on the Origin of the Word "International"' in British Journal of International Studies Vol.4 No.3 (October 1978) pp.226-232.
45. T.E. Holland, Studies in International Law (Oxford: Clarendon Press, 1898) p.152.

46. Joynt and Corbett, op.cit., p.35. See also H. Lauterpacht, 'The Grotian Tradition in International Law' in The British Year Book of International Law Vol.XXIII (1946) pp.1-53 at pp.26-30.
47. M. Donelan, 'Grotius and the Image of War' in Millennium (Winter 1983/4) Vol.12 No.3 pp.233-243.
48. For example, Grotius, De Jure Belli ac Pacis Libri Tres, Bk.II Chapter I Section XVIII, Bk.II Chapter XXIII Sections VII & VIII, tr. of the text of the 1646 ed. by F.W. Kelsey (Oxford: Clarendon Press, 1925) pp.185, 560-563.
49. Among them, for example, are E. York, Leagues of Nations, Ancient, Mediaeval, and Modern (London: Swarthmore, 1919) and S.J. Hemleben, Plans for World Peace through Six Centuries (Chicago: The University of Chicago Press, 1943).
50. M. Forsyth, Unions of States (Leicester: Leicester University Press, 1981) p.87.
51. Ibid. See Abbot St. Pierre, A Project for Settling an Everlasting Peace in Europe tr. of Projet de Paix Perpetuelle (London: Printed for J.W., 1714). References to the Germanic Body, Helvetic Union and the Netherlands are particularly frequent in the first two 'Discourses' of the Project. His description of the Empire is found, for example, on pp.30-31. His account of the origin of the Empire, however, is unhistorical. See the Second Discourse. Although the 'Germanic Body' is repeatedly mentioned by Saint-Pierre in his Project as his model, it is somewhat unlikely that he used it more than as a very general guideline. His scheme is extremely detailed in comparison to a rather brief sketch he gives of the institutional structure of the Germanic Empire, and there are many features of his Project which cannot have been borrowed from the model of the Empire.
52. See C.J. Friedrich, Inevitable Peace (Cambridge, Mass.: Harvard University Press, 1969) esp., Chapter VI.

53. M. Forsyth et al., The Theory of International Relations p.183.
54. Ibid., p.253.
55. Ibid., pp.253-254. Kant finds an example of such a congress in the assembly of states-general at the Hague in the first half of the eighteenth century. It is curious that Kant should have thought that 'To this assembly, the ministers of most European courts and even of the smaller republics brought their complaints about the hostilities carried out by one against another' and that 'Thus, all of Europe thought of itself as a single federated state, which was supposed to fulfil the function of judicial arbitrator in these public disputes.' Ibid.
56. Forsyth, Unions of States p.103.
57. It must be stressed that Kant, unlike many writers examined in this thesis, was not engaged in producing a blue-print for peace with the view to its adoption in the immediate or near future. See Forsyth, Unions of States p.103. See also F.H. Hinsley, Power and the Pursuit of Peace Chapter 4; W.B. Gallie, Philosophers of Peace and War (Cambridge: Cambridge University Press, 1978) Chapter 2; and A. Linklater, Men and Citizens in the Theory of International Relations Chapter 6.
58. Another example is Edwin Borchard whose ideas will be examined in detail in Chapter VI below. See his 'Realism v. Evangelism' in American Journal of International Law Vol.28 No.1 (Jan. 1934) pp.108-117.

NOTES

Chapter II

1. See, on the nature of analogical reasoning, J.S. Mill, A System of Logic: Ratiocinative and Inductive (London: Routledge, 1905) pp.324-329.
2. D.W. Bowett, Self-Defence in International Law (Manchester: Manchester University Press, 1958) Chapter X.
3. M. Akehurst, A Modern Introduction to International Law 3rd ed. (London: Allen & Unwin, 1977) pp.244-245.
4. Bull, 'Society and Anarchy in International Relations' p.35.
5. Manning, 'The Future of the Collective System' p.174.
6. See supra, pp.28-29.
7. See supra, p.21.
8. See Bull, The Anarchical Society esp., Chapters 1 & 4. On p.35 of 'Society and Anarchy in International Relations', however, Bull does not draw a sharp distinction between 'peace' and 'orderly social life'.
9. See, for example, David Davies, The Problem of the Twentieth Century (London: Benn, 1930).
10. See Abbot St. Pierre, op.cit., pp.106ff.
11. See Chapter VI below.
12. See H. Kelsen, General Theory of Law and State tr. by Anders Wedberg (New York: Russell & Russell, 1945) pp.364-365.

13. See The Anarchical Society Part Two.
14. I.L. Claude, Jr., Power and International Relations (New York: Random House, 1962) pp.255-271 at p.271.
15. E.H. Carr, The Twenty Years' Crisis 1919-1939 (London: Macmillan, 1939) pp.269ff. J.L. Brierly, The Outlook for International Law (Oxford: Clarendon Press, 1944) pp.46ff.
16. Bull, 'Society and Anarchy in International Relations' p.48.
17. Quoted in H.J. Morgenthau, Politics among Nations 5th ed. (New York: Knopf, 1973) p.170 n.5.
18. M. Wight, 'The Balance of Power and International Order' in A. James (ed.) The Bases of International Order pp.85-115 at p.86.
19. See E.D. Dickinson, 'The Analogy between Natural Persons and International Persons in the Law of Nations' in Yale Law Journal Vol.26 (1916-1917) pp.564-591.
20. Oppenheim, The Future of International Law pp.16 & 21-22.
21. Bull, 'Society and Anarchy in International Relations' p.35.
22. Oppenheim, The Future of International Law pp.14 & 51-52.
23. W. Jay, War and Peace: The Evils of the First and a Plan for Preserving the Last, reprinted from the original ed. of 1842 with an introduction by J.B. Scott (New York: Oxford University Press, 1919) pp.52-53. Jay's plan for an arbitration clause is found on p.55.
24. See V. Ehrenberg, The Greek State (Oxford: Blackwell, 1960) Chapter III. Also there were a hundred cases of Papal arbitration in Italy alone in the 13th century. See D. Thomson et al., Patterns of Peacemaking (London: Kegan Paul, Trench, Trubner, 1945) p.129.

25. See H.J. Morgenthau, 'The Impartiality of the International Police' in S. Engel & R.A. Métaill. (eds.) Law, State and International Legal Order (Knoxville: The University of Tennessee Press, 1964) pp.210-223 at pp.211ff.
26. Here, by 'sovereignty' is meant the 'legal independence' of the state. A 'sovereign state' therefore means a 'legally independent' political community. See Suganami, 'International Law' in J. Mayall (ed.) The Community of States (London: Allen & Unwin, 1982) pp.63-72 at pp.63-65.
27. Throughout this thesis 'international government', in contradistinction to 'world state' or 'world government', is taken to mean a comprehensive form of international organization of the kind proposed by James Lorimer not undermining the sovereignty of the member-states. Demarcation lines between 'confederation' and 'international government', and between the latter and 'international organization' are not rigid. It is possible to define 'confederation' so broadly as to encompass both 'international government' and 'international organization'. See, for example, Kelsen op.cit., pp.316ff, where the League of Nations is treated as an instance of a confederacy. Here, however, I took 'confederation' to mean an advanced form of international government.
28. See J.L. Kunz, The Changing Law of Nations (Ohio State University Press, 1968) Chapter XXXIII Supranational Organs.
29. F. Schuman, The Commonwealth of Man: An Inquiry into Power Politics and World Government (London: Robert Hale, 1954) pp.419-420.
30. Bull, 'Grotian Conception of International Society' pp.53 & 65.
31. Ibid., p.65.
32. See Oppenheim, The Future of International Law p.16.

33. See James Bryce et al., Proposals for the Prevention of Future Wars (London: Allen & Unwin, 1917) pp.14-15.
34. Bull, The Anarchical Society pp.20-22.

NOTES

Chapter III

1. Hinsley, Power and the Pursuit of Peace Chapters 6 & 7.
2. F.M.H. Markham (ed. & tr.) Henri Comte de Saint-Simon (1760-1825): Selected Writings (Oxford: Blackwell, 1952) pp.28-68.
3. Ibid., p.34.
4. Ibid., pp.31-32, 39.
5. See *ibid.*, Bk.I Chapter IV.
6. Ibid., pp.41-45.
7. Ibid., pp.46ff.
8. Ibid., p.48.
9. Ibid.
10. Ibid.
11. See *ibid.*, pp.38 & 46.
12. Ibid., p.41.
13. See S.A. de Smith, Constitutional and Administrative Law 2nd ed. (Harmondsworth: Penguin Education, 1973) p.58. See also W. Blackstone, Commentaries on the Laws of England in Four Books 5th ed. (Oxford: Clarendon Press, 1773) Bk.I pp.261 & 154; and E. Halévy, A History of the English People in 1815 Bk.I Political Institutions (London: Penguin Books, 1937) pp.31-32 n.2.

14. Markham, op.cit., p.47.
15. Ibid., pp.46-47.
16. Ibid., p.47.
17. Ibid., p.46.
18. Ibid., p.47.
19. See A. Cobban, 'The "Middle Class" in France, 1815-1848' in his France since the Revolution (London: Jonathan Cape, 1970) pp.7-21.
20. Markham, op.cit., p.48.
21. Ibid., p.47.
22. Ibid., pp.34-35.
23. See G.H. Sabine, A History of Political Thought 3rd ed. (London: Harrap, 1963) pp.558ff.
24. Quoted in Sabine, op.cit., p.560 from Bolingbroke, A Dissertation upon Parties. See also R. Shackleton, 'Montesquieu, Bolingbroke, and the Separation of Powers' in French Studies (1949) pp.25-38.
25. Markham, op.cit., p.43.
26. Ibid., pp.55-57.
27. See J.P.T. Bury, France 1814-1940 2nd ed., (London: Methuen, 1950) pp.1-9. See also J. & M. Lough, An Introduction to Nineteenth Century France (London: Longman, 1978) pp.44-46.
28. See Bury op.cit., Appendix III.
29. Markham, op.cit., Bk.III Chapters IV-XII.

30. Ibid., pp.61, 63 & 66.
31. Ibid., p.49.
32. Ibid., pp.49 & 62.
33. See supra, pp.56-59.
34. See G. Ionescu (ed.) The Political Thought of Saint-Simon (London: Oxford University Press, 1976) Introduction, esp., p.18.
35. See P. Renouvin, L'Idée de Fédération Européenne dans la Pensée Politique due XIXe Siècle pp.6-7.
36. See *ibid.*, p.5. See also Hinsley, *op.cit.*, Chapter 6.
37. See, for example, D.L. Dodge, War Inconsistent with the Religion of Jesus Christ with an Introduction by E.D. Mead (Boston: Gin, 1905); N. Worcester, 'A Solemn Review of the Custom of War' printed in The Society for the Promotion of Permanent and Universal Peace Tract No.1 (London, 1822).
38. K.N. Waltz, Man, the State and War (London: Columbia University Press, 1954). See also Renouvin, *op.cit.*, pp.5-6.
39. See A.C.F. Beales, The History of Peace (London: Bell, 1931) *passim*.
40. W. Ladd, An Essay on a Congress of Nations for the Adjustment of International Disputes without Resort to Arms reprinted from the original of 1840 with an introduction by J.B. Scott (New York: Oxford University Press, 1916) Chapters III-VI.
41. *Ibid.*, pp.xlix-l.
42. *Ibid.*, p.5.
43. *Ibid.*, pp.77-78.

44. Ibid., p.9.
45. Ibid., p.10.
46. Ibid., p.34.
47. Ibid., Chapters III-V.
48. Ibid., p.13.
49. Ibid., p.44.
50. Ibid.
51. Ladd's main source of information is Abraham Rees' account in his Cyclopaedia. See Ladd, op.cit., pp.41-42. See also A. Rees with the Assistance of Eminent Professional Gentlemen, The Cyclopaedia: or Universal Dictionary of Arts, Science, and Literature 39 Vols. (London: Longman, 1819) Vol.34 'Switzerland'. Other sources Ladd refers to are, J. Mallet du Pan, History of the Destruction of the Helvetic Union published in London in 1798, and an article in the Christian Spectator of 1832. Ladd, op.cit., pp.42-44. Ladd does not obtain any information regarding the structure and function of the 'court' of the Helvetic Union from either of these two sources. The process for the peaceful settlement of disputes which is close to an inter-cantonal court is stipulated by the treaty of perpetual league concluded on 1 August 1291 between the three forest communities of Switzerland. It says: 'If indeed dissention should arise between the confederates [conspiratos] the more prudent of the confederates are bound to intervene [debent accedere] to settle the difference between the parties as to them it shall seem expedient. And if one party should reject that ordinance the other confederates are bound to declare themselves against them. ... If indeed war or discord shall have arisen between any of the confederates, if one party of the contestants [litigantium] refuses to receive satisfaction by the adjudgement of a composition, the confederates are bound to defend the other party.' See A.P. Newton,

Federal and Unified Constitutions (London: Longmans, 1923) pp.42-43. None of the three agreements mentioned in Rees' account, the Treaty of Sempach (1393), the Convention of Stantz (1481) and the Treaty of Peace at Arau (1712), refers to the existence of 'the court of judges or arbitrators' empowered to settle disputes 'arising between any two or more members of the Union', although the Treaty of Sempach stipulates regulations concerning trials and punishment in each canton of deserters and criminals, and the Convention of Stantz contains rules concerning treatment of the instigators of separatist activity. The French text of the Treaty of Sempach is in J. Dumont (ed.) Corps Universel Diplomatique du Droit des Gens 8 Vols. (Amsterdam: Brunel, 1726-1731) Vol.II Pt.I pp.235-236. The German text of the same is in W. Oechsli, Quellenbuch zur Schweizergeshichte (Zürich: F. Schulthers, 1886) pp.110-112. The German text of the Convention of Stantz of 22 December 1481 is in Oechsli, op.cit., pp.203-206. The German text of the Treaty of Arau is in C. Parry (ed.) The Consolidated Treaty Series (Dobbs Ferry: New York: Oceana, 1969) Vol.27 pp.305-313. According to Forsyth, however, the Diet, which was not explicitly provided for in the basic treaties of the Helvetic Union, 'exercised undefined powers of a legislative, judicial, and executive nature.' See his Unions of States p.24. Forsyth warns that we must not read into the old Swiss Confederation 'the structures and concepts of later times.' Ibid., p.19. This is precisely what Ladd appears to have done.

52. Ladd, op.cit., pp.42-43. Ladd's source is an article from the Christian Spectator of 1832, and the picture of the Swiss Diet Ladd obtained from this source is mostly accurate. See Oechsli, History of Switzerland: 1499-1914 tr. by E. & C. Paul (Cambridge: Cambridge University Press, 1922) esp., pp.21-22, 249ff. See also C.J. Hughes, The Parliament of Switzerland (London: Cassell, 1962) pp.3ff, and G.A. Coddington, Jr., The Federal Government of Switzerland (London: Allen & Unwin, 1961) pp.21ff.

53. Ladd, op.cit., p.9.

54. Ibid., p.8.

55. Ibid., p.35.
56. G. Schwarzenberger, William Ladd Preface by J.B. Scott 2nd ed. (London: Constable, 1936) p.xv. See also C. Herman Pritchett, The American Constitution 3rd ed. (New York: McGraw-Hill, 1977) pp.80-81.
57. See Newton, op.cit., pp.70-77.
58. Schwarzenberger, op.cit., p.xiv.
59. Newton, op.cit., pp.66-70 esp., pp.68-69.
60. See Pritchett, op.cit., p.3.
61. W.P. Adams, The First American Constitutions tr. by R. & R. Kimber (Chapel Hill: University of North Carolina Press, 1973) p.269. See also Ladd, op.cit., p.iv.
62. Ladd, op.cit., p.86.
63. Ibid., p.44.
64. Ladd had proposed earlier, in his petition to the U.S. Congress, a compulsory adjudication of international disputes by a Court of Nations, and it appears to be tactical considerations that led him to advance a less demanding scheme in his 1840 essay. See Ladd, op.cit., pp.113 & 130. See also Schwarzenberger, op.cit., p.20.
65. See supra, pp.28-29.
66. Lorimer, 'Le Problèm Final du Droit International' in Revue de Droit International Vol.IX No.II (1877) pp.161-206.
67. J.C. Bluntschli, 'Die Organisation des Europäischen Staatenvereines' reprinted in his Gesammelte Kleine Schriften 2 Vols. (Nördlingen: Beck, 1879-1881) Vol.II pp.279-312. Bluntschli consistently spelled 'Staat' as 'Stat'. Hence 'Statenverein' etc.

68. Ibid., pp.293-294.
69. Lorimer, The Institutes of the Law of Nations Vol.2 pp.275-276.
70. On 'Delegations', see K.C. Wheare, Federal Government 4th ed. (London: Oxford University Press, 1963) p.5. The original text of the constitution promulgated on 21st December 1867 is found in E. Bernazik, Die Österreichischen Verfassungsgesetze Zweite Auflage (Wien: Manzche, 1911) pp.439-452. See also A.J. May, The Hapsburg Monarchy: 1867-1914 (Cambridge, Mass.: Harvard University Press, 1951) pp.38-41.
71. Lorimer's project is found in his The Institutes of the Law of Nations Vol.2 pp.279-287. For the likely domestic models, the following items have been consulted: O.Hood Phillips, Constitutional and Administrative Law 4th ed. (London: Sweet & Maxwell, 1967) esp., pp.101-102; B. Schwartz, American Constitutional Law (Cambridge: Cambridge University Press, 1955) esp., pp.59 & 99; A.P. Newton, op.cit., pp.270ff; C.J. Hughes, op.cit., p.xiii; G.A. Coddington, Jr., op.cit., pp.69ff.
72. See H.B. Adams, Bluntschli's Life-Work Presented to the Seminary of Historical and Political Science (Baltimore: Johns Hopkins University, 1884).
73. Lorimer, The Institutes of the Law of Nations Vol.2 pp.279 & 283.
74. Bluntschli, op.cit., Vol.II p.299.
75. Ibid., pp.307-308.
76. Ibid., pp.297 & 309.
77. Ibid., pp.309-310.
78. Lorimer, The Institutes of the Law of Nations, Vol.2 pp.245ff & 279. Bluntschli, op.cit., p.298.

79. Lorimer, The Institutes of the Law of Nations Vol.2 pp.194, 218ff. Bluntschli, op.cit., p.293.
80. Lorimer, The Institutes of the Law of Nations Vol.2 pp.193-194. Bluntschli, op.cit., p.300.
81. Bluntschli, op.cit., p.292. Lorimer, *ibid.*, pp.240ff.
82. Bluntschli, op.cit., p.293.
83. Lorimer, The Institutes of the Law of Nations Vol.2 pp.240ff.
84. *Ibid.*, pp.279-280.
85. *Ibid.*, p.280.
86. Lorimer, The Institutes of the Law of Nations, Vol.2 pp.240-245. Lorimer believed that the process of democratization was a universal trend. 'Even in non-constitutional countries — Russia, I believe, being no exception — the monarch no longer carries the national will in his pocket', he remarked. See *ibid.*, p.240. However, it was particularly in the light of the rise of parliamentary democracy in Britain, it seems, that Lorimer was prompted to argue for establishing a link between national legislatures and his proposed international government. See *ibid.*, pp.240ff.
87. Bluntschli, op.cit., Vol.2 pp.302ff.
88. J. Bryce, The Holy Roman Empire new ed. (London: Macmillan, 1928) p.480. See also A.P. Newton, op.cit., pp.239-262.
89. Bluntschli, op.cit., Vol.II p.305. See Articles V, VII and XXVIII of the German Constitution reprinted in Newton, op.cit., pp.239ff.
90. See Article LXXVI of the Constitution reprinted in Newton, *ibid.*

91. Bluntschli, op.cit., Vol.2 pp.305ff.
92. Ibid., p.299.
93. Bluntschli, Das Moderne Völkerrecht der Civilisirten Staten
(Nördlingen: Beck, 1878) pp.90-92.
94. Bluntschli, Gesammelte Kleine Schriften Vol.2 pp.300ff.
95. H.B. Adams, op.cit., p.14ff. See also J.L. Snell, The Democratic Movement in Germany 1789-1914 ed. and completed by H.A. Schmitt
(Chapel Hill: The University of North Carolina Press, 1976)
Chapter VII.
96. Bluntschli, Gesammelte Kleine Schriften Vol.2 p.312.

NOTES

Chapter IV

1. Markham, op.cit., pp.28-29 & 40. Ladd, op.cit., Chapter XI.
Saint-Simon stressed the intellectual and scientific progress of mankind while Ladd considered moral improvement as the great force of human history.
2. Lorimer, The Institutes of the Law of Nations Vol.2 pp.193-197 & 248.
3. Bluntschli, Gesammelte Kleine Schriften vol.2 p.312.
4. Rousseau, for example. See M.G. Forsyth et al., The Theory of International Relations pp.131-166.
5. Markham, op.cit., p.50.
6. Ladd, op.cit., pp.84-85.
7. Lorimer, The Institutes of the Law of Nations Vol.2 pp.186-187.
8. For example, the unification of Germany with the Reichstag as one of its constitutional organs. See Snell, op.cit., pp.174-176; H.B. Adams, op.cit., pp.15 & 18.
9. See Ladd, op.cit., pp.45-47. Lorimer's and Bluntschli's attitudes towards the Concert of Europe are explained in C. Holbraad, The Concert of Europe: A Study in German and British International Theory 1815-1914 (London: Longman, 1970) pp.65-70 & 187. For the development of administrative organizations, see J.L. Kunz, 'Experience and Techniques in International Administration' in his The Changing Law of Nations Chapter XXV.
10. See J.B. Scott, The Hague Peace Conferences of 1899 and 1907 2 Vols. (Baltimore: Johns Hopkins Press, 1909).

11. W.E. Hall, A Treatise on International Law 6th ed., edited by J.B. Atlay (Oxford: Clarendon Press, 1909) p.v.
12. However, the failure of the Declaration of London to secure ratification was regarded as fatal to the proposal for an International Prize Court, and accordingly Hague Convention XII, proposing to establish such a court, remained unratified. See Oppenheim, International Law 2 Vols. 7th ed. by H. Lauterpacht (London: Longman, 1952) Vol.II p.876.
13. T.J. Lawrence, The Principles of International Law 4th ed. (Norwood, Mass.: Norwood Press, 1910) p.iv.
14. Among them are: W.E. Hall, A Treatise on International Law 4th ed. (1895), 5th ed. (1904), 6th ed. (1909); T.J. Lawrence, The Principles of International Law, 1st ed. (1895) ... 4th ed. (1910).
15. G. Keeton, National Sovereignty and International Order (London: Peace Book Company, 1939) p.68.
16. D. Mitrany, The Functional Theory of Politics Introduction by Paul Taylor (London: Martin Robertson/London School of Economics and Political Science, 1975) pp.4-5.
17. See supra, pp.29-30.
18. J.B. Scott (ed.) The Proceedings of the Hague Peace Conferences: Translations of Official Texts, The Conference of 1899 (New York: Oxford University Press, 1920) pp.v-vi.
19. See supra, p.54.
20. See supra, p.77.
21. W. Schücking, The International Union of the Hague Conferences tr. from the German, Der Staatenverband der Haager Konferenzen by C.G. Fenwick (Oxford: Clarendon Press, 1918) Chapters II & III. Fenwick, however,

ignores the usual distinction between Staatenbund (Confederation) and Bundesstaat (Federation), and translates Schücking's 'Staatenbund' consistently as 'federation', which obscures Schücking's arguments.

22. Schücking, The International Union of the Hague Conferences p.282.
23. Ibid., pp.153-277.
24. Ibid., p.247 n.1.
25. Ibid., pp.247ff.
26. See Lorimer, The Institutes of the Law of Nations Vol.2 pp.284-285.
27. Schücking, op.cit., pp.278ff.
28. Vollenhoven's plan involved the establishment of an international navy, to be composed of national contingents and directed by an international body. The navy was to act as an executive organ to enforce an award of an international court and to suppress violations of neutrality by belligerent states. See Schücking, op.cit., pp.300ff.
29. Ibid., pp.304ff.
30. Ibid., pp.305ff.
31. Ibid., pp.313-314.
32. Vollenhoven, 'Holland's Vocation' etc., in M. Nijhoff (ed.) War Obviated by an International Police: A Series of Essays written in various countries (The Hague: Nijhoff, 1915) pp.1-82.
33. For instance, Max Waechter, a German naturalized in Britain, who appears to have spent much of his time and wealth for the promotion of public welfare and world peace, took up in 1909 the idea of the United States of Europe on the model of the U.S.A., and founded

in 1913 a European Unity League. See Max Waechter, How to Make War Impossible: The United States of Europe (London: Twentieth Century Press, 1912) esp., pp.4-5. See also his The European Unity League: An Instrument for Carrying Out the Greatest and Most Important Social Reform (London: The European Unity League, 19??).

34. Lawrence, The Principles of International Law 4th ed. p.iv. By a High Court of Arbitral Justice was meant at that time an international court of justice rather than a court of arbitration. See J.B. Scott (ed.) The Hague Peace Conferences of 1899 and 1907 Vol.I pp.423ff, and H. Wehberg, The Problem of an International Court of Justice tr. by C.G. Fenwick (Oxford: Clarendon Press, 1918) pp.125-127.
35. Lawrence, The Principles of International Law 4th ed., p.v. See, for a similar view, Henri La Fontaine, 'The Existing Elements of a Constitution of the United States of the World' in International Conciliation No.47 (October 1911) pp.3-13.
36. See supra, pp.29-30.
37. Oppenheim (ed.) The Collected Papers of John Westlake on Public International Law (Cambridge: Cambridge University Press, 1914) p.x.
38. Oppenheim, The Future of International Law esp., pp.vi, 5 & 17.
39. Compare Oppenheim, International Law 1st ed. Vol.II p.56 and 2nd ed. Vol.II p.56.
40. Oppenheim himself never stated so clearly that this was his position. However, this can be inferred from his writings. See, for example, his The Future of International Law pp.21-22, and International Law 1st ed. Vol.II pp.55-56. Hersch Lauterpacht agrees that this was Oppenheim's view of international law. See H. Lauterpacht, The Function of Law in the International Community p.404.

41. Oppenheim, The Future of International Law p.54.
42. Ibid., pp.52-53.
43. Ibid., p.53. The metaphor of 'machinery', which Oppenheim uses to refer to a legal institution is perhaps indicative of the belief in progress of his time which was backed by rapid technological developments. The word 'machinery' has come to be used to refer to legal institutions so commonly that it is now a 'dead' metaphor.
44. Ibid., p.17. See also J.H. Latané (ed.) Development of the League of Nations Idea : Documents and Correspondence of Theodore Marburg 2 Vols. (New York: Macmillan, 1932) Vol.2 p.805.
45. Oppenheim, The Future of International Law pp.51-52.
46. See supra, p.30.
47. See Otfried Nippold, The Development of International Law after the World War tr. by A.S. Hershey with an Introduction by J.B. Scott (Oxford: Clarendon Press, 1923) p.v. In this Chapter we are concerned with Nippold's views of international law before his experience of the First World War.
48. Oppenheim, The Future of International Law pp.48-49.
49. Oppenheim, International Law 2nd ed. Vol.I p.82.
50. Oppenheim, The Future of International Law p.48.
51. Otfried Nippold, Die Fortbildung des Verfahrens in Völkerrechtlichen Streitigkeiten (Leipzig: Duncker & Humblot, 1907). See esp., pp.150-151.
52. Nippold, Die Zweite Haager Friedenskonferenz 2 Vols, (Leipzig: Duncker & Humblot, 1908) Vol.1 pp.221ff.

53. See, for example, Oppenheim, International Law Vol.I 8th ed. by H. Lauterpacht (London: Longman, 1955) pp.87-88.
54. See Nippold, Die Fortbildung des Verfahrens in Völkerrechtlichen Streitigkeiten pp.148-168.
55. Nippold's own summary of his proposal before the First World War is found in his The Development of International Law after the World War, pp.13-26.
56. See J.B. Scott, The Hague Peace Conferences of 1899 and 1907 Vol.1 p.146.
57. See Karl von Stengel, Weltstaat und Friedensproblem (Berlin: Reichl, 1909) Chapter I.
58. Ibid., pp.7-8. Stengel's view of war is explained in *ibid.*, Chapter VI.
59. Stengel, however, was in favour of developments in the laws of war. See *ibid.*, pp.44-45 & 71.
60. Schücking, *op.cit.*, p.93 n. & p.208.
61. Stengel, *op.cit.*, Chapter VII.
62. See Thomas Baty, Alone in Japan: The Reminiscence of an International Jurist Resident in Japan 1916-1954 ed. by M. Hasegawa (Tokyo: Maruzen, 1959).
63. T. Baty, The Canons of International Law (London: John Murray, 1930) pp.25-27.
64. Ibid., p.27.
65. Baty, International Law (London: John Murray, 1909) pp.1ff, esp., pp.8-9.

66. Ibid., p.9.
67. Ibid., p.10.
68. Ibid., a similar view was expressed about the same time by Elihu Root in his 'The Sanction of International Law' in American Journal of International Law Vol.2 No.3 (1908) pp.451-457.
69. Baty, International Law p.11.
70. Ibid., pp.20-21.
71. H. Wehberg, op.cit., esp., p.241.
72. See Baty, International Law Chapters VII-VIII.
73. See supra, pp.53-55.
74. See, for example, Wehberg, op.cit. The sociologist, Georg Simmel once observed that the more closely contestants resemble each other, the more intense is a conflict between them. This seems precisely to have been the case with Oppenheim's attitude towards someone like Nippold. See G. Simmel, Conflict tr. by K.H. Wolff, The Web of Group-Affiliations tr. by R. Bendix, with a Foreword by E.C. Hughes (New York: The Free Press, 1955) pp.43ff.
75. See H. Lauterpacht, The Function of Law in the International Community p.412.
76. See Heinrich von Treitschke, Politics abridged, edited, and with an introduction by Hans Kohn (New York: Harcourt, Brace & World, 1963) esp., Fifth Book: The State in International Relationships.

NOTES

Chapter V

1. See C. van Vollenhoven, 'Holland's vocation' in War Obviated by an International Police pp.1-13.
2. See supra, p.98.
3. See T.J. Lawrence, The Principles of International Law 4th ed. Preface.
4. See J.B. Scott, The Hague Peace Conferences of 1899 and 1907 Vol.II pp.289-291.
5. Latané (ed.) op.cit., Vol.II p.615.
6. Oppenheim, International Law 3rd ed. (1920-21) Vol.2 p.335.
7. Ibid., Vol.1 pp.291ff at p.297.
8. Ibid., p.298.
9. Ibid., p.294.
10. Ibid. Oppenheim's remark that he considered a 'super-State' as a 'Utopia' is noteworthy since this implies that he was not opposed to it in principle. See *ibid.*
11. See H. Lauterpacht, The Function of Law in the International Community p.432 n.3. Compare Franz von Liszt, Das Völkerrecht Zehnte, umgearbeitete Auflage (Berlin: Springer, 1915) pp.8-10 with his Das Völkerrecht Elfte Auflage (Berlin: Springer, 1918) p.8.
12. See Nippold, The Development of International Law after the World War pp.34-35.

13. Ibid., pp.35-36.
14. Ibid., pp.58ff.
15. See P.M. Brown, 'International Administration' in J.B. Moore et al., Symposium on International Law: Its Origin, Obligation, and Future, reprinted from Proceedings American Philosophical Society Vol.LV (1916) pp.291-329 at pp.312-322.
16. See Latané (ed.) op.cit., Vol.II pp.773-775.
17. For the Fabian Society programme, see L.S. Woolf, International Government (New York: Brentano's, 1916; Garland Publishing, 1971) pp.371ff, esp., pp.378-379.
18. See Judicial Settlement of International Disputes No.21 (1915)
19. Latané (ed.) op.cit., Vol.II pp.713, 767 & 851.
20. Ibid., Vol.II pp.703ff and Vol.I passim.
21. Ibid., Vol.II pp.790ff.
22. Quoted in Hemleben, op.cit., pp.152-153.
23. Bryce et al., op.cit., pp.14-15. See also Carnegie Endowment for International Peace, Division of International Law, Treaties for the Advancement of Peace between the United States and Other Powers Negotiated by Honorable William Bryan, Secretary of State of the United States with an Introduction by J.B. Scott (New York: Oxford University Press, 1920).
24. See M.E. Curti, Bryan and World Peace (New York: Octagon Press, 1969) p.145.
25. See W.J. Bryan and M.B. Bryan, The Memoirs of William Jennings Bryan (Philadelphia: The United Publishers of America, 1925) pp.384ff.

According to Principles of Labor Legislation rev.ed. (New York: Harper, 1927) by J.R. Commons and J.B. Andrews, the system of compulsory investigation accompanied by prohibition of strikes and lockouts pending the completion of the investigation and the publication of recommendations is 'the characteristic feature of the Canadian Industrial Disputes Investigation Act of 1907, copied by Colorado in 1915'. (p.137) According to the authors, although in the United States there are a score or so states in which compulsory investigation is provided for, Colorado is the only state that has copied the Canadian act forbidding strikes or lockouts pending investigation and recommendation. (pp.148-149) See also R. Ginger (ed.) William Jennings Bryan: Selections (Indianapolis: Bobbs-Merrill, 1967) pp.191-193.

26. See W.J. Bryan and M.B. Bryan, *op.cit.*, p.384.
27. See D.H. Miller, The Drafting of the Covenant 2 Vols. (New York: G.P. Putnum's Sons, 1928) Vol.I p.386 for a newspaper comment which asserted that the Covenant attempted to create a world state in which America would become a junior partner, and p.387 for a suggestion that the world 'constitution' be avoided in the Preamble of the Covenant as that word connoted to American students of law and history the formation of new world state. Similarly, the 'Executive Council' was reduced to 'Council', the 'Body of Delegates' became 'Assembly'. the term 'League' was preferred to 'Union', and the 'Chancellor' became 'Secretary-General'. See Miller, *ibid.*, Vol.I pp.363-364, 403; 142; 220-221. It may be added here that a similar consideration led the United States at the Dumbarton Oaks Conference, which met in 1944 to prepare a proposal for the United Nations Charter, to oppose the Soviet suggestion that the new organization be named 'World Union'. See R.B. Russell, A History of the United Nations Charter: The Role of the United States 1940-1945 assisted by J.E. Muther (Washington, D.C.: The Brookings Institution, 1958) p.419.
28. The Bryce group proposal was not merely an attempt to generalize the Bryan treaties, but an element of coercion was to be added to the idea of a 'cooling-off' period. Moreover, while the group never

- explicitly based their proposal on the domestic analogy, they nevertheless utilized a set of concepts borrowed from domestic organization, such as 'executive authority' and 'legislative body' in their discussion. It is noteworthy that G.L. Dickinson, a member of the group, said of his own proposal, which was virtually identical with the group's proposal, that it constituted a preliminary step towards the ultimate federal goal. See Bryce et al., op.cit., pp.16, 17 & 28. See also G.L. Dickinson, After the War (London: Fifield, 1915) p.34.
29. See Alfred Zimmern, The League of Nations and the Rule of Law 1918-1935 2nd ed. (London: Macmillan, 1939) pp.197-209 at p.204.
 30. Ibid., Chapter VII. See ibid., p.191.
 31. Public Record Office, FO 371/4353, 149-151.
 32. Zimmern, op.cit., pp.192 & 204.
 33. See M. Hankey, 'Diplomacy by Conference' in The Round Table (March 1921) pp.287-311 esp., at pp.289-290, 292 & 297. See also G.E.H. Palmer (Compiler) Consultation and Co-operation in the British Commonwealth: A Handbook on the Methods and Practice of Communication and Consultation between the Members of the British Commonwealth of Nations with an introduction by Professor A. Berriedale Keith on the Constitutional Development of the British Empire in regard to the Dominions and India from 1887 to 1933 (London: Oxford University Press, 1934) pp.106ff.
 34. J.C. Smuts, The League of Nations: A Practical Suggestion (London: Hodder & Stoughton, 1918) p.32.
 35. The idea of regular conference was also seen by some commentators on the League as an improvement on the Concert of Europe. See Zimmern, op.cit., pp.190-193 & 272-273. Indeed some writers on International Relations treat the Concert system as an embryonic 'international government' superseded by the League and the UN. See, for example, Morgenthau, Politics among Nations 5th ed. (New York: Knopf, 1973)

pp.434ff. However, the overall conception of the League was more strongly propelled by the general desire to emulate domestic institutions as can be seen from the examples noted in this chapter rather than by a clearly felt need to base the new institution on the nineteenth century European practice. On the contrary, the bankruptcy of the nineteenth century system is a very strong theme which runs through the writings of the Great War period. Edward Grey, the British Foreign Secretary at the outbreak of the Great War is well known for his attempt to resurrect the Concert to prevent a general war in Europe and for his support of the idea of a League as a new and much improved substitute for the Concert. See Viscount Grey of Fallodon, Twenty-Five Years 1892-1916 3 vols. (London: Hodder & Stoughton, 1928) Vol.II Chapter XVI and G.M. Trevelyan, Grey of Fallodon (London: Longmans, Green, 1937) pp.107-108. But even he explained the League idea in terms of the domestic (criminal law) analogy. See quotation from Grey's remarks made on May 15, 1916, on a league of nations, printed in Bryce, et al., op.cit., pp.45-46.

36. C. Seymour (ed.) The Intimate Papers of Colonel House, Arranged as a Narrative 4 Vols. (London: Ernest Benn, 1926) Vol.1 pp.213-216.
37. Ibid., p.216.
38. R.S. Baker, Woodrow Wilson and World Settlement: Written from his Unpublished and Personal Material 2 Vols. (New York: Double Day, 1922) Vol.I pp.219-221. The 'Congress' which Baker refers to on p.221 is not the United States Congress, but Pan American Scientific Congress. See Seymour, op.cit., Vol.I p.232.
39. R.S. Baker (ed.) Woodrow Wilson, Life & Letters 7 Vols. (London: William Heinemann, 1938) Vol.6 Facing War, 1915-1917 pp.204-205.
40. Ibid., Vol.7 War Leader, April 1917 - February 28, 1918 p.155.
41. League to Enforce Peace, Enforced Peace: Proceedings of the First Annual National Assemblage of the League to Enforce Peace, Washington, May 26-27 1916 pp.159-164 at p.164.

42. See T.T.B. Ryder, Koine Eirene: General Peace and Local Independence in Ancient Greece (London: Oxford University Press for the University of Hull, 1965) p.xi.
43. See Ryder, op.cit., for a detailed examination of the meaning of koine eirene, esp., pp.xvi, 1-2 & 118-119.
44. See *ibid.*, Chapters II & VII. See also W. Wilson, The State, Elements of Historical and Practical Politics rev. ed. (London: D.C. Heath, 1899) esp., Chapter II. In this connection it may also be noted that the term 'Covenant', which Wilson liked and used to refer to a new set of obligations which states were to accept after the war, probably came from Scottish history rather than Hobbes, for example. See R.S. Baker, Woodrow Wilson and World Settlement Vol.I p.213, and Seymour (ed.) op.cit., Vol.IV p.27.
45. Seymour, op.cit., Vol.I pp.226ff.
46. See Seymour, op.cit., Vol.IV Chapter I, and D.H. Miller, op.cit., Vol.II pp.7-11 at p.10, Article 20. Wilson is reported to have told William Rappard in an interview on November 1, 1917 that what he (Wilson) wanted to do for the world was what he unsuccessfully attempted to do for the American continent a year or two before. See W.E. Rappard, International Relations as Viewed from Geneva (New Haven: Yale University Press, 1925) p.103.
47. Miller, op.cit., Vol.II p.7 Article 5.
48. See Zimmern, op.cit., pp.230ff; Seymour, op.cit., Vol.IV pp.10-17 & 42-47.
49. Miller, op.cit., Vol.I p.16, and compare Documents 2 & 3 in Miller, op.cit., Vol.II.
50. Zimmern, op.cit., pp.195-196. Sir Walter Phillimore had been appointed the Chairman of the Committee on the League of Nations by the Foreign Secretary, and the Committee's Draft Convention was submitted to the British Government in March 1918. The

Committee saw in some contemporary proposals for a loose association of states a feasible approach to the problem of post-war international organization, and extracted from these proposals the elements which they saw as practicable and expedient. Their draft, therefore, reflected the leading ideas of the time. See Zimmern, op.cit., pp.180ff, and the Interim Report of the Committee on the League of Nations reprinted in Miller, op.cit., Vol.I pp.4-8 at p.4.

51. Miller, op.cit., Vol.I p.64. Cecil also argued for the necessity of coercion in international law on the analogy of the institution of the Star Chamber by Henry VII. See Seymour, op.cit., Vol.IV pp.40-41.
52. See Latané (ed.) op.cit., Vol.II pp.770ff. See also Zimmern op.cit., Chapter X and Miller, op.cit., Vol.I passim.
53. L. Bourgeois, Le Pacte de 1919 et la Société des Nations (Paris: Bibliotheque-Charpentier, 1919) pp.64 & 66ff.
54. Miller, op.cit., Vol.II pp.238ff.
55. Ibid., Vol.I p.11; F.P. Walters, A History of the League of Nations 2 Vols. (London: Oxford University Press, 1952) Vol.I p.23.
56. Zimmern, op.cit., pp.203-204. Smuts, op.cit., pp.7-30. Miller, op.cit., Vol.II pp.87ff.
57. Thus, in 'Class B' Mandates, the Mandatory was to secure equal opportunities for the trade and commerce of other members of the League. See Article 22 para.5.
58. See N. Bentwich, The Mandates System (London: Longmans, Green, 1930) pp.5-7.
59. Ibid., p.7. See also H. Lauterpacht, Private Law Sources and Analogies of International Law, pp.191ff.

60. Bentwich, *ibid.*, p.7.
61. Paragraph 1 refers to 'peoples not yet able to stand by themselves under the strenuous conditions of the modern world' and attempts to secure 'the well-being and development of such peoples'. Paragraph 2 uses the word 'tutelage', and, it is to be noted, 'tutela' in Roman law meant 'guardianship'. See Lauterpacht, Private Law Sources and Analogies of International Law p.192 n.3. Paragraph 3 refers to 'the stage of the development of the people', and paragraph 4 uses the expression 'until such time as they are able to stand alone'.
62. See Lauterpacht, Private Law Sources and Analogies of International Law p.197.
63. Oppenheim considered it to be one of the defects of the Covenant that this task was given to the Assembly since unanimity of forty or more states was required for it to give such an advice. See Oppenheim, International Law 3rd ed. Vol.I p.299.
64. Latané (ed.) *op.cit.*, Vol.II pp.790ff.
65. See Bryce et al., *op.cit.*, p.28, and Miller, *op.cit.*, Vol.II Document 1. See Miller, *op.cit.*, Vol.I Chapter I for the influence of the Phillimore plan upon the creation of the League.
66. Smuts, *op.cit.*, pp.45-46; Miller, *op.cit.*, Vol.II Documents, 2, 3, 7 & 14.
67. Miller, *op.cit.*, Vol.II p.92.
68. Miller, *ibid.*, Vol.II p.62 and Document 10.
69. See Miller, *ibid.*, Vol.II Documents 12 & 28.

NOTES

Chapter VI

1. Preamble, The Covenant of the League of Nations.
2. F.L. Schuman, International Politics 7th ed. (New York: McGraw-Hill, 1969) p.213. See also Rappard, op.cit.
3. Schuman, International Politics 7th ed., p.217.
4. Luard, A History of the United Nations (London: Macmillan, 1982) Vol.1 The Years of Western Domination, 1945-1955 p.3.
5. Paul Taylor draws attention to the 'functionalist' element in Woolf's vision as expressed in The Framework of a Lasting Peace (London: Allen & Unwin, 1917) and The Intelligent Man's Way to Prevent War (London: Victor Gollancz, 1933). See Taylor, International Co-operation Today: the European and the Universal Pattern (London: Elek Books, 1971) pp.50 & 51. Here, however, we shall focus on Woolf's work published in 1940, The War for Peace.
6. Woolf, The War for Peace (London: Routledge, 1940) p.234.
7. Ibid., pp.129ff.
8. Ibid., p.46. See also ibid., pp.132-133.
9. Ibid., p.53.
10. Ibid., pp.1ff, 57ff, 78ff, 105-106, 147ff.
11. Ibid., p.116 n.1.
12. Ibid., pp.195-196 & 201.

13. Ibid., pp.52, 206-207 & 225-230.
14. Ibid., pp.220ff.
15. Ibid., p.235 n.1.
16. Ibid., pp.191ff. See also H. Lauterpacht, 'The Legal Aspect' in C.A.W. Manning (ed.) Peaceful Change: An International Problem reprint of the 1937 ed. with a new introduction for the Garland Edition by C. Marzani (New York: Garland Publishing, 1972) pp.135-169 at p.158, and Manning, 'Some Suggested Conclusions' in the same volume, pp.169-190 at pp.178-180.
17. G. Schwarzenberger, William Ladd 2nd ed. (London: Constable, 1936) pp.64-76.
18. Schwarzenberger, The League of Nations and World Order: A Treatise on the Principle of Universality in the Theory and Practice of the League of Nations (London: Constable, 1936) esp., Conclusions.
19. Schwarzenberger, Power Politics: An Introduction to the Study of International Relations and Post-War Planning (London: Jonathan Cape, 1941) Chapter 29.
20. Ibid., Chapter 24 & pp.357ff.
21. Ibid., pp.430 & 399.
22. Ibid., p.410 & 402-404.
23. Ibid., Chapters 30-31, and pp.427-428.
24. Ibid., p.358.
25. Ibid., pp.359 & 403.
26. Ibid., pp.418, 427-428 & Conclusions.

27. Schwarzenberger, International Law and Totalitarian Lawlessness (London: Jonathan Cape, 1943) esp., Chapter IV.
28. Schuman, International Politics (New York: McGraw-Hill, 1933) p.viii, Chapter XIII-4 and p.730.
29. Ibid., pp.642 & 661ff.
30. Ibid., pp.740.
31. Ibid., pp.828ff.
32. Ibid., pp.830-831.
33. Ibid., p.670.
34. Ibid., p.853.
35. Ibid.
36. Schuman, 'Toward the World State' in H.D. Gideonse et al., The Politics of Atomic Energy (New York: The Woodrow Wilson Foundation, 1946) pp.35-55 at p.36.
37. Ibid., pp.44ff.
38. Schuman, The Commonwealth of Man: An Inquiry into Power Politics and World Government (London: Robert Hale, 1954) p.493.
39. See H.J. Morgenthau, 'Fragment of an Intellectual Autobiography: 1904-1932' in K. Thompson and R.J. Meyers (eds.) Truth and Tragedy: A Tribute to Hans Morgenthau (Washington, D.C.: The New Republic Book Company, 1977) pp.1-17; Morgenthau, Die Internationale Rechtspflege, ihr Wesen und ihre Grenzen (Leipzig: Robert Noske, 1929).
40. Morgenthau, Politics among Nations (New York: Alfred A. Knopf, 1948) Chapter XXIII.

41. Ibid., Foreword. Although this thesis is concerned with the period between 1814 and 1945, Morgenthau's ideas as expressed in his work published in 1948 are treated here since the outline of his ideas can safely be assumed to have been formulated by 1945, and his views are interesting to compare with those of Schwarzenberger and Schuman. Morgenthau remarks in his autobiographical note that his views of international relations were formed at Munich in the early 1920s under the influence of Hermann Oncken whose lectures on the principles of foreign and military policy and their relationships, distilled from Bismarck's Realpolitik, he had closely followed. See Morgenthau, 'Fragment of an Intellectual Autobiography: 1904-1932' in Thompson and Meyers (eds.) op.cit., pp.1-17 at pp.5-6.
42. Morgenthau, Politics among Nations (1948) p.309.
43. Ibid., pp.398-399.
44. Ibid., pp.398-402.
45. Ibid., p.406.
46. Ibid., pp.412ff. See also Morgenthau's Introduction to David Mitrany's A Working Peace System, published in co-operation with the society for a world service federation (Chicago: Quadrangle Books, 1966) esp., pp.10-11.
47. Morgenthau, Politics among Nations (1948) pp.414-415.
48. Ibid., p.415.
49. Ibid., Part Ten.
50. Schwarzenberger's concern for blue-prints can be seen in his Power Politics (1941) Chapters 25, 32 & pp.378-79. It is interesting to note that those writers who are often classified as 'realist' turn out to be in principle in favour of a world government. See T. Taylor, 'Power Politics' in his Approaches

and Theory in International Relations pp.122-140. Taylor refers to Schwarzenberger, Schuman and Morgenthau as among the 'founder members' of the 'power politics' school. (p.122) The priority of some communal foundation upon which world constitutional structures can and must rest is also stressed by Reinhold Niebuhr in his 'The Illusion of World Government' in Foreign Affairs Vol.27 No.3 (April 1949) pp.379-388.

51. See supra, pp.56-59.
52. E.H. Carr, The Twenty Years' Crisis 1919-1939 (London: Macmillan, 1939) pp.42, 253-254 & 261-263.
53. Ibid., Chapters 3 & 4; Conditions of Peace (London: Macmillan, 1943) Part I and p.238; Nationalism and After (London: Macmillan, 1945) esp., pp.60-61.
54. See Conditions of Peace, Introduction and Part I.
55. Ibid., Chapters 2, 4 & 6.
56. The Twenty Years' Crisis Chapters 12 & 13.
57. Ibid., pp.269ff & 272.
58. Ibid., pp.270-271.
59. Ibid., p.272.
60. Ibid., p.273.
61. Ibid., p.279.
62. Ibid., pp.272 & 283-284.
63. See supra, pp.42-45.
64. Morgenthau, Politics among Nations (1948) pp.439ff.

65. Carr, Nationalism and After pp.38ff and Conditions of Peace Chapter 10. See also Carr, 'The Future of International Government' in Peace Aims Pamphlet No.4 (1941) pp.1-9.
66. Nationalism and After pp.43ff. and Conditions of Peace pp.244ff.
67. Nationalism and After pp.47-48. Here Carr followed Mitrany very closely. See Mitrany, A Working Peace System: An Argument for the Functional Development of International Organization (London: Oxford University Press for the Royal Institute of International Affairs, 1943) esp., pp.32-33.
68. Nationalism and After, p.49.
69. D. Mitrany, The Functional Theory of Politics p.94.
70. See Carr The Twenty Years' Crisis p.249 n.1 where he criticizes one such jurist.
71. Nationalism and After p.61.
72. Ibid., pp.23 & 19.
73. Ibid., pp.45-47.
74. Ibid., p.47.
75. J.L. Brierly, The Outlook for International Law (Oxford: Clarendon Press, 1944) pp.34-35, 38-39 & 46.
76. Ibid., p.118.
77. Ibid., pp.47ff.
78. Ibid., pp.50-51.
79. Ibid., p.51.

80. Ibid., pp.51ff.
81. Ibid., pp.75ff.
82. Ibid., pp.58-59 & 95ff.
83. Mitrany, The Functional Theory of Politics, pp.98-99 & 125.
84. Ibid., p.182.
85. Ibid., p.125.
86. Ibid.
87. Ibid., pp.17-18 & 136.
88. Ibid., p.129.
89. Ibid., pp.26 & 162.
90. Ibid., p.27.
91. Ibid., p.26.
92. Ibid., p.27.
93. Ibid., pp.106ff. Mitrany was also interested in the transition taking place within the domestic sphere from the phase of traditional democratic institutions to the phase where technocratic organizations play an increasing role, and was in favour of applying the same principle to international integration. See A.J.R. Groom and P. Taylor (eds.) Functionalism: Theory and Practice in International Relations (London: University of London Press, 1975) pp.3-5.
94. See supra, pp.45-49.
95. Brierly, The Outlook for International Law p.95. However,

analogical reasoning of this form is peripheral to Brierly's argument, and he soon starts to talk in terms of the welfare of men, women and children living in separate states. See *ibid.*, p.97.

96. Carr, Conditions of Peace; Nationalism and After esp., Part II; Brierly, The Outlook for International Law Chap. VII. Mitrany, A Working Peace System; The Functional Theory of Politics.
97. Brierly, The Outlook for International Law p.116.
98. *Ibid.*, pp.107ff.
99. Forsyth et al., The Theory of International Relations p.183.
100. Nationalism and After p.46.
101. *Ibid.*
102. Kant's primary concern was to reduce the 'uncontrolled freedom' of states in their external relations, and, as regards the cosmopolitical rights of men, he is well-known for having stated in his Perpetual Peace that 'the Right of men as Citizens of the world in a cosmopolitical system, shall be restricted to conditions of universal Hospitality.' See Forsyth et al., *op.cit.*, p.214. Carr, by contrast, attributed to the states-system a much broader, and more positive, role of enhancing the economic and social well-being of individuals living in separate states. The fact that in the passage quoted in the text, Kant had formulated his argument in terms of the state, while, in the comparable passage, Carr focussed on the individual is consonant with this shift of concern. It is not suggested here, however, that Kant's political and moral philosophy was not based on individualism.
103. Mitrany, The Functional Theory of Politics pp.116-117.
104. *Ibid.*, p.117.
105. See, for example, J. Mayall, 'Functionalism and International

Economic Relations' in Groom and Taylor (eds.) Functionalism
pp.250-277 at p.254.

106. See supra, pp.45-49.
107. W. Friedmann, What's Wrong with International Law? (London: Watts, 1941) pp.15-16.
108. Moore's position is found in J.B. Moore, 'An Appeal to Reason' in Foreign Affairs Vol.11 No.4 (July 1933) pp.547-588. Borchard's admiration of Moore's views is clear from Borchard, 'Realism v. Evangelism' in American Journal of International Law (Hereafter A.J.I.L.) Vol.28 No.1 (Jan 1934) pp.108-117. See also H.W. Briggs, 'In Memorium: Edwin M. Borchard, 1884-1951' in A.J.I.L. Vol.45 No.4 (Oct 1951) pp.708-709. Borchard's numerous publications in the A.J.I.L. are listed in the Bibliography below.
109. See Law Quarterly Review Vol.54 (July 1938) pp.438-439. The copy of Neutrality for the United States available in the Keele University Library shows that that was the very copy which the reviewer had used for the article in this journal. The copy bears a signature, 'J.F.W.', presumably that of John Fischer Williams.
110. H.W. Briggs, op.cit., p.709.
111. Borchard, 'The Place of Law and Courts in International Relations' in A.J.I.L. Vol.37 No.1 (Jan 1943) pp.46-57 at pp.47 & 52.
112. Ibid., p.54.
113. Ibid., p.52.
114. E. Borchard and W.P. Lage, Neutrality for the United States (London: Oxford University Press, 1937) p.2.
115. Ibid., esp., Part III, I.
116. Borchard, 'The Place of Law and Courts in International Relations' p.50.

117. See esp. Borchard, 'Neutrality and Unneutrality' A.J.I.L. Vol.32 No.4 (Oct 1938) pp.778-782. See also Borchard and Lage, op.cit., p.348.
118. Borchard and Lage, op.cit., pp.23-24, & 32.
119. Ibid., p.346.
120. See, for example, ibid., p.348.

NOTES

Chapter VII

1. See C. Schmitt, Völkerrechtliche Grossraumordnung mit Interventionsverbot für Raumpfremde Mächte (Berlin: Deutscher Rechtsverlag, 1939). See also Schwarzenberger, International Law and Totalitarian Lawlessness pp.28-29; Brierly, The Outlook for International Law pp.76-77; Morgenthau, 'Fragment of an Intellectual Autobiography' in Thompson and Meyers (eds.) Truth and Tragedy p.15.
2. G. Clark and L.B. Sohn, World Peace through World Law (Cambridge, Mass.: Harvard University Press, 1956) is now in its third edition (1966).
3. See, for example, M.F. Imber, 'Re-reading Mitrany: a pragmatic assessment of sovereignty' in Review of International Studies Vol.10 No.2 (April 1984) pp.103-123 at p.103. See also Mitrany, 'The Prospect of Integration: Federal or Functional?' in Groom and Taylor (eds.) Functionalism pp.53-78 at pp.56-59; Functional Theory of Politics pp.228-229.
4. C. Beitz, Political Theory and International Relations (Princeton: Princeton University Press, 1979). For developments in the field of the protection of human rights, see I. Brownlie, Basic Documents on Human Rights 2nd ed.(Oxford: Clarendon Press, 1981).
5. R. Falk, A Study of Future Worlds (New York: Free Press, 1975); H. Bull, Anarchical Society (London: Macmillan, 1977).
6. See Preamble, Articles 1 & 55 of the UN Charter.
7. See D. Thomson et al., Patterns of Peacemaking (London: Kegan Paul, Trench, Trubner, 1945) pp.158, 183 & 308. Paul Taylor records that in 1939 W.B. Curry's The Case for Federal Union (Harmondsworth: Penguin, 1939) was a best-seller in Britain.

See Taylor, International Co-operation Today, p.98.

8. C. Hull, The Memoirs of Cordell Hull 2 Vols. (London: Hodder & Stoughton, 1948) Vol.2 p.1639.
9. Ibid., pp.1634ff.
10. H.G. Nicholas, The United Nations as a Political Institution 5th ed. (London: Oxford University Press, 1975) p.2.
11. Ibid.
12. See T. Greer, What Roosevelt Thought: The Social and Political Ideas of Franklin D. Roosevelt (East Lansing, Michigan: Michigan State University Press, 1965) p.198.
13. See S. Bloom, The Autobiography of Sol Bloom (New York: G.P. Putnum's Sons, 1948) pp.2-4 & 278. See also M. Forsyth, Unions of States p.186.
14. See Kelsen, Principles of International Law 2nd ed., rev. and ed. by R.W. Tucker (New York: Holt, Rinehart & Winston, 1967) I. Edwin Borchard is described by Leuchtenburg as an influential isolationist international lawyer who accused Roosevelt of committing the United States to the 'idiosyncracies of Wilsonian ideology'. See W.E. Leuchtenburg, Franklin D. Roosevelt and the New Deal 1932-1940 (New York: Harper & Row, 1963) p.222.
15. Luard, A History of the United Nations Vol.1 p.54.
16. A. Verdross, 'General International Law and the United Nations Charter' in International Affairs Vol.30 No.3 (July 1954) pp.342-348 at p.348.
17. See Kunz, The Changing Law of Nations p.605. See also Kelsen, op.cit., pp.13-15 for the relationship between 'self-help' and 'self-defence'.

18. See Russell, op.cit., pp.688ff.
19. See, for example, M. Akehurst, A Modern Introduction to International Law 3rd ed., pp.242-243.
20. Russell, op.cit., p.676 n.61.
21. See W.S. Churchill, The Second World War 6 Vols. (London: Cassell, 1948-1954) Vol.VI Triumph and Tragedy p.311. See also Hull, op.cit., Vol.II pp.1700-1701.
22. R.E. Sherwood, The White House Papers of Harry L. Hopkins 2 Vols. (London: Eyre & Spottiswoode, 1949) Vol.II pp.846-847.
23. Ibid., p.846.
24. The Atlantic Charter is reprinted in Russell, op.cit., Appendix B. Wilson's Fourteen Points can be found in Latané (ed.) op.cit., Vol.II pp.839-840.
25. Greer, op.cit., p.170.
26. Russell, op.cit., p.66. In a letter to the opening session of the Food and Agriculture Conference held in 1943 Roosevelt wrote: 'In this and other United Nations conferences we shall be extending our collaboration from war problems into important new fields. Only by working together can we learn to work together, and work together we must and will.' See Russell, op.cit., p.66 n.11.
27. Hull, op.cit., Vol.II p.1643.
28. Russell, op.cit., pp.172-173.
29. Ibid., p.173; Nicholas, op.cit., p.161.
30. Russell, op.cit., pp.170-171.

31. Ibid., p.306.
32. F.P. Walters, A History of the League of Nations Vol.II p.762
Russell, op.cit., p.305.
33. See P.A. Reynolds & E.J. Hughes, The Historian as Diplomat:
Charles Kingsley Webster and the United Nations 1939-1946
(London: Martin Robertson, 1976) p.70.
34. Luard, op.cit., Vol.I p.38.
35. See Leuchtenburg, op.cit.
36. See supra, pp.155-156.
37. Thus, according to Penrose, negotiators at the Food and
Agriculture Conference learned a great deal from 'the masterly
work of the British Ministry of Food, Ministry of Health, and
Advisory Committee on Nutrition, in the distribution of scarce
supplies to the best nutritional advantage among the different
groups of the population'. See E.F. Penrose, Economic Planning
for the Peace (Princeton: Princeton University Press, 1953) p.42.
One striking use of the domestic analogy is found in the famous
Keynes plan for an International Clearing Union. This body was
to keep banking accounts in exactly the same way as central
banks in each country kept accounts for commercial banks, and
to create international purchasing power by allowing member states
overdraft facilities. Horsefield remarks that the Clearing
Union was conceived 'along the lines of the British banking
system'. Unlike any ordinary banking system, however, the
Union was to charge a rate of interest on both credit and debit
balances. See J.K. Horsefield, The International Monetary Fund
1945-1965 (Washington, D.C.: International Monetary Fund 1969)
pp.18-19. See also Penrose, op.cit., p.42. The original plan
of Keynes was much whittled down in the process of negotiation
which eventually led to the creation of the Bretton Woods system.
See R.F. Harrod, The Life of John Maynard Keynes (London:
Macmillan, 1951) Chapter XIII.

38. See supra, p.153.
39. Sherwood, op.cit., Vol.II p.780.
40. Ibid.
41. Ibid., pp.817-818.
42. This is clear from Roosevelt's subsequent remark. See ibid., p.818.
43. Hull, op.cit., Vol.II p.1682.
44. Ibid., p.1700.
45. Ibid.
46. Russell, op.cit., Part Two.
47. Ibid., p.105.
48. Reynolds & Hughes, op.cit., p.126.
49. Churchill, op.cit., Vol.IV The Hinge of Fate, p.717
50. Russell, op.cit., p.105.
51. Churchill, op.cit., Vol.IV p.718. Coudenhove Kalergi's ideas are found in his Pan-Europa (Wien: Paneuropa-Verlag, 1926).
52. Churchill, op.cit., Vol.IV pp.717-718.
53. Churchill, ibid., p.718.
54. Ibid., pp.718-719.
55. See supra, p.140.
56. Brierly, The Outlook for International Law p.87.

57. E. Roosevelt, This I Remember (London: Hutchinson, 1950) Appendix I.
58. Russell, op.cit., p.96.
59. Hull, op.cit., Vol.II pp.1642-1643.
60. Hull, ibid., pp.1645-1646; Russell, op.cit., p.206.
61. Sherwood, op.cit., p.715.
62. Ibid., p.780. However, the chart which Roosevelt drew in the course of the Teheran Conference shows that the I.L.O., Health, Agriculture and Food were to come under the Assembly. See Sherwood, Roosevelt and Hopkins: An Intimate History (New York: Harper, 1948) pp.789-790.
63. Sherwood, The White House Papers of Harry L. Hopkins Vol.II pp.780-781.
64. Reynolds and Hughes, op.cit., Chapter 2 and p.26. Lord Gladwyn, The Memoirs of Lord Gladwyn (London: Weidenfeld & Nicolson, 1972) pp.108-109 & 128.
65. Reynolds and Huges, op.cit., p.29.
66. Ibid., p.32.
67. Ibid., Chapter 3.
68. Ibid., pp.28, 70 & 88-89.
69. Hull, op.cit., pp.1727-1728.
70. Reynolds and Hughes, op.cit., p.38.
71. See, for example, Luard, op.cit., and Nicholas, op.cit.
72. See Luard, op.cit., pp.29ff; Reynolds and Hughes, op.cit., pp.40ff.

73. Any hint of the UN's connection with the League was suppressed in line with the American tactic of emphasizing the novelty of the new organization. See Nicholas, *op.cit.*, p.14. See also Brierly, 'The Covenant and the Charter' in H. Lauterpacht & C.H.M. Waldock (eds.) The Basis of Obligation in International Law and Other Papers by the Late James Leslie Brierly (Oxford: Clarendon Press, 1958) pp.314-326 at p.315.
74. The following discussion closely follows Brierly, 'The Covenant and the Charter' and Kelsen, Principles of International Law 2nd ed., I B.
75. See Kelsen, Principles of International Law 2nd ed., pp.34-36, 47-49.
76. Nicholas, *op.cit.*, p.16. Articles 43, 45, 46 & 47 of the Charter.
77. See *supra*, pp.131-132.
78. Nicholas, *op.cit.*, p.50.
79. Brierly, 'The Covenant and the Charter' pp.319-321.
80. *Ibid.*, p.324.
81. *Ibid.*, p.326.
82. See Kelsen, Principles of International Law 2nd ed., pp.33-51.
83. Reynolds and Hughes, *op.cit.*, p.71.
84. See, for example, E. McWhinney, Peaceful Coexistence and Soviet-Western International Law, (Leyden: A.W. Sijthoff, 1964) More recent works include: Raymond Cohen, International Politics: the rules of the game (London: Longman, 1981) and Paul Keal, Unspoken Rules and Superpower Dominance (London: Macmillan, 1983). For a critical examination of the sense in which the so-called tacit rules of superpower relations can be said to exist, see H. Suganami,

Rules for the Restraint of Force in the Nuclear Age, Thesis
presented for the Degree of Master of Science (Econ.)
University of Wales (1972).

NOTES

Chapter VIII

1. See Chapter III above.
2. See supra, p.97.
3. See Chapter V above.
4. See supra, p.160.
5. See supra, pp.176-177.
6. See Chapter IV above.
7. See supra, pp.101-103.
8. See supra, pp.110-111.
9. See The Development of International Law after the World War pp.14ff.
10. See Chapter VII above.
11. See supra, pp.154-156.
12. See supra, pp.146ff.
13. See supra, pp.173-175.
14. See Chapter VII above.
15. See supra, p.123.
16. See Chapter III above.
17. See A. Cobban, 'The "Middle Class" in France, 1815-1848' in his

France since the Revolution, and other Aspects of Modern History
p.8 where he criticizes such an approach to history.

18. See Chapter V above.
19. See Chapter IV above.
20. See Chapter V above.
21. See supra, pp.110-111, 119.
22. See supra, pp.161-163.
23. See supra, pp.20-28.
24. See supra, p.113.
25. See supra, p.162.
26. See Brierly, 'The Covenant and the Charter' p.323; Zimmern, The League of Nations and the Rule of Law 2nd ed., pp.191-192; G.M. Trevelyan, Grey of Fallodon, being the Life of Sir Edward Grey afterwards Viscount Grey of Fallodon (London: Longmans, Green, 1937) pp.248-249; Sherwood, The White House Papers of Harry L. Hopkins Vol.II p.780; and Schiffer, op.cit., p.203.
27. See supra, pp.175-176, 178, 183-184.
28. See supra, pp.184-185.
29. Here I borrow the term from Kant. See M.G. Forsyth et al., (eds.) The Theory of International Relations p.214.
30. See supra, p.63.
31. See supra, pp.33-34.
32. See supra, pp.107-108.

33. See supra, pp.103-104, 108.
34. Nippold, Die Fortbildung des Verfahrens in Völkerrechtlichen Streitigkeiten pp.148ff.
35. See supra, pp.111-112.
36. See supra, pp.109-110.
37. See supra, p.162.
38. See supra, pp.30-32, and Lauterpacht, The Functions of Law in the International Community.
39. Carr, The Twenty Years' Crisis (1939) p.249 n.1. See supra, pp. 147, 151-153.
40. T. Nardin, Law, Morality and the Relations of States (Princeton: Princeton University Press, 1983) pp.119-120.
41. Lauterpacht, The Function of Law in the International Community.
42. What follows is based on his Politics among Nations: The Struggle for Power and Peace 5th ed. (New York: Alfred A. Knopf, 1973) pp.418ff, but his ideas on the limitations of the judicial settlement of international disputes first appeared in his Die Internationale Rechtspflege (1929). See p.153 of the latter for a diagrammatic presentation of Morgenthau's views.
43. Morgenthau, Politics among Nations 5th ed., p.420.
44. Ibid., pp.420 & 422.
45. Lauterpacht, The Function of Law in the International Community p.398.
46. Ibid., Part IV.
47. Ibid., pp.345 & 346.

48. J. Westlake, International Law (Cambridge: Cambridge University Press, 1904) Part I p.344.
49. See Bull, 'Grotian Conception of International Society' p.71.
50. Ibid. See also Borchard and Lage, Neutrality for the United States esp., Part III, I.
51. See Bull, The Anarchical Society, pp.143-145 & 189.
52. The alarmist attitude of those who argue along these lines is linked closely with their dislike of the domestic analogy. See Suganami, 'The Structure of Institutionalism: An Anatomy of British Mainstream International Relations' in International Relations Vol.VII No.5 (May 1983) pp.2363-2381 at pp.2370 & 2377-2378.
53. Borchard and Lage, op.cit., Part III, I; Bull, 'Grotian Conception of International Society' p.71; Morgenthau Politics among Nations 5th ed. pp.408-410.
54. See supra, p.163. On p.3 of Neutrality for the United States Borchard and Lage trace the origins of the institution of neutrality back to the practice of the twelfth century.
55. Brierly, The Outlook for International Law pp.26ff.
56. Ibid., pp.29-30.
57. It is true that some, particularly German, writers of the nineteenth century wrote in praise of war. See, for example, Moltke's letter of 11th December 1880 to Bluntschli reprinted in Bluntschli, Gesammelte Kleine Schriften Vol.II pp.271-274 esp., p.271; and Stengel, op.cit., Chapter VI. However, even in the nineteenth century, the belief in the moral unacceptability of an aggressive use of force appears to have existed though this did not apply to colonial expansion.
58. See I.L. Claude, Jr., Swords into Plowshares: The Problems and

- Progress of International Organization 4th ed. (New York: Random House, 1971) pp.249ff.
59. See Bull, The Anarchical Society p.144; Morgenthau, Politics among Nations 5th ed., p.411.
 60. Woolf, The War for Peace pp.79-80.
 61. I.L. Claude, Jr., Power and International Relations pp.259-260.
 62. Claude, *ibid.*, pp.243ff; Carr, The Twenty Years' Crisis pp.269ff; Brierly, The Outlook for International Law pp.46ff.
 63. See *supra*, p.140.
 64. The idea of a 'security community' is examined in K.W. Deutsch et al., Political Community and the North Atlantic Area: International Organization in the Light of Historical Experience (Princeton: Princeton University Press, 1957).
 65. See *supra*, pp.76-78, 97, 104.
 66. See *supra*, p.162.
 67. See Bull, The Anarchical Society p.149. See also R. Falk 'On the Quasi-legislative Competence of the General Assembly' in his The Status of Law in International Society (Princeton: Princeton University Press, 1970) pp.174-184.
 68. For example, see Lauterpacht, 'The Legal Aspect' in Manning (ed.) Peaceful Change.
 69. See *supra*, p.111.
 70. For example, M. Akehurst, *op.cit.*, pp.15-16.
 71. Lauterpacht, 'The Legal Aspect' in Manning (ed.) Peaceful Change p.160.

72. Ibid., p.163.
73. Ibid., p.164.
74. See supra, p.205.
75. Lauterpacht, 'The Legal Aspect' pp.164-165.
76. Linklater, Men and Citizens in the Theory of International Relations. 'Primitive tribalism' and 'modern nationalism' are empirical manifestations of Linklater's abstract concepts, 'Tribalism' and 'Citizenship'. See *ibid.*, Part Three in particular.
77. *Ibid.*, pp.199ff.

NOTES

Chapter IX

1. Forsyth, Unions of States p.186.
2. See Chapter III above.
3. See Schücking, The International Union of the Hague Conferences, pp.304ff.
4. See supra, p.135.
5. See Lorimer, The Institutes of the Law of Nations, Vol.II, pp.240ff.
6. Schücking, The International Union of the Hague Conferences pp.307-308. The original passage is found in his Der Staatenverband der Haager Konferenzen (München: Duncker & Humblot, 1912) pp.301-302. Here I quote Fenwick's translation.
7. See R. Falk, Human Rights and State Sovereignty (New York: Holmes & Meier, 1981) esp., Chapters VII - IX, and A Study of Future Worlds pp.152-153.
8. See Lorimer, The Institutes of the Law of Nations Vol.II pp.243ff.
9. Ibid., p.244.
10. Ibid.
11. Ibid.
12. Ibid., pp.244-245.
13. Schücking, The International Union of the Hague Conferences

pp.310-311.

14. See P. Willetts (ed.) Pressure Groups in the Global System: The Transnational Relations of Issue-Oriented Non-Governmental Organizations (London: Frances Pinter, 1982) Appendixes.
15. Forsyth, Unions of States p.186.
16. See supra, pp.141-145.
17. Markham, op.cit., p.32.
18. Morgenthau, Politics among Nations 5th ed., pp.487 & 480.
19. Claude, Power and International Relations p.255.
20. Bull, The Anarchical Society p.46.
21. Markham, op.cit., pp.34-35.
22. See supra, pp.67-75.
23. Markham, op.cit., p.51.
24. See supra, pp.102-103.
25. Ionescu, op.cit., pp.29ff & 182ff.
26. Ibid., pp.110 & 114.
27. E. Durkheim, Socialism and Saint-Simon ed. with an Introduction by A.W. Gouldner, tr. by C. Sattler, from the ed. originally edited with an Introduction by M. Mauss (London: Routledge & Kegan Paul, 1959) pp.177-178.
28. Morgenthau, Politics among Nations (1948) p.430.
29. See supra, pp.144-145.

30. Ibid.
31. See supra, pp.142-144, and Schuman, International Politics (1933) Chapter I.
32. See, for example, R.B. Mowat, A History of European Diplomacy 1815-1914 (London: Edward Arnold, 1922) p.8 and Chapter II.
33. See Schiffer, The Legal Community of Mankind pp.199, 209 & 282-283.
34. Claude, Power and International Relations p.221.
35. When it is stated that war is inherent in the states-system it is hardly ever made clear what is meant by the expression 'inherent in'. Here I took this to mean either 'logically integral to the concept of' or 'highly likely to occur in'. The former is conceptual, and the latter empirical. Even Kenneth Waltz fails to adhere to this distinction consistently. See his Man, the State and War esp., Chapter VIII.
36. See H. Suganami, 'A.V. Lowe on general rules of international law' in Review of International Studies Vol.10 No.2 (April 1984) pp.175-182 at pp.179-180.
37. For a more detailed examination of 'sovereignty', see Suganami, 'The Structure of Institutionalism: An Anatomy of British Mainstream International Relations' in International Relations Vol.VII No.5 (May 1983) pp.2363-2381 at pp.2370-2373.
38. Schiffer, op.cit., p.104.
39. F.S. Northedge, The International Political System (London: Faber & Faber, 1976) pp.31 & 321-323.
40. Ibid., p.323.
41. See supra, pp.150-156.

42. 'Neo-functionalism' is explained in C. Pentland, International Theory and European Integration (London: Faber & Faber, 1973) Chapter 4.
43. See Bull, 'The Grotian Conception of International Society' in which 'pluralism' is contrasted with Grotian 'solidarism'; Pentland, op.cit., in which 'pluralism' is distinguished from 'functionalism', 'neo-functionalism' and 'federalism'; and R. Pettman, State and Class: A Sociology of International Affairs (London: Croom Helm, 1979), in which 'pluralism' is juxtaposed to 'structuralism'. The vocabulary of Politics becomes somewhat more anarchical in International Relations.
44. See supra, pp.146ff.
45. For a succinct summary of 'functionalism', see Paul Taylor's Introduction to Mitrany's The Functional Theory of Politics p.x.
46. See supra, p.196.
47. Markham, op.cit., p.49.
48. Ladd, op.cit., Chapter VI.
49. See Mitrany A Working Peace System (1943) pp.32ff.
50. Mitrany, The Functional Theory of Politics p.128 and A Working Peace System (1943) p.43. It should be noted, however, that Mitrany said of 'functional arrangements' as 'organic elements of a federalism by instalments'. (Emphasis added.) See A Working Peace System p.43.
51. Kelsen, General Theory of Law and State pp.322ff & 341ff.
52. Bull, The Anarchical Society pp.152 & 318.
53. Bull, *ibid.*, p.152.
54. See Brierly, The Outlook for International Law pp.112ff.

55. See Mitrany, A Working Peace System (1943) pp.23, 26, 40, 51 & 53.
56. Thus, Mitrany's use of the TVA as an illustration of how functional co-operation works as an integrative force has been challenged by the federalists who pressed the claim that as with other New Deal acts the TVA had been possible just because they were set going within an existing federation.' See Mitrany, The Functional Theory of Politics p.27.
57. See M.F. Imber, 'Re-reading Mitrany: a pragmatic assessment of sovereignty' in Review of International Studies Vol.10 No.2 (April 1984) pp.103-123 at pp.117ff, and Mitrany, The Functional Theory of Politics p.xxii.
58. Bull, The Anarchical Society, p.153.
59. See supra, pp.153, 161ff.

NOTES

Conclusion

1. The tendency to see the international state of nature as being analogous to the Hobbesian state of nature has been criticized by Bull in his 'Society and Anarchy in International Relations', and more thoroughly by Charles Beitz in his Political Theory and International Relations, Part One.
2. It may be recalled here that Hobbes' first fundamental law of nature commanded that 'every man, ought to endeavour peace, as far as he has hope of obtaining it; and where he cannot obtain it, that he may seek, and use, all helps, and advantages of war'. From this Hobbes derived the second law: 'that a man be willing, when others are so too, as far-forth, as for peace, and defence of himself he shall think it necessary, to lay down this right to all things; and be contented with so much liberty against other men, as he would allow other men against himself.' See his Leviathan, edited and abridged with an introduction by J. Plamenatz, pp.146-147.
3. See *supra*, pp.24ff.
4. See *supra*, pp.240-241.
5. See *supra*, pp.199-202.
6. See *supra*, pp.42-45.
7. See *supra*, p.246. Of course this will not be a weakness of the 'welfarist' approach if it is correct to assume, as Mitrany appears to have done, that needs themselves determine the shape of the institutions. See Mitrany, A Working Peace System (1943) p.35.
8. See Mitrany, The Functional Theory of Politics p.xxii.

9. See supra, pp.241-242.
10. See supra, p.225.
11. Ibid.
12. On the one hand, it may be argued, in order for the notion of the society of states to exist it is sufficient that there prevails among those who act and talk in the name of states the assumption that states are persons forming a society under its rules. See C.A.W. Manning, The Nature of International Society, reissue (London: Macmillan, 1972). On the other hand, it may be thought, the prevalence of such an assumption is precarious unless supported by the conviction that the members of separate states form a community of a kind. See Bull, The Anarchical Society p.317.
13. A persuasive argument in favour of universalism is found in Linklater, Men and Citizens in the Theory of International Relations. In the following the necessity of universalism defended by Linklater on the grounds of moral philosophy and philosophy of history is assumed.
14. This may take the form of what Bull calls 'a new mediaevalism'. The nature of the mediaeval system is described in G. Poggi, The Development of the Modern State: A Sociological Introduction (London: Hutchinson, 1978) Chapter II.
15. See supra, pp.28-29, 82ff. To be fair to Lorimer, he conceded that future ingenuity of man might discover 'a self-adjusting balance of power, a self-modifying European Concert, or some other hitherto unthought-of expedient which, in the hands of diplomacy, [would] act as a cheaper guarantee against anarchy than' could international institutions built on the model of municipal law. See supra, p.29.
16. Carr, The Twenty Years' Crisis (1939) p.306.
17. Ibid., p.307.

18. See M.W. Doyle, 'Kant, Liberal Legacies, and Foreign Affairs' Philosophy and Public Affairs Vol.12 No.3 (Summer 1983) pp.205-234 and Vol.12 No.4 (Fall 1983) pp.323-353. The criteria of 'liberal states' are stated in Philosophy and Public Affairs Vol.12 No.3 p.212 notes a,b, & c, and those of 'war' in *ibid.*, pp.214-216 n.
19. Doyle's explanation cannot be accepted entirely since, clearly, not all pairs of states have kept peace between them as a result of the operation of these factors. For example, peace between Latvia, listed as liberal between 1922 and 1934, and Chile, also counted as liberal between 1900 and 1924 and in 1932, is very unlikely to have been attributable to the three factors: presumably the geographical distance between them, and also probably the absence of close relationship between them were decisive. See Doyle, *op.cit.*, Philosophy and Public Affairs Vol.12 No.3 p.210. See also R.J. Rummel, 'Libertarianism and International Violence' in The Journal of Conflict Resolution Vol.27 No.1 (March 1983) pp.27-71 for a finding similar to Doyle's. Rummel, however, does not attempt a theoretical explanation of the regularity he finds.
20. In this connection, the following remarks by Linklater on Kant are of great interest: 'Republicanism [according to Kant] is a product of man's aspiration to have the freedom to which he is entitled as a rational being expressed in the practices of his community. But, when they establish the republican regime men were doing more than gaining recognition of their own rational nature; they were creating a political society more able than any of its predecessors to be incorporated within an international political community. A republican constitution, in which men qua men are treated as ends in themselves, would by its very nature provide a core around which other states would gather to form a free federation of nations. A man who takes his place within a republican constitution can perceive himself as taking part in that historical process which will culminate in a political structure which treats all men, not merely those within the state, as ends in themselves.' See Linklater, *op.cit.*, pp.115-116.

21. Regarding technology, it is interesting to compare Ladd's proposal for a Congress of Nations with Wolff's argument that since all the nations scattered throughout the whole world could not assemble together, the law of nations should be worked out by the use of reason supported by the approval of the more civilized nations. See supra, pp.75-76, and Wolff, Jus Gentium Methodo Scientifica Pertractatum (1764) Prolegomena, section 20.
22. One important work in this respect is Forsyth, Unions of States.
23. One well-known work in this field is Hinsley, Power and the Pursuit of Peace.
24. Among the WOMP schemes, we briefly noted Richard Falk's A Study of Future Worlds. See supra, p.166.
25. See supra, pp.108-110, 165.
26. I have made an attempt with regard to Confucian international theory in my paper 'Political theory and international theory, Japanese and Western', read at the Research Seminars at Southampton and Kent in 1981 and 1983.
27. The following is discussed in more detail in my paper 'Domestic analogy in proposals for world order' read at the 1984 Annual Conference at Durham of the British International Studies Association.
28. This despite Linklater's ambiguous statement that 'a progressive development of international relations necessitates the transference of understandings of social relations from their original domestic setting to the international arena' and Moorhead Wright's criticism that Linklater relies heavily on the 'problematic analogy between domestic and international society'. See supra, pp.6-7.
29. Bull distinguishes between the goals of 'international society' and those of 'world society', but insists that the latter have

moral priority. See The Anarchical Society pp.8-22 & p.319. His defence of the states system is that this mode of world organization not only sustains international order, but contributes effectively to the satisfaction of the goals of the great society of mankind.

BIBLIOGRAPHY

- Adams, H.B., Bluntschli's Life-Work Presented to the Seminary of Historical and Political Science (Baltimore: Johns Hopkins University, 1884)
- Adams, W.P., The First American Constitutions tr. by R. & R. Kimber (Chapel Hill: University of North Carolina Press, 1973)
- Akehurst, M., A Modern Introduction to International Law 3rd ed. (London: Allen & Unwin, 1977)
- Baker, R.S., Woodrow Wilson and World Settlement: Written from his Unpublished and Personal Material 2 Vols. (New York: Double Day, 1922)
- Baker, R.S., (ed.) Woodrow Wilson, Life & Letters 7 Vols. (London: William Heinemann, 1938)
- Baty, T., International Law (London: John Murray, 1909)
- Baty, T., The Canons of International Law (London: John Murray, 1930)
- Baty, T., Alone in Japan: The Reminiscence of an International Jurist Resident in Japan 1916-1954 ed. by M. Hasegawa (Tokyo: Maruzen, 1959)
- Beales, A.C.F., The History of Peace (London: Bell, 1931)
- Beitz, C., Political Theory and International Relations (Princeton: Princeton University Press, 1979)
- Bentwich, N., The Mandates System (London: Longmans, Green, 1930)
- Bernazik, E., Die Österreichischen Verfassungsgesetze Zweite Auflage (Wien: Manzche, 1911)
- Blackstone, W., Commentaries on the Laws of England in Four Books 5th ed. (Oxford: Clarendon Press, 1773)

Bloom, S., The Autobiography of Sol Bloom (New York: G.P. Putnum's Sons, 1948)

Bluntschli, J.C., Das Moderne Völkerrecht der Civilisirten Staten (Nördlingen: Beck, 1878)

Bluntschli, J.C., Gesammelte Kleine Schriften 2 Vols. (Nördlingen: Beck, 1879-1881)

Borchard, E., Review of J.B. Moore, International Law and Some Current Illusions in American Journal of International Law Vol.18 No.4 (Oct. 1924) pp.858-863

Borchard, E., Review of B.W. von Bülow, Der Versailler Völkerbund in A.J.I.L. Vol.19 No.1 (Jan. 1925) pp.224-226

Borchard, E., 'Limitation of Coercive Protection' in A.J.I.L. Vol.21 No.2 (April 1927) pp.303-306

Borchard, E., 'The Multilateral Treaty for the Renunciation of War' in A.J.I.L. Vol.23 No.1 (Jan. 1929) pp.116-120

Borchard, E., 'The Arms Embargo and Neutrality' in A.J.I.L. Vol.27 No.2 (April 1933) pp.293-298

Borchard, E., 'The "Enforcement" of Peace by "Sanctions"' in A.J.I.L. Vol.27 No.3 (July 1933) pp.518-525

Borchard, E., 'Realism v. Evangelism' in A.J.I.L. Vol.28 No.1 (Jan. 1934) pp.108-117

Borchard, E., Review of Nicolas Politis, La Neutralité et la Paix in A.J.I.L. Vol.29 No.4 (Oct. 1935) pp.717-719

Borchard, E., 'Sanctions v. Neutrality' in A.J.I.L. Vol.30 No.1 (Jan. 1936) pp.91-94

Borchard, E., '"Neutrality" and Civil Wars' in A.J.I.L. Vol.31 No.2 (April 1937) pp.304-306

Borchard, E., Review of Alfred von Verdross, Völkerrecht in A.J.I.L. Vol.31 No.4 (Oct. 1937) pp.748-750

Borchard, E. and W.P. Lage, Neutrality for the United States (London: Oxford University Press, 1937)

Borchard, E., 'Neutrality and Unneutrality' in A.J.I.L. Vol.32 No.4 (Oct. 1938) pp.778-782

Borchard, E., 'War, Neutrality and Non-Belligerency' in A.J.I.L. Vol.35 No.4 (Oct. 1941) pp.618-625

Borchard, E., 'The Place of Force in International Law' in A.J.I.L. Vol.36 No.4 (Oct. 1942) pp.628-631

Borchard, E., 'The Place of Law and Courts in International Relations' in A.J.I.L. Vol.37 No.1 (Jan. 1943) pp.46-57

Borchard, E., 'Flaws in Post War Peace Plans' in A.J.I.L. Vol.38 No.1 (Jan. 1944) pp.284-289

Borchard, E., 'International Jurisprudence - Analytical and Functional' in A.J.I.L. Vol.38 No.1 (Jan. 1944) pp.95-98

Borchard, E., 'The Dumbarton Oaks Conference' in A.J.I.L. Vol.39 No.1 (Jan. 1945) pp.97-101

Borchard, E., 'The Effect of War on Law' in A.J.I.L. Vol.40 No.3 (July 1946) pp.620-623

Borchard, E., 'International Law and International Organization' in A.J.I.L. Vol.41 No.1 (Jan. 1947) pp.106-108

Borchard, E., Review of Clyde Eagleton, International Government rev.ed. in A.J.I.L. Vol.44 No.1 (Jan. 1950) pp.224-225

Bourgeois, L., Le Pacte de 1919 et la Société des Nations (Paris: Bibliotheque-Carpentier, 1919)

Bowett, D.W., Self-Defence in International Law (Manchester: Manchester University Press, 1958)

Brierly, J.L., The Outlook for International Law (Oxford: Clarendon Press, 1944)

Briggs, H.W. 'In Memorium: Edwin M. Borchard, 1884-1951' in A.J.I.L. Vol.45 No.4 (Oct. 1951) pp.708-709

Brownlie, I., Basic Documents on Human Rights 2nd ed. (Oxford: Clarendon Press, 1981)

Bryan, W.J. and M.B. Bryan, The Memoirs of William Jennings Bryan (Philadelphia: The United Publishers of America, 1925)

Bryce, J., The Holy Roman Empire new ed. (London: Macmillan, 1928)

Bryce, J. et al., Proposals for the Prevention of Future Wars (London: Allen & Unwin, 1917)

Bull, H., 'Order vs Justice in International Society' in Political Studies Vol. XIX No.3 (September 1971) pp.269-283

Bull, H., The Anarchical Society: A Study of Order in World Politics (London: Macmillan, 1977)

Bury, J.P.T., France 1914-1940 2nd ed., (London: Methuen, 1950)

Butterfield, H. and M. Wight (eds.) Diplomatic Investigations: Essays in the Theory of International Politics (London: Allen & Unwin, 1966)

Carnegie Endowment for International Peace, Division of International Law, Treaties for the Advancement of Peace between the United States and Other Powers Negotiated by Honorable William Bryan, Secretary of State of the United States with an Introduction by J.B. Scott (New York:

Oxford University Press, 1920)

Carr, E.H., The Twenty Years' Crisis 1919-1939 (London: Macmillan, 1939)

Carr, E.H., 'The Future of International Government' in Peace Aims Pamphlet No.4 (1941) pp.1-9

Carr, E.H., Conditions of Peace (London: Macmillan, 1943)

Carr, E.H., Nationalism and After (London: Macmillan, 1945)

Churchill, W.S., The Second World War 6 Vols. (London: Cassell, 1948-1954)

Clark, G. and L.B. Sohn, World Peace through World Law (Cambridge, Mass.: Harvard University Press, 1956)

Clark, I., Reform and Resistance in the International Order (Cambridge: Cambridge University Press, 1980)

Claude, I.L., Jr., Power and International Relations (New York: Random House, 1962)

Claude, I.L., Jr., Swords into Plowshares: The Problems and Progress of International Organization 4th ed. (New York: Random House, 1971)

Cobban, A., France since the Revolution, and Other Aspects of Modern History (London: Jonathan Cape, 1970)

Cobden, R., The Political Writings of Richard Cobden 2 Vols. (London: Ridgeway, 1867)

Codding, G.A., Jr., The Federal Government of Switzerland (London: Allen & Unwin, 1961)

Cohen, R. International Politics: the rules of the game (London: Longman, 1981)

Commons, J.R. and J.B. Andrews, Principles of Labor Legislation rev.ed. (New York: Harper, 1927)

Curti, M.E., Bryan and World Peace (New York: Octagon Press, 1969)

Davies, D., The Problem of the Twentieth Century (London: Benn, 1930)

de Smith, S.A., Constitutional and Administrative Law 2nd ed.
(Harmondsworth: Penguin Education, 1973)

Deutsch, K.W. et al., Political Community and the North Atlantic Area: International Organization in the Light of Historical Experience
(Princeton: Princeton University Press, 1957)

Dickinson, E.D., 'The Analogy between Natural Persons and International Persons in the Law of Nations' in Yale Law Journal Vol.26 (1961-1971) pp.564-591

Dickinson, G.L., After the War (London: Fifield, 1915)

Dodge, D.L., War Inconsistent with the Religion of Jesus Christ with an Introduction by E.D. Mead (Boston: Gin, 1905)

Donelan, M., 'Grotius and the Image of War' in Millennium (Winter 1983/4) Vol.12 No.3 pp.233-243

Doyle, M.W., 'Kant, Liberal Legacies, and Foreign Affairs' in Philosophy and Public Affairs Vol.12 No.3 (Summer 1983) pp.205-234 and Vol.12 No.4(Fall 1983) pp.323-352

Dumont, J. (ed.) Corps Universel Diplomatique du Droit des Gens
8 Vols. (Amsterdam: Brunel, 1726-1731)

Durkheim, E., Socialism and Saint-Simon ed. with an Introduction by A.W. Gouldener, tr. by C. Sattler, from the ed. originally edited with and Introduction by M. Mauss (London: Routledge & Kegan Paul, 1959)

Eherenberg, V., The Greek State (Oxford: Blackwell, 1960)

Engel, S. & R.A. Métaill (eds.) Law, State and International Legal Order
(Knoxville: The University of Tennessee Press, 1964)

Falk, R., Legal Order in a Violent World (Princeton: Princeton University Press, 1968)

Falk, R., The Status of Law in International Society (Princeton: Princeton University Press, 1970)

Falk, R., A Study of Future Worlds (New York: Free Press, 1975)

Falk, R., Human Rights and State Sovereignty (New York: Holmes & Meier, 1981)

Falk, R. and C.E. Black (eds.) The Future of International Legal Order
4 Vols. (Princeton: Princeton University Press, 1969) Vol.I Trends
and Patterns

Forsyth, M., Unions of States: The Theory and Practice of Confederation
(Leicester: Leicester University Press, 1981)

Forsyth, M.G. et al., (eds.) The Theory of International Relations:
Selected Texts from Gentili to Treitschke (London: Allen & Unwin, 1970)

Fox, W.T.R., The American Study of International Relations (Columbia:
Institute of International Studies, University of South Carolina, 1968)

Friedmann, W., What's Wrong with International Law? (London: Watts, 1941)

Friedrich, C.J. Inevitable Peace (Cambridge, Mass.: Harvard University
Press, 1969)

Fromkin, D., The Independence of Nations (New York: Praeger, 1981)

Gallie, W.B., Philosophers of Peace and War (Cambridge: Cambridge
University Press, 1978)

Gideonse, H.D. et al., The Politics of Atomic Energy (New York:
The Woodrow Wilson Foundation, 1946)

Ginger, R. (ed.) William Jennings Bryan: Selections (Indianapolis: Bobbs-Merrill, 1967)

Gladwyn, Lord, The Memoirs of Lord Gladwyn (London: Weidenfeld & Nicolson, 1972)

Greer, T., What Roosevelt Thought: The Social and Political Ideas of Franklin D. Roosevelt (East Lansing, Michigan: Michigan State University Press, 1965)

Grey of Fallodon, Viscount, Twenty-Five Years, 1892-1916 3 Vols. (London: Hodder & Stoughton, 1928)

Groom, A.J.R. and P. Taylor (eds.) Functionalism: Theory and Practice in International Relations (London: University of London Press, 1975)

Grotius, H., De Jure Belli ac Pacis Libri Tres, tr. of the text of the 1646 ed. by F.W. Kelsey (Oxford: Clarendon Press, 1925)

Halévy, E., A History of the English People in 1815 (London: Penguin Books, 1937)

Hall, W.E., A Treatise on International Law 6th ed. by J.B. Atlay (Oxford: Clarendon Press, 1909)

Hankey, M., "Diplomacy by Conference" in The Round Table (March 1921) pp.287-311

Harrod, R.F., The Life of John Maynard Keynes (London: Macmillan, 1951)

Hemleben, S.J., Plans for World Peace through Six Centuries (Chicago: The University of Chicago Press, 1943)

Hobbes, T., Leviathan (1651) edited and abridged with an introduction by John Plamenatz (London: Collins, 1962)

Hobson, J.A., Richard Cobden: The International Man (London: T. Fisher Unwin, 1918)

Holbraad, C., The Concert of Europe: A Study in German and British International Theory 1815-1914 (London: Longman, 1970)

Holland, T.E., Studies in International Law (Oxford: Clarendon Press, 1898)

Horsefield, J.K., The International Monetary Fund 1945-1965 (Washington, D.C.: International Monetary Fund, 1969)

Hughes, C.J., The Parliament of Switzerland (London: Cassell, 1962)

Hull, C., The Memoirs of Cordell Hull 2 Vols. (London: Hodder & Stoughton, 1948) Vol.2 p.1639

Imber, M.F., 'Re-reading Mittrany: a pragmatic assessment of sovereignty' in Review of International Studies Vol.10 No.2 (April 1984) pp.103-123

Ionescu, G. (ed.) The Political Thought of Saint-Simon (London: Oxford University Press, 1976)

Jacobs, A.J., Neutrality versus Justice (London: T. Fisher Unwin, 1917)

James, A.M. (ed.) The Bases of International Order (London: Oxford University Press, 1973)

Jay, W., War and Peace: The Evils of the First and a Plan for Preserving the Last, reprinted from the original ed. of 1842 with an introduction by J.B. Scott (New York: Oxford University Press, 1919)

Jellinek, G., Allgemeine Staatslehre 3rd ed. by Walter Jellinek (Berlin: Springer, 1922)

Joynt, C.B. and P.E. Corbett, Theory and Reality in World Politics (London: Macmillan, 1978)

Keal, P., Unspoken Rules and Superpower Dominance (London: Macmillan, 1983)

Keeton, G., National Sovereignty and International Order (London: Peace Book Company, 1939)

Kelsen, H., General Theory of Law and State tr. by Anders Wedberg (New York: Russell & Russell, 1945)

Kelsen, H., Principles of International Law 2nd ed., rev. and ed. by R.W. Tucker (New York: Holt, Rinehart & Winston, 1967)

Kunz, J.L., The Changing Law of Nations (Ohio State University Press, 1968)

Ladd, W., An Essay on a Congress of Nations for the Adjustment of International Disputes without Resort to Arms reprinted from the original of 1840 with an introduction by J.B. Scott (New York: Oxford University Press, 1916)

La Fontaine, H., 'The Existing Elements of a Constitution of the United States of the World' in International Conciliation No.47 (October 1911) pp.3-13

Latané, J.H. (ed.) Development of the League of Nations Idea : Documents and Correspondence of Theodore Marburg 2 Vols. (New York: Macmillan, 1932)

Lauterpacht, H., Private Law Sources and Analogies of International Law (With Special Reference to International Arbitration) (London: Longmans, Green, 1927)

Lauterpacht, H., The Function of Law in the International Community (Oxford: Clarendon Press, 1933)

Lauterpacht, H., 'The Grotian Tradition in International Law' in The British Year Book of International Law Vol. XXIII (1946)

Lauterpacht, H. and C.H.M. Waldock (eds.) The Basis of Obligation in International Law and Other Papers by the Late James Leslie Brierly (Oxford: Clarendon Press, 1958)

Lawrence, T.J., The Principles of International Law 4th ed. (Norwood, Mass.: Norwood Press, 1910)

League to Enforce Peace, Enforced Peace: Proceedings of the First Annual National Assemblage of the League to Enforce Peace, Washington, May 26-27, 1916

Leuchtenburg, W.E., Franklin D. Roosevelt and the New Deal 1932-1940 (New York: Harper & Row, 1963)

Linklater, A., Men and Citizens in the Theory of International Relations (London: Macmillan/London School of Economics and Political Science, 1982)

Liszt, Franz von, Das Völkerrecht Zehnte, umgearbeitete Auflage (Berlin: Springer, 1915)

Liszt, Franz von, Das Völkerrecht Elfte Auflage (Berlin: Springer, 1918)

Lorimer, J., 'Le Problèm Final du Droit International' in Revue de Droit International Vol.IX No.II (1877) pp.161-206

Lorimer, J., The Institutes of the Law of Nations 2 Vols. (Edinburgh: Blackwood, 1884)

Lough, J. & M., An Introduction to Nineteenth Century France (London: Longman, 1978)

Luard, E., A History of the United Nations (London: Macmillan, 1982) Vol.1 The Years of Western Domination, 1945-1955

McWhinney, E., Peaceful Coexistence and Soviet - Western International Law (Leyden: A.W. Sijthoff, 1964)

Manning, C.A.W., 'The Future of the Collective System' in Problem of Peace Tenth Series Anarchy or World Order (London: Allen & Unwin, 1936) pp.152-177

Manning, C.A.W., (ed.) Peaceful Change: An International Problem, reprint of the 1937 ed. with a new introduction for the Garland Edition by C. Marzani (New York: Garland Publishing, 1972)

Manning, C.A.W., The Nature of International Society, reissue (London: Macmillan, 1972)

Markham, F.M.H. (ed. & tr.) Henri Comte de Saint-Simon (1760-1825): Selected Writings (Oxford: Blackwell, 1952)

May, A.J., The Hapsburg Monarchy: 1867-1914 (Cambridge, Mass.: Harvard University Press, 1951)

Mayall, J. (ed.) The Community of States (London: Allen & Unwin, 1982)

Mill, J.S. A System of Logic: Ratiocinative and Inductive (London: Routledge, 1905)

Miller, D.H., The Drafting of the Covenant 2 Vols. (New York: G.P. Putnum's Sons, 1928)

Mitrany, D., A Working Peace System: An Argument for the Functional Development of International Organization (London: Oxford University Press for the Royal Institute of International Affairs, 1943)

Mitrany, D., A Working Peace System published in co-operation with the society for a world service federation (Chicago: Quardrangle Books, 1966)

Mitrany, D., The Functional Theory of Politics Introduction by Paul Taylor (London: Martin Robertson/London School of Economics and Political Science, 1975)

Moore, J.B., et al., Symposium on International Law: Its Origin, Obligation, and Future reprinted from Proceedings, American Philosophical Society Vol.LV (1916) pp.291-329

Moore, J.B., 'An Appeal to Reason' in Foreign Affairs Vol.11 No.4 (July 1933) pp.547-588

Morgenthau, H.J., Die Internationale Rechtspflege, ihr Wesen und ihre Grenzen (Leipzig: Robert Noske, 1929)

Morgenthau, H.J., Scientific Man versus Power Politics (Chicago: University of Chicago Press, 1946)

Morgenthau, H.J., Politics among Nations 1st ed. (New York: Alfred A. Knopf, 1948)

Morgenthau, H.J., Politics among Nations 5th ed. (New York: Knopf, 1973)

Mowat, R.B., A History of European Diplomacy 1815-1914 (London: Edward Arnold, 1922)

Nardin, T., Law, Morality and the Relations of States (Princeton: Princeton University Press, 1983)

Newton, A.P., Federal and Unified Constitutions (London: Longmans, 1923)

Nicholas, H.G., The United Nations as a Political Institution 5th ed. (London: Oxford University Press, 1975)

Niebuhr, R., 'The Illusion of World Government' in Foreign Affairs Vol.27 No.3 (April 1949) pp.379-388

Nijhoff, M. (ed.) War Obviated by an International Police: A Series of Essays written in various countries (The Hague: Nijhoff, 1915)

Nippold, O., Die Fortbildung des Verfahrens in Völkerrechtlichen Streitigkeiten (Leipzig: Duncker & Humblot, 1907)

Nippold, O., Die Zweite Haager Friedenskonferenz 2 Vols. (Leipzig: Duncker & Humblot, 1908)

Nippold, O., The Development of International Law after the World War tr. of Die Gestaltung des Völkerrechts nach dem Weltgriegen (1917) by A.S. Hershey with an introduction by J.B. Scott (Oxford: Clarendon Press, 1923)

Northedge, F.S., The International Political System (London: Faber & Faber, 1976)

Oechsli, W., Quellenbuch zur Schweizergeschichte (Zürich: F. Schulthers, 1886)

Oechsli, W., History of Switzerland: 1499-1914 tr. by E. & C. Paul (Cambridge: Cambridge University Press, 1922)

Oppenheim, L., International Law 2 Vols., 1st ed. (London: Longmans, Green, 1905-6)

Oppenheim, L., International Law 2 Vols., 2nd ed. (London: Longmans, Green, 1912)

Oppenheim, L., International Law 2 Vols., 3rd ed. by R.F. Roxburgh (London: Longmans, Green, 1920-21)

Oppenheim, L., International Law 2 Vols., 7th ed. by H. Lauterpacht (London: Longman, 1952)

Oppenheim, L., International Law Vol.I, 8th ed. by H. Lauterpacht (London: Longman, 1955)

Oppenheim, L., The Future of International Law tr. by J.P. Pate from Die Zukunft des Völkerrechts (1911) (Oxford: Clarendon Press, 1921)

Oppenheim, L., (ed.) The Collected Papers of John Westlake on Public International Law (Cambridge: Cambridge University Press, 1914)

Palmer, G.E.H. (Compiler) Consultation in the British Commonwealth: A Handbook on the Methods and Practice of Communication and Consultation between the Members of the British Commonwealth of Nations with an

introduction by Professor A. Berriedale Keith on the Constitutional Development of the British Empire in regard to the Dominions and India from 1887 to 1933 (London: Oxford University Press, 1934)

Parry, C. (ed.) The Consolidated Treaty Series (Dobbs Ferry, New York: Oceana, 1969)

Penrose, E.F., Economic Planning for the Peace (Princeton: Princeton University Press, 1953)

Pentland, C., International Theory and European Integration (London: Faber & Faber, 1973)

Pettman, R., State and Class: A Sociology of International Affairs (London: Croom Helm, 1979)

Phillimore, W., Schemes for Maintaining General Peace, Foreign Office Handbooks No.160 (London: H.M. Stationery Office, 1920)

Phillips, O. Hood, Constitutional and Administrative Law 4th ed. (London: Sweet & Maxwell, 1967)

Poggi, G., The Development of the Modern State: A Sociological Introduction (London: Hutchinson, 1978)

Porter, B. (ed.) The Aberystwyth Papers: International Politics 1919-1969 (London: Oxford University Press, 1972)

Pritchett, C.H., The American Constitution 3rd ed. (New York: McGraw-Hill, 1977)

Pufendorf, S., De Jure Naturae et Gentium tr. of the 1688 ed. by C.H. & W.A. Oldfather (Oxford: Clarendon Press, 1935)

Rappard, W.E., International Relations as Viewed from Geneva (New Haven: Yale University Press, 1925)

Rees, A. with the Assistance of Eminent Professional Gentlemen, The Cyclopaedia: or Universal Dictionary of Arts, Science and Literature 39 Vols. (London: Longman, 1819)

Renouvin, P., L'Idée de Fédération Européenne dans la Pénsee Politique du XIXe Siècle (Oxford: Clarendon Press, 1949)

Reynolds, P.A. & E.J. Hughes, The Historian as Diplomat: Charles Kingsley Webster and the United Nations 1939-1946 (London: Martin Robertson, 1976)

Roosevelt, E., This I Remember (London: Hutchinson, 1950)

Root, E., 'The Sanction of International Law' in American Journal of International Law Vol.2 No.3 (1908)

Rosen, S.J. and W.S. Jones, The Logic of International Politics (Cambridge, Mass.: Winthrop, 1980)

Rummel, R.J., 'Libertarianism and International Violence' in The Journal of Conflict Resolution Vol.27 No.1 (March 1983) pp.27-71

Ryder, T.T.B., Koine Eirene: General Peace and Local Independence in Ancient Greece (London: Oxford University Press for the University of Hull, 1965)

Sabine, G.H., A History of Political Thought 3rd ed. (London: Harrap, 1963)

St. Pierre, Abbot, A Project for Settling an Everlasting Peace in Europe tr. of Projet de Paix Perpetuelle (London: Printed for J.W., 1714)

Schiffer, W., The Legal Community of Mankind (New York: Columbia University Press, 1954)

Schmitt, C., Völkerrechtliche Grossraumordnung mit Interventionsverbot für Raufremde Mächte (Berlin: Deutscher Rechtsverlag, 1939)

Schuman, F.L., The Commonwealth of Man: An Inquiry into Power Politics and World Government (London: Robert Hale, 1954)

Schuman, F.L., International Politics 1st ed. (New York: McGraw-Hill, 1933)

Schuman, F.L., International Politics 7th ed. (New York: McGraw-Hill, 1969)

Schücking, W., The International Union of the Hague Conferences tr. of Der Staatenverband der Haager Konferenzen (1912) by C.G. Fenwick (Oxford: Clarendon Press, 1918)

Schvan, A., The Foundation of Permanent Peace (London: Richards, 1918)

Schwartz, B., American Constitutional Law (Cambridge: Cambridge University Press, 1955)

Schwarzenberger, G., The League of Nations and World Order: A Treatise on the Principle of Universality in the Theory and Practice of the League of Nations (London: Constable, 1936)

Schwarzenberger, G., William Ladd Preface by J.B. Scott 2nd ed. (London: Constable, 1936)

Schwarzenberger, G., Power Politics: An Introduction to the Study of International Relations and Post-War Planning (London: Jonathan Cape, 1941)

Schwarzenberger, G., International Law and Totalitarian Lawlessness (London: Jonathan Cape, 1943)

Scott, J.B., The Hague Peace Conferences of 1899 and 1907 2 Vols. (Baltimore: Johns Hopkins Press, 1909)

Scott, J.B., (ed.) The Proceedings of the Hague Peace Conferences: Translations of Official Texts, The Conference of 1899 (New York: Oxford University Press, 1920)

Seymour, C. (ed.) The Intimate Papers of Colonel House, Arranged as a Narrative 4 Vols. (London: Ernest Benn, 1926)

Shackleton, R., 'Montesquieu, Bolingbroke, and the Separation of Powers' in French Studies (1949) pp.25-38

Sherwood, R.E., Roosevelt and Hopkins: An Intimate History (New York: Harper, 1948)

Sherwood, R.E., The White House Papers of Harry L. Hopkins 3 Vols. (London: Eyre & Spottiswoode, 1949)

Simmel, G., Conflict tr. by K.H. Wolff; The Web of Group-Affiliations tr. by R. Bendix with a Foreword by E.C. Hughes (New York: The Free Press, 1955)

Smith, Steve (ed.) International Relations: British & American Perspectives (Oxford: Blackwell in association with the British International Studies Association, 1985)

Smuts, J.C., The League of Nations: A Practical Suggestion (London: Hodder & Stoughton, 1918)

Snell, J.L., The Democratic Movement in Germany 1789-1914 ed. and completed by H.A. Schmitt (Chapel Hill: The University of North Carolina Press, 1976)

Stengel, Karl von, Weltstaat und Friedensproblem (Berlin: Reichl, 1909)

Suganami, H., 'A Note on the Origin of the Word "International"' in British Journal of International Studies Vol.4 No.3 (October 1978) pp.226-232

Suganami, H., 'The Structure of Institutionalism: An Anatomy of British Mainstream International Relations' in International Relations Vol.VII No.5 (May 1983) pp.2363-2381

Suganami, H., 'A.V. Lowe on general rules of international law' in Review of International Studies Vol.10 No.2 (April 1984) pp.175-182

Taft, W.H., 'United States Supreme Court the Prototype of a World Court' in Judicial Settlement of International Disputes No.21 (May 1915)

Taylor, P., International Co-operation Today: the European and the Universal Pattern (London: Elek, 1971)

Taylor, T. (ed.) Approaches and Theory in International Relations (London: Longman, 1978)

Thompson, K. and Meyers (eds.) Truth and Tragedy: A Tribute to Hans Morgenthau (Washington, D.C.: The New Republic Book Company, 1977)

Thomson, D. et al., Patterns of Peacemaking (London: Kegan Paul, Trench, Trubner, 1945)

Treitschke, Heinrich von, Politics abridged, edited, and with an introduction by Hans Kohn (New York: Harcourt, Brace & World, 1963)

Trevelyan, G.M., Grey of Fallodon, being the Life of Sir Edward Grey afterwards Viscount Grey of Fallodon (London: Longmans, Green, 1937)

Vattel, E. de., Le Droit des Gens tr. of the 1758 ed. by C.G. Fenwick (Washington, D.C.: Carnegie Institute of Washington, 1916)

Verdross, A., 'General International Law and the United Nations Charter' in International Affairs Vol.30 No.3 (July 1954) pp.342-348

Waechter, M., How to Make War Impossible: The United States of Europe (London: Twentieth Century Press, 1912)

Waechter, M., The European Unity League: An Instrument for Carrying Out the Greatest and Most Important Social Reform (London: The European Unity League, 19??)

Walters, F.P., A History of the League of Nations 2 Vols. (London: Oxford University Press, 1952)

Waltz, K.N., Man, the State and War (New York: Columbia University Press, 1954)

Waltz, K.N., Theory of International Politics (Reading, Mass.: Addison-Wesley, 1979)

Walzer, M., Just and Unjust Wars (London: Allen Lane, 1978)

Wehberg, H., The Problem of an International Court of Justice tr. of Das Problem eines Internationalen Staatengerichtshofes (1912) by C.G. Fenwick (Oxford: Clarendon Press, 1918)

Westlake, J., International Law (Cambridge: Cambridge University Press, 1904) Part I Peace

Wheare, K.C., Federal Government 4th ed. (London: Oxford University Press, 1963)

Willetts, P. (ed.) Pressure Groups in the Global System: The Transnational Relations of Issue-Oriented Non-Governmental Organizations (London: Frances Pinter, 1982)

Wilson, W., The State, Elements of Historical and Practical Politics rev. ed. (London: D.C. Heath, 1899)

Wolff, C., Jus Gentium Methodo Scientifica Pertractatum tr. of the 1764 ed. by J.H. Drake (Oxford: Clarendon Press, 1934)

Woolf, L.S., International Government (New York: Brentano's, 1916; Garland Publishing, 1971)

Woolf, L., The Framework of a Lasting Peace (London: Allen & Unwin, 1917)

Woolf, L., The War for Peace (London: Routledge, 1940)

Woolf, L., (ed.) The Intelligent Man's Way to Prevent War (London: Victor Gollancz, 1933)

Worcester, N., 'A Solemn Review of the Custom of War' printed in The Society for the Promotion of Permanent and Universal Peace Tract No.1 (London, 1822)

Wright, M., 'Central but ambiguous: states and international theory' in Review of International Studies Vol.10 No.3 (July 1984) pp.233-237

York, E., Leagues of Nations, Ancient, Mediaeval, and Modern (London: Swarthmore, 1919)

Zimmern, A., The League of Nations and the Rule of Law 1918-1935 2nd ed.(London: Macmillan, 1939)