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THE RELATION OF INTERNATIONAL LAW TO INTERNATIONAL PEACE

JAMES L. BRIERLY*

In the early days of our legal history, when society was still too weak to enforce the law by a system of legal punishments, our ancestors devised a rude procedure which we know as 'outlawry'; *caput gerat lupinum*, the court would decree, let the criminal wear the wolf's head, and become like a wild beast whom it is every man's right and duty to hunt down and kill. Outlawry therefore meant quite frankly that the community went to war with one whom it could not control by law, and there is certainly a strong dramatic appeal in the choice of the term as a motto by one of the latest American peace movements. War, it seems to suggest, is a wild beast that we have been vainly trying to regulate by law; let us therefore outlaw it, declare war upon war. On the other hand, without being overcritical of a catchword, which may well have its use if we remember that it should be our servant and not our master, it is worth pointing out that the analogy does not carry us very far. As a matter of history recourse to outlawry, we are told, 'is one of the tests by which the relative barbarousness of various bodies of ancient law may be measured'; it was a weapon 'as clumsy as it was terrible'¹; it was in fact a confession of the failure of law and not its triumph, for it did not mean the substitution of law for war, but exactly the reverse. Moreover in historical outlawry it was an individual that was put outside the law, a rough and ready but at any rate a very simple method of dealing with him; what we are now asked to outlaw is a certain practice, a form of conduct which men at times adopt towards one another, and the process of treating war in that way is obviously a very different process from the other, and not nearly so simple. We cannot in any literal sense put the wolf's head on to war, and by merely calling the process 'outlawry', we do not even indicate a plan of campaign for our metaphorical war against war. By a curious inversion modern 'outlawrists' seem to use the term not to mark the abdication of law, but as a call for its extension into a new and hitherto unappropriated field; and though we need not quarrel over the use of a word, it is important that the old associations, in particular the idea of the rough simplicity of the process, should not be carried over to the new meaning. By all means let us agree that

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¹2 POLLOCK and MAITLAND, HISTORY OF ENGLISH LAW (2d ed. 1911) 450, 581.

war is a thing altogether evil, that it threatens to engulf our whole civilization unless it can be eradicated, and, as I at any rate should hope, that it is not an inherently necessary evil, but one that *can* be eradicated if we have the wisdom to find the way and then to make the sacrifices of immediate interests that will be called for. There will still, however, remain the question of a plan, and in particular the question what part should be assigned to law? How far are we justified in looking upon law, in this case international law, as an instrument which can take the place that war has traditionally held in the relations of states?

To this question a very confident answer is given by the present movement for the 'outlawry of war', of which a clear, and what I take to be a more or less authoritative, account has recently been given by Dr. Charles C. Morrison;² and as the views contained in this article are radically opposed to those of Dr. Morrison's book it may be well at the outset to make it clear that the difference is solely one of judgment upon the method by which his purpose is likely to be attained. For since law is only one of the elements of which the social life of men and nations is built up, and since Dr. Morrison's scheme, as he insists more than once, 'moves wholly on the juridical plane', I should have thought that some inquiry into the potentialities and limitations of law, and the conditions in which it is or is not likely to function successfully, would have been relevant to his purpose. Dr. Morrison, however, draws a curious distinction³ between "an interest in international law, as such", which he disclaims, and the interest in it of "a builder of peace", which is much as though a builder were to insist on the best work in brick-laying and plumbing, while disclaiming any interest in either of those trades 'as such'; although this disclaimer does not prevent him from claiming that his proposals "rest on sound juridical foundations"⁴. No proposal looking towards a reformed international order can avoid giving judgment either expressly or by implication on the part that law should play in such an order; but it is curious how common is this habit of assuming that that part can be determined with dogmatic confidence on *a priori* reasoning. The builders of peace seldom seem to ask themselves such questions as these: What part is the law playing in international relations as things are? Why is that part a

²MORRISON, THE OUTLAWRY OF WAR; *a constructive policy for world peace* (1927).

³p. 157. Possibly the explanation of this distinction lies in another misconception to the effect that existing international law "is practically a code of war" (p. 99). ⁴p. 154.

relatively minor one? How does it come about that law plays a larger part in our relations as individuals? Why is it that it sometimes breaks down even there? Yet there is probably no other department of social organization in which it would be considered profitable to propound schemes of reform without research into the relevant experience. It is far from my intention to suggest that international law, or law in general, is a mystery to be reserved for specialists; on the contrary the evidence is available upon which any intelligent man can form an opinion. I merely plead that dissatisfaction with the existing order ought not to be regarded as a sufficient equipment for prescribing specific plans of reform in matters of international organization any more than it would be in any other social field, and that international law cannot be cast for any part in the scheme that happens to be vacant without regard to its special aptitude, or the context in which it is expected to function. It is the object of this article to suggest, partly by way of criticism of the overwhelmingly important part which Dr. Morrison assigns to it, that international law is not and cannot be made a panacea, and therefore that any scheme which "moves wholly on the juridical plane" is founded on a false simplification of a very complex problem.

The book has four main theses;⁵ (1) "that the problem of war must be disentangled from all other controversies, and, thus isolated, brought directly before the nations for a yes or no decision;" (2) "that war is an *institution*—legal, established, sanctified, and supreme;" (3) "that it can be abolished only by disestablishing it, by casting it out of the legal system of the nations in which it is entrenched;" and (4) "that its disestablishment can be made effective only by establishing in its place an institution of peace *conceived not under political but under juridical categories*. This can be done only by a basic change in international law."

(1) If we can imagine a plebiscite taken of motorists for a 'yes or no decision' on the question whether motor accidents should or should not continue to occur, the answer would hardly be doubtful, but it would not necessarily follow that they would drive with any greater care and skill, and unless they did so, accidents would continue to occur. War is in the same case; those who desire war for its own sake in any nation are so few as to be negligible, and if it were possible to 'disentangle' war from everything else and to 'isolate' it, it would have been abolished long ago. The difficulty of abolishing it only exists because in every country there are many who desire ends the pursuit of which may in fact, as things now are, lead to war, and there are

⁵p. xxviii.

many more who believe, or can be persuaded that they believe, those ends to be legitimate and worthy of their patriotic support. In other words nations, like motorists, are perpetually taking risks; they do not desire war, any more than the motorist desires a collision, and generally their dangerous policies do not lead to war, just as generally bad driving does not lead to an accident; but in the hundredth case the war or the accident does happen. No foundation, therefore, for a scheme of international order could be more unpromising than one which starts with the assumption that 'world peace is a question all by itself; it is a yes or no issue in international relationships, requiring not at all the previous or the concomitant solution of any other controversial question', or with the idea that it is possible to 'lift the war and peace question' far above the tides and clouds of politics.⁶ For how can a political event, such as war is, be lifted out of politics? War persists merely because the horror of it, sincere and wide-spread though it is, is not always strong enough to deter one nation from pursuing some particular 'policy' which contradicts some other 'policy' which another nation is equally determined to pursue, and the project of outlawry does not propose to change this state of things one jot. On the contrary it proposes carefully to preserve intact the 'sovereign right of a nation to attend to its own business'; and unfortunately we all live on the same planet, and some of us have a habit of managing or mismanaging our 'own business' to a degree that others find intolerably inconvenient. We shall take the first step towards the elimination of war from international life when we cease to think in terms of our sovereign rights to attend each to our own business, and begin to think more of what we owe to the legitimate interests and even to the susceptibilities of other nations; which is but to say that our plans will have to move on the 'moral', and not 'wholly on the juridical plane'.

(2) What is the present attitude of international law to war? To say that it is an institution 'sanctified and supreme' is merely a rhetorical exaggeration which explains nothing. Very briefly summarized the facts are that for centuries the *theory* of international law made a distinction between lawful and unlawful occasions of war, just as every tolerable system of municipal law makes a distinction, both in theory and practice, between the lawful and the unlawful uses of force; but that this distinction was never accepted by states in their practice, and its retention in the theory merely gave unreality to the system. The modern view is well expressed by Hall,⁸ when he

⁶p. 274.

⁷p. 65.

⁸HALL, INTERNATIONAL LAW (8th ed. 1925) 82.

says that "international law has no alternative but to accept war, independently of the justice of its origin, as a relation which the parties to it may set up if they choose". No one suggests that this is a tolerable state of the law, and it is the law merely because it reflects the practice which has hitherto prevailed between states! If the states can be induced to alter their practice, there will be no difficulty about altering the law; but merely altering the law, even if there were any way in which that could be done except by the action of the states, would not affect the practice. The truth is of course that international relations, and with them and as part of them international law, lag hopelessly behind the general march of civilization; they stand today much on the footing of baronial relations in the disorderly days of feudalism. The explanation of the present attitude of international law towards war is merely that a primitive age—and internationally we live in such an age—has the law it deserves, a primitive system of law; and it is idle to think that the law can be lifted to the level of our national systems of law except as part of a process in which the relatively civilized practice of our national lives is extended to our international relations.

(3) We are warned not to think of the outlawry scheme as an attempt to abolish war by fiat, for it is said to be 'a proposal to organize the world for peace'⁹. Whether the charge is really rebutted, will depend on the character of the organization proposed, and this is dealt with under the fourth of Dr. Morrison's theses. Here it is sufficient to repeat that war does not persist because it is tolerated by international law; it is only tolerated in law because it persists in fact.

(4) The institution which the outlawry scheme proposes to establish in the place of war is a court of law; and the essentials of a real court of law, we are told, are three, a body of judges, a definite code of law, and 'affirmative' jurisdiction, *i.e.* jurisdiction to summon a nation to its bar and to hear the complaint against it whether or not it enters an appearance.¹⁰ The primary statute of the code will make war in any form and under any guise a 'public crime'¹¹; 'the breath of life and of power' will be breathed into the system by a universal treaty between the nations, 'that they renounce forever and unconditionally the immemorial right to resort to war for the settlement of international disputes, that they agree to accept the jurisdiction of the court in all disputes covered by the code or arising

⁹p. 110.

¹⁰p. 144. It is interesting to note that these requirements would exclude all English courts and those of some American states.

¹¹pp. 38-39.

under treaties, and that they will accept in 'good faith and abide by the decision of the court in all cases'. The court however will deal only with 'international disputes; disputes over domestic policies of the nations are not within its jurisdiction'¹², and whether a dispute falls within its jurisdiction or not will be determined by the code as interpreted by the court itself. Dr. Morrison admits that the line between "disputes that are obviously international in character" and those involving "the sovereign right of a nation to attend to its own business" may be difficult to draw; still the line will be drawn by the makers of the code, that is to say, by the nations themselves. Periodic revision of the code is to be provided for. As to disputes not falling within the court's jurisdiction Dr. Morrison will have nothing to do with proposals for their compulsory arbitration. "In the case of the United States we have only to think of tariffs, and immigration, and the Monroe Doctrine, and prohibition, and the Allied debts, to see how a meddling nation, *under cover of our pledge to arbitrate any dispute whatsoever*, could provocatively precipitate an issue which was none of its business—in any sense which an independent country like the United States would acknowledge—and then demand that we go to arbitration with it. Illustrations similarly involving Great Britain, France, and other nations abound. Thus imposed upon, and taken advantage of, any self-respecting nation would be driven to repudiate its arbitration agreement without hesitation and without compunction."¹³ These disputes, however, would be covered by the absolute ban against war. So that the 'proposal to organize the world for peace' turns out to be merely a proposal to establish a court and a code of law. If my object were merely to criticise Dr. Morrison's scheme, I should have much to say in answer to his arguments that the existing Permanent Court of International Justice neither is at present, nor can be reformed so as to become, a real court of international justice.¹⁴ But the real objections to such a proposal lie deeper than the eccentricities of a particular exponent.

The radical vice of the scheme for 'outlawing' war is the fundamentally materialistic basis of its thought. We are really concerned with a great problem of human conduct, for 'law' and 'war' are merely abstract terms by which we denote two contrasted ways in

¹²p. 64.

¹³pp. 68-9.

¹⁴The value of these arguments may be estimated by noting that the writer is under the impression that the Statute of the Court "expressly forbids the use of a previous decision as a precedent" (p. 142); that the Court is a court of "arbitration"; and that on that account it is "susceptible of political shuffling and manipulation" (p. 220). For this charge no evidence is produced and none exists.

which men behave towards one another. No doubt since language is never more than an imperfect vehicle of thought, it is permissible and inevitable that we should to some extent hypostatize these abstractions; but if we ever allow ourselves to forget that this is what we are doing we shall easily be led astray. War is 'entrenched' in the legal system; we are to make a 'frontal attack' on war; international law is to be 'blamed' for the League's impotence in relation to war; war is to be cut out of the 'tissue' of law; these perpetually recurrent metaphors, (often, curiously enough, military metaphors) would be harmless, if one could feel that they belonged only to the language, and not also to the underlying thought, of outlawry. But the scheme is in fact a capital illustration of three fundamental materialistic fallacies with regard to the nature of international law, fallacies which are not often held in the crude form in which they appear in Dr. Morrison's book, but which are yet sufficiently common in the thought of laymen on international law to deserve a reasoned refutation. Stated in the baldest form these fallacies are (1) that international law is a self-acting force; (2) that it admits of manufacture by processes of mass production; and (3) that its primary function is to be an instrument for the settlement of disputes.

(1) When Dr. Morrison quotes Mr. Levinson as saying that "Not until the will of mankind throws the irresistible weight of the majesty of the law on the moral side, by destroying war's institutional status, by condemning and outlawing it, will this plague of plagues, which has baffled and shamed religion and civilization ever be exterminated"¹⁵, we may suppose that neither of them really believes law to be a body of irresistible weight; but such metaphors tempt us to imagine that somehow there is an inherent force in a rule of law, whereas on the contrary law is a very delicate highly specialized instrument of social progress, which easily degenerates into formalism or worse if its special aptitudes are disregarded. Instances abound of the failure of law or legal institutions when roughly transplanted to the soil of an alien civilization, and of the disrespect into which they fall when they have ceased to reflect the prevailing social conscience on the matters which they profess to regulate. In such cases we may be sure that this delicate instrument, the law, has fallen into unskilled hands; the mistake has been made of treating it as though it were a material thing, instead of being, as it is, a part of the institutional framework of a civilized society, and depending on other elements in that framework for its meaning and vitality. How insidious is the

¹⁵p. 93.

notion of law as an irresistible force is very clearly seen in Dr. Morrison's use of historical analogies to illustrate the power of a legal prohibition to abolish a noxious social institution. In his hands all these analogies are so many boomerangs which really show the utter dependence of law for its effectiveness on other social factors. Thus "the nations," he says, "made piracy an international crime. . . the institution was outlawed. The nations simply said, we want no more piracy, we want piracy made a crime; and their jurists formulated the laws to punish any found guilty of it. The international slave trade was outlawed in the same way."¹⁶ Now piracy decayed for many reasons, of which the chief was that the better policing of the seas made the trade too dangerous; in certain waters where there is a fair prospect of a safe field of operations and of markets in which to dispose of booty it still survives today. But the most instructive point about this analogy is that the law had declared pirates to be *hostes humani generis* centuries before they began to disappear, and it does so today in places where piracy is rife. The duel, we are told again, is "a match for the war system almost point for point, the two being dissimilar, as institutions, only in the fact that war involves nations while the duel involves two individuals. War is simply duelling on an international scale. . . It was disestablished by law and disappeared."¹⁷ It would be difficult to put more inaccuracies into a few words than are contained here. In actual fact the duel had hardly anything in common with war except its etymology; it was a fashion, a vice of a tiny minority of the population of certain countries at certain times, a debased relic of chivalry; it was no more the result of the clash of two competing wills, each determined to bend the other to its purpose, as war is, than is a modern prize fight. And again it is not historically true to say that it was eradicated by being made illegal; English law, for example, regarded death by duel as murder long before a change of social fashion abolished it in England, and the law of every country, so far as I know, where the duel still survives today, brands it as an illegal practice. But perhaps the analogy which is most fatal to the case for outlawry is that of slavery. "All the world knows that the act by which slavery was outlawed was no highly complicated one involving great subtlety of statecraft. In America the thing was done by means of writing into the federal constitution these few simple words: 'Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to its jurisdiction. . . .' As we look back

¹⁶p. 98.¹⁷p. 98.

upon the history of America's procedure against it the most amazing aspect of its abolition was the simple technique by which it was accomplished. A few words written into the constitutional law of the land, expressive of the profound public determination to have done with the institution forever, were the medium of its utter destruction. The law which had been on the side of the infamy was now turned against the infamy, and slavery disappeared."¹⁸ One is inclined to think that when President Lincoln said, "I do not want to issue a document that the whole world will see must necessarily be inoperative like the Pope's bull against the comet," he had a truer insight than this implies into the part that the victorious forces of the Union would have to play in making these "few simple words" effective.

Mr. John Bassett Moore has suggested¹⁹ that it is unreasonable to expect that *international* wars will cease before *civil* wars do so; and it is certainly curious that those who are interested in the problem of international war, and especially in the attitude of international law towards war, so seldom seem to realize how very instructive for their purpose would be an examination of the problem of civil wars. The latter, though they are generally on a smaller scale, are far commoner events than international wars; in the last decade there have been civil wars in Russia, China, Finland, Ireland, and there have been no international wars. The only reference that Dr. Morrison appears to make to this part of his problem is in the course of an appeal for the extension to the whole world of the juridical side of the American Federal system, the result of which would be, he thinks, that "international war will be cast down from its present legitimate institutional status and abandoned and prohibited by the nations as the states of the American Union have abandoned and prohibited it."²⁰ At this point he notes that the prohibition did not prevent the Civil War; but that war, he explains, was not analogous to an international war, because it was a "rebellion". No doubt, but to the inhabitants of the Shenandoah Valley the distinction probably seemed unimportant. "The effect of the outlawry of war would be to make war between nations illegal and criminal, as wars of rebellion are now." That again is true, but it is more relevant to know whether it would make them less frequent. For the significant lesson that the persistence of civil wars ought to teach us is the liability in certain conditions of a legal prohibition of war, even when backed by the whole organized system of a state government, to break under a

¹⁸pp. 102-103.

¹⁹MOORE, INTERNATIONAL LAW AND SOME CURRENT ILLUSIONS (1924) 95.

²⁰p. 262.

sufficient strain. If we could discover and formulate the conditions in which this is likely to happen, I suspect that we should make an important contribution towards the elucidation of the problem of *international war*. For since war is completely 'outlawed' in every state and yet is liable to occur in any, it clearly cannot be the mere fact of outlawry that normally preserves a condition of internal peace, for that fact is unaltered when civil war breaks out; and there is no reason to think that outlawry as between state and state would give a higher degree of security against the occurrence of international war.

(2) There is no real difference of opinion on the question of the need for more and better law in international relations. Nor would there, I suppose, be any difference about the need for more of many other desirable things; but it does not follow that the same wholesale methods of manufacture are applicable to all of them. When Hooker wrote that, "Of law there can be no less acknowledged than that her seat is the bosom of God, her voice the harmony of the world", he may have been using language which rings strangely in modern ears, but he was at least telling us a truth that we easily forget, that law belongs to the spiritual and not to the material side of our lives. International law has hitherto been, and for the most part it still is, essentially a system of customary law, which means that it belongs to a type of law which is characteristic of a very simple primitive community. Such growth as it has made has not until very recent times been the result of purposive action at all; it has been assumed that the slow processes by which new customs get themselves accepted and others fall into desuetude would suffice for the needs of international life. No modern international lawyer regards that state of things as tolerable today; everyone is agreed that deliberate action stimulating the growth of the law, and comparable in some degree to the legislative processes that are constantly going on within the state, is an urgent and vital need. But it is foolish to shut one's eyes to the reality of the difficulties of such a process, which are partly technical and partly inherent in the nature of the task.²¹ On the technical side there is the absence of any true international legislative machinery; the only substitute is an international conference, in which there is not and cannot be any provision entitling the will of the majority to prevail over that of the minority. If we imagine Congress or

²¹Dr. Morrison's references to the League Committee on Codification, besides showing that he does not know the nature of the task entrusted to the Committee, contain no less than three misstatements of fact, and I can personally vouch for the inaccuracy of his conjecture that the members spent their time 'playing golf or pinochle'!

Parliament attempting to work under such conditions, the magnitude of a merely procedural difficulty like this will be obvious. But that is not all. The agreed work of a quasi-legislative conference could only come into force if it were ratified; and I would ask Americans to think of the traditional attitude of their own Senate towards the ratification of treaties, and then to remember that before international legislation can take effect it must run the gauntlet of more than fifty such bodies, each with similar powers of rejection or of making reservations and each exposed to the distracting influences of domestic politics. But apart from these technical difficulties of the international legislative process it is obvious that an agreement on the law would be of real value only in spheres in which either differences at present exist as to what the law is or what it ought to be; in those departments of the law where the nations already hold identical views, no difficulty can arise as things are. But where such differences do exist, they are rarely a matter of accident; they exist because the nations have different interests on the matters concerned, so that if agreed principles of law are to be laid down at all, concessions must clearly be made by some, and probably by all, nations. I do not think that discussions of the problems of codification usually attach sufficient importance to this factor. It is so very easy to assume that the concessions, if any are required, will be made by other nations, whose views are so obviously less reasonable than our own; it is very easy to assume that, until one meets the representatives of the other nations in conference, and finds precisely the same assumption rooted in their minds. Nothing could be more misleading than to imagine that codification is a task requiring merely technical legal skill which can be handed over to the lawyers; their special training will be needed as advisers, and for the work of draftsmanship, but the questions of policy, and especially the question what sacrifices each country is prepared to make, cannot be for them. This point is so pervasively important in the task of codification that it is worth while to indicate the sort of problem which is inevitably raised at every turn. Let us suppose that nationality is one of the subjects, as it clearly ought to be, on which it is decided to promote international legislation. At present we have the scandal that many persons are without any nationality at all, and that others have more than one. The prime reason of this unsatisfactory state of affairs is obvious; it is simply that some nations, including Great Britain and the nations of North and South America, take the principle of the *jus soli* as the basis of their law, while others take the *jus sanguinis*. A satisfactory solution can only be obtained if one of these groups of nations, or

both, will make concessions from their cherished principle to the other, and a group of competent lawyers could draft provisions to that effect in a few hours. But when we begin to enquire *why* each group respectively cherishes its own principle, the difficulty begins to appear less tractable. The Americas are countries of *immigration*; they, or at any rate the United States, believe in the 'melting-pot'; they do not wish that the loyalty of an American born should be claimed by the country to which his parents may have belonged. On the other side are the countries of *emigration*; they do not care to admit that by crossing the sea their citizens or their descendants sever the ties of interest or of sentiment that bind them to the home of their ancestors. Both views are entitled to sympathy, but the conflict is only superficially juridical; it is a conflict of national interests.

Agreement on a code is nothing but an agreement on a thousand and one detailed provisions of the law, and no apology is needed therefore for another illustration indicative of the sort of details upon which agreed solutions are immensely difficult. The American Congress has recently departed from the traditional principle by which a married woman takes the nationality of her husband. It is not necessary to consider whether the change was wise or not; Congress for sufficient reasons evidently thought that it was. From the international codifier's point of view the important thing is that opinion in most other countries probably prefers the old rule, and thinks that it better meets the interests and even the wishes of most of the women concerned. Is the American Congress going to retrace its steps, or must the rest of the world, the majority, follow its lead? No doubt the point might be left unsettled, and no really serious harm would be done; but that is true of any particular provision of a proposed code. In fact, desirable as agreed solutions on international legal matters are in themselves, it is a delusion to think that these are the matters about which, in the absence of a solution, nations go to war.

(3) It is merely another aspect of what I have called the materialist view of law that it should be thought of as primarily a convenient means for the settlement of disputes. Lawyers and laymen alike are prone to confuse law with litigation; the lawyer, because the nature of his business makes litigation always present as a fact or a possibility, the layman, because most of what he reads or hears about the operation of law relates to this side of it. But actually litigation—the settlement of a dispute which has come to an issue—is only an incident, and not the essence, of law; it belongs to the path-

ology and not to the healthy operation of a legal system; it is no more the whole of law as a social institution than the curing of disease is the whole of hygiene. For our present purpose the serious result of regarding law as nothing but a means of settling disputes is that we tend to forget or fail to inquire why it is that law can be used effectively in this way at all. And yet the reason is plain; it can be so used because and in so far as the law is *a way of life*, because individuals within a state *normally* observe the standards it lays down in their personal relations, and conduct their business on the accepted understanding that it shall regulate their mutual rights and obligations. If this were not so, there would be no virtue in law as such which could save us from ourselves at the crisis of our disputes. The primary function of law, like that of medicine, is not to be curative, but preventive; and its curative function, which is secondary and derivative, is only possible so long as our disputes are occasional and not normal, and so long as most of us in our normal relations limit our freedom of action and follow certain principles of conduct whose object is the reduction of the inevitable friction that social life engenders.

The efficacy of law as a means of settling the disputes of states depends in exactly the same way on their readiness, as yet very limited, to accept law as the rule of their normal relations. Existing international law, uncodified though it is, is already effective to settle a host of minor disputes between states, and it is so used in an increasing number of controversies every year; and the reason that this is possible is because in minor matters, that is to say, in matters not necessarily unimportant in themselves, but about which it is hardly conceivable that in any event they will go to war, the states do already accept international law as their rule of life. International law is not used today to settle the major disputes of states, disputes in which their so-called 'vital interests' are concerned, not because the law is not codified, nor because the jurisdiction of international courts is not compulsory, but for the much more fundamental reason that the states refuse to submit their policies on such matters to any rule of law, because they claim that their policies, even though they may injure the interests, or offend the susceptibilities of other nations, are 'domestic' matters within their own 'sovereign right' of sole decision. While that is so, law cannot settle the issue when the policies of two states conflict.

Law and courts of law do their work in a well-ordered state, because they are an inseparable part of a highly complicated organization for the adjustment of conflicting interests, because in the

widest sense of the word they are a part, but not the whole, of social government. But it is impossible, without creating a superstate, which is neither a possible nor a desirable ideal, to establish 'government' in the international sphere. Can we, however, establish some international substitute for government, some measure of organization which will at least create the environment in which law will have a chance to grow and to perform internationally something like the same service that we demand from it in our national life? That would be a proposal really "to organize the world for peace", in a sense very different from that in which Dr. Morrison uses that phrase; a proposal for a revolution much greater than any that is dreamed of in the philosophy of outlawry. I have no prophecy to offer. I can only see that it means a complete reversal of the tendency towards aggressive nationalism that seems in the ascendant today; that it involves in particular the cessation of the practice of placing political power at the ready service of the economic interests of individuals; and that it calls for a tolerance of differences and a sympathy with others which is not yet common in any country. But there is sunshine as well as clouds in the international sky today.