The General Assembly referred to the same committee the draft declaration on the rights and duties of States, proposed by the Panamanian delegation, and it directed the committee "to treat as a matter of primary importance plans for the formulation, in the context of a general codification of offenses against the peace and security of mankind, or of an International Criminal Code, of the principles recognized in the Charter of the Nuremberg Tribunal and in the judgment of the Tribunal."

A new vista thus opens for developing international law! Those who work in the field will take an intense interest in the work of the committee, and they will feel reassured if it includes among its members men who, having lived with the subject, are capable both of valuing the methods followed in the past and of appraising the changes in the world which now necessitate a "fresh approach." It is gratifying to feel that our progress in international organization may mean that continuous attention can now be given to "revitalizing and strengthening international law," and it is a happy augury that a high official of the United Nations Secretariat, Mr. Y. L. Liang, has been charged with responsibility to that end.[7]

A significant contribution to the committee's deliberations was made in the paper [8] read by Sir Cecil Hurst before the Grotius Society in London on October 16, 1946. Out of his long experience, Sir Cecil submitted that the work to be done with respect to codification, to have "any chance of success," (1) "cannot be done by Governments or by delegates working under Government instructions"; (2) "cannot be done upon a purely individual basis" as the "work of one man alone"; and (3) "must be undertaken on both a national and an international basis." [9] Even if these views should not be wholly shared by the members of the committee they are stated with such cogency that they merit the most serious consideration.

MANLEY O. HUDSON

INTERNATIONAL LAW AND INTERNATIONAL ORGANIZATION

International law is a law between independent states. The effort to form a centralized or super government, evident during the last thirty years, implies on the other hand an abolition of independent states. This finds its reflection in the League of Nations, which had to recognize the continued existence of states, and less strongly in the United Nations Organization, which may have abolished the independence of the small states not possessing a veto power. It is inherent in the proposal of Judge Roberts and his friends for a world government. They would have domestic de-control, but believe in international control, even of individuals. All

[7] Journal, No. 58 (Supp. A), pp. 475, 485.

[8] Printed privately, under the title "A Plea for the Codification of International Law on New Lines."

[9] See Elihu Root, "The Function of Private Codification of International Law," this JOURNAL, Vol. 5 (1911), p. 577.

these movements contemplate so fundamental a change in international law, and a substitution of some new municipal law, that attention must be called to the transformation. The effort of the United Nations to pay lip service to the continued prevalence of international law is in a sense contradictory, for if the United Nations were successful in creating a superstate they would have to abolish international law. Perhaps the federalized state still will require international law for its members.

The latest evidence of the change from international to a superstate municipal law is found in the proceedings of the Nuremberg trials. However little sympathy needs to be wasted on the Nazi big-wigs there condemned, attention must be called to the fact that it was not an old or a new international law which was applied, but a new municipal law, a criminal law which was not theretofore known. To punish people for making war contemplates that judges of other states are in a position to reach such a conclusion, whereas international law had not given anybody authority to reach such a judgment. It must be, therefore, that the victors have simply availed themselves of their power as victors to judge the vanquished, and for that reason it seems unlikely, in spite of Justice Jackson's predictions, that the judgment, however just, will commend itself as an authority in international law.[1] Leaving aside the contradiction in terms, the verdict is more likely to involve a condemnation, judicial or otherwise, of the leaders of the losing cause. The efforts to abolish war, however commendable, do not seem impressive to those charged with the duty of safeguarding the defense of the state. Armaments are today higher than ever before in peacetime, and a condition of apprehension and mistrust prevails. These facts are largely due to recent departures from international law as we have known it heretofore. With the existence of the atomic bomb humanity may well be apprehensive as to its future.

It is to be noted that the really vital international decisions, the peace treaties which are supposed to chart the future, have no relation to law. They are dictated by political considerations involving all the factors that enter into politics. The law is hampered by such arrangements, for they become a superior authority.

We are therefore faced with the condition whether international law can prevail in the face of the trend, however unsuccessful, toward a unified centralized state. The law's continuance may be evidenced in the fact that treaties on trade and other matters continue to be adopted, and that the states regard themselves as independent.

[1] We leave aside the fact that the judges of the Tribunal, in characterizing "aggressive" war as a crime, were each condemning the history of their own nation, that the Kellogg Pact had numerous exceptions upon which the signatory nations insisted and that the Kellogg Pact had not heretofore been regarded as applying to individuals: *The New York Times*, Oct. 1, 1946, p. 12, col. 3, and Oct. 2, 1946, p. 22. Moreover, a military order leaves no "moral choice" to the soldier commanded.

The United States Undersecretary of State has recently observed that our intervention in the Dardanelles is due to the fact that the United States has an interest in all matters which might disturb the peace of nations.[2] If the country is thus to intervene promiscuously in all matters occurring anywhere, it is likely to have its fingers burned badly. It is a justification for the superstate theory consistent only with municipal law, which began with the assumption that individuals were subject to the control of international law, and was continued by the theory that independent states no longer exist. The discredited theory of the "just war" plays its part in this wishful thinking. All this of course is contrary to fact, but logically a superstate must intervene on behalf of every injured person, whatever his nationality, to redress wrongs which international law had heretofore left to the exclusive jurisdiction of his national state. There is an obvious contradiction, therefore, in leaving the diplomatic protection of the citizen abroad within the jurisdiction of his national state. Logically this should be the function of the superstate, whether a non-existent international community or one of the states arrogating to itself a temporary superiority. That this superiority is likely to be challenged and that it leads to alliances and combinations and imperialism is left unnoticed.

This is not to say that independent states have not common interests, which they have heretofore evidenced in their subservience to law and in their promotion of administrative unions, a function largely taken over now by the Social and Economic Council of the United Nations and its Commissions. This is worth while work and there is no intention of disparaging it. But when it comes to political centralization, a fundamental change in state life is inherent. The states show no evidence of a voluntary willingness to forego their sovereignty, so that we are left in some dilemma as to whether the new theory of subordination can prove effective. To speak of international law fitting the new theory is to try to fit a square peg into a round hole. This mechanical operation has usually been unsuccessful. Whether it can be more successful in political international life is problematical. The subject deserves more consideration than it has thus far received.

EDWIN BORCHARD

THE PROBLEM OF WORLD GOVERNMENT

The United Nations Charter came into force on October 24, 1945, less than four months after it was signed. Its inadequacies were not the result of any oversight but were deliberately written into the Charter in order that the Organization might be firmly grounded in the political environment in which it must operate.

In the period between the signing of the Charter and its coming into force atomic energy had been turned by man against man. The calculable

[2] *The New York Times*, Oct. 2, 1946, p. 14.