the quota or other restrictions which are applicable to immigrants, that he intends in good faith and will be able to depart from the United States upon the termination of his status, and that the enterprise is one which actually exists or is in active process of formation, and is not a fictitious paper operation.

In the case of the Department of Justice, the admission regulations of the Immigration and Naturalization Service apparently draw no distinction between treaty traders and treaty investors insofar as what is required of the alien is concerned. Under these regulations, one of the reasons for which a "trader or dependent" may be deemed to have failed to maintain status is his changing from activities of a treaty trader to those of a treaty investor, or *vice versa,* without previously obtaining consent to do so from the district director having administrative jurisdiction over the district in which the alien resides.[20] A "trader" under the 1952 Act is not required to submit an annual maintenance-of-status report to the director of immigration of his district, such as that required of traders and dependents under the 1924 Immigration Act. Regulations prescribe that the maximum time period for which a nonimmigrant may be admitted initially into the United States shall be whatever the admitting officer deems appropriate in order to accomplish the intended purpose of the alien's temporary stay in the United States;[21] a separate provision relates to application for extension of temporary admission.[22]

The new provisions of statutory law and treaties concerning treaty investors have not been in effect for a sufficient length of time to justify any final conclusions as to their practical utility. Much will depend upon the manner in which they, and the administrative regulations implementing them, are applied. It seems clear that the objective in mind is thoroughly sound. It is to be hoped that the plan of the new treaty clauses will fit in constructively with other moves aimed at promoting foreign investment and improving the world economic situation.

ROBERT R. WILSON

PLURALISM OF LEGAL AND VALUE SYSTEMS AND INTERNATIONAL LAW

A life dedicated to the study of international law, long studies on philosophy of law and more recent studies in comparative law have convinced this writer that any legal order, and hence international law, in order to be fully understood, must be studied from three approaches: analytical, sociological-historical and axiological. The analytical approach, the lawyer's approach par excellence, is indispensable; but it alone is not sufficient; it must first be supplemented—supplemented, not replaced—by the sociological-historical approach.[1] It must, second, be supplemented by an

[20] 8 C.F.R. Sec. 214e.4(a) (2).

[21] *Idem,* Sec. 214.1.

[22] *Idem,* Sec. 214e.5.

[1] Max Huber, Dietrich Schindler, J. L. Brierly. The true sociological approach has, of course, nothing to do with current "neo-realism." It is interesting to note that three very different writers put strong emphasis on this approach: Julius Stone, Legal Controls of International Conflict (New York, 1954); Mariano Aguilar Navarro, Derecho

axiological approach, by the study of the different legal systems and of the different systems of values which underlie these legal systems and the cultures of which they are a part. For the purpose of this investigation it is not essential whether we speak of this system of values as "natural laws" [2] or as mere ideologies. For even if they were not more than ideologies—Verdross has recently stated—their knowledge would still be necessary in order to understand these legal orders. The faith shared in the system of values by those subject to a legal order is, further, of the highest importance to make this legal order effective. Just as the present sociological foundation of international law limits its effectiveness, so the effectiveness of international law is hampered by the lack of a system of truly international values. This approach, still ignored by the majority of international lawyers, is today particularly important.

Our international law is a creation of Christian Europe. It has its roots in the *Respublica Christiana* of medieval Europe. The present "international community" came into being through the decentralization of the medieval unity. It remained until toward the end of the eighteenth century restricted to Christian Europe [3] and its extension to the United States and Latin America did not change its legal and value basis. It was shaped by theologians and lawyers of the Roman law. Many of its norms are mere transplantations of norms of Roman private law into the international sphere. The great importance of natural law in the early development of international law merely corroborates the dominating influence of Roman law. For Roman law was regarded not only as a world law—"jus gentium"—but also as the "ratio scripta"; the contents of natural law were taken from Roman law and Catholic theology. Our international law is based on the value system of the Occidental culture, on Christian,[4] and often Catholic, values. The Roman law-Catholic foundation has often been recognized by Protestant common-law lawyers.[5]

But even prior to 1856 the identity of legal and value systems was never complete. There were the states of Byzantine origin.[6] There was, at the

Internacional Público (3 vols. Madrid, 1952–1954); and Charles De Visscher, Théories et Réalités en Droit International Public (Paris, 1953). See also Walter Schiffer, The Legal Community of Mankind (New York, 1954).

[2] It is, of course, necessary to recognize that "natural law," so called, is not law, but ethics, a system of norms superior to law, by which to judge a legal order not as law or non-law, but as good or bad law. In this sense modern adherents of natural law: the German Coing, the Spaniard Legaz y Lacambra, the Mexican Rafael Preciado Hernández. The Belgian Jean Dabin, an orthodox Neo-Thomist, now states unequivocally "Au binôme: droit naturel-droit positif il faut substituer celui de: morale-droit." Théorie Générale du Droit (Brussels, 1953).

[3] Up to the beginning of the nineteenth century writers spoke of the "Droit des Gens de l'Europe." Still in 1856 Turkey was admitted "to participate in the advantages of the Public Law and System of Europe."

[4] All other countries were referred to as "pays hors chrétienté."

[5] "Existent international law is the creation of *but one historical portion* of *one* living culture" (italics supplied). Northrop "Contemporary Jurisprudence and International Law," 61 Yale L. J. 636 (1952).

[6] See the Russian scholar, Baron de Taube, "Études sur le développement historique du Droit International dans l'Europe Orientale" 11 Hague Academy of International

very beginning, the antithesis between Catholicism and Protestantism. Protestant writers often claim that international law is a Protestant creation. On the other hand, modern Spanish writers[7] blame the present crisis of international law on the fact that Catholic ethics and universality,[8] on which the "Spanish Fathers" tried to build international law, have been abandoned. Also today there is *within* the Occidental culture a difference between Catholic and Protestant cultures and "ways of life," between Anglo-Saxon and Hispanic cultures, between England and the Continent, between the United States and Latin America, between Europe and America. There is further a duality of legal systems: civil law and common law. In view of the Roman-law basis of international law, common-law lawyers have sometimes voiced apprehension.[9] But these differences do not threaten international law and its development. For the bases are common: the values of Occidental culture. It is a question of differences, but not of antagonisms; Catholic and Protestant, Anglo-Saxon and Hispanic, European and American values may be different, but they are also complementary.

Between 1856 and today the European Christian law of nations has, in an historical process, spread so as to constitute today the universal international law, binding also on nations of non-Occidental legal and value systems. This development was generally welcomed and praised.[10] Although the reception of international law by non-Occidental nations "made Oriental adjustments and interpretations necessary,"[11] the problem of the binding value of European Christian international law on states of non-Occidental legal and value systems was not seen in the West. For the

Law, Recueil des Cours 345–535 (1926), and "L'apport de Byzance au développement du droit international occidental" 67 *ibid.* 237–339 (1939). A modern Greek writer has seen the principal reason for the many Balkan crises of the nineteenth and twentieth centuries in the "total lack of understanding which the men of Occidental Europe have shown toward the states of Byzantine origin." P. A. Papaligouras, Théorie de la Société Internationale 489 (Zurich, 1941).

[7] See Aguilar Navarro, *op. cit. supra*, note 1, and Antonio de Luna, "Fundamentación del Derecho Internacional," 60 Revista de Derecho Internacional 210–264 (Havana, 1952).

[8] "Humanum genus, quamvis in varios populos et regna divisum, semper habet aliquam unitatem non solum specificam, sed etiam quasi politicam et moralem." Francisco Suárez, De legibus ac Deo legislatore.

[9] Thus Lauterpacht wrote some time ago that there is danger that states of the common law may be outvoted at international conferences, that international tribunals are mostly manned by Roman-law lawyers who have little (if any) knowledge of the common law, and that there is little justification today to make the development of international law exclusively dependent on Roman and civil law or to attribute to *one* system of law of a particular time and space the qualities of a *universal* law. Private Law Sources and Analogies in International Law 178.

[10] It remained for the leading National Socialist lawyer, Carl Schmitt, to attack what he called the "dissolution" of European order in a vague and universal, so-called "international law." "Die Auflösung der europäischen Ordnung im International Law," 5 Deutsche Rechtswissenschaft 267–278 (1940); against him H. Wehberg, in 41 Die Friedenswarte 157–166 (1941).

[11] See the interesting account in "Japan's Reception of the Law of Nations," by Professor Zengo Ohira, 4 Annals of the Hitotsubashi Academy (Tokyo) 55–66 (1953).

Occidental man was not only convinced of the eternity and absolute superiority of his culture, but believed also that it had been absorbed by the rest of the world to such a degree as to have become, in fact, the only one, worldwide culture.[12] Since 1920 positive international law has recognized the pluralism of the legal and value systems of the world, in the manner of elections to the Council of the League of Nations and the United Nations Security Council, to other organs of international organizations, in the equitable distribution, as to countries, of international civil servants and, particularly, in the Statute of the Permanent Court of International Justice and now in Article 9 of the Statute of the International Court of Justice, according to which "in that body as a whole the representation of the *main forms of civilization* and the *principal legal systems of the world* should be assured."

The present situation is characterized by the decline of Europe and the total crisis of our Occidental culture. There is, further, the deep split between the free and the Communistic worlds, a split *within* the Occidental cultures; if we speak of the East-West split, the words "East" and "West" are not used in the sense of Kipling. The Soviet law is of Western origin; the Soviet ideology is based on Marx and stems, therefore, in ultimate analysis, from Hegel. Yet Soviet law is a new legal system, different from civil and common law, as recognized in the free world and emphasized by Soviet scholars.[13] The Soviet ideology is not only different from that of the free Occidental world, but may perhaps be found to be incompatible with it. The political consequences of this split and of the "cold war" require no enumeration. There are also deep-reaching influences on international law and the law of international organization. Just as Professor Jessup,[14] thinking of the "cold war," could ask whether international law should not recognize a status intermediate between war and peace, so others have asked whether the same international law can rule both the capitalistic and the Communistic worlds, whether this ideological struggle will not lead to a disruption of the unity and universality of international law.[15] Although the early tendency to regard international law merely as the "law of the transition period"[16] seems to have been abandoned in the Soviet Union, there is no doubt that this split and the Soviet concept of international law[17] are posing and will pose many difficult problems, *de lege lata*

[12] Arnold Toynbee warned even in 1934 against the "misconception of the unity of culture." 1 A Study of History 149 ff. (1934).

[13] "Soviet law is a completely unique type of law; it is not a further development of bourgeois law, but a new type of law." A. Golumskii and M. S. Strogovitch, quoted in "Soviet Legal Philosophy," 5 XXth Century Legal Philosophies Series 385–386 (Cambridge, Mass., 1951).

[14] 48 A.J.I.L. 98–103 (1954).

[15] Kurt Wilk in 45 *ibid.* 648–670 (1951).

[16] Thus, E. Korovine, Das Völkerrecht der Übergangszeit (1929. German tr. from Russian original of 1924).

[17] See Taracouzio, The Soviet Union and International Law (1935); S. Krylov, "La doctrine soviétique du droit international," 70 Hague Academy of International Law, Recueil des Cours 411–471 (1947).

and *de lege ferenda,* for international law and the law of international organizations.

There is finally the fact that the international community has today for the first time become, so to speak, *really* international through the definitive emergence and the great activity on the international stage of states of non-Occidental legal and value systems.[18] Nearly one third of the Members of the United Nations are Asian and African states. They often form a bloc, supported in voting by the states of the Soviet bloc and a number of Latin American states. They are primarily interested in bringing colonial issues before the Security Council or Assembly; they are very active within the framework of Chapter XI of the United Nations Charter.[19] There is also a definite policy of the states of Africa and Asia outside the United Nations.

While this "rebellion" of the present and former colonial and semi-colonial peoples is, in present-day world politics, strongly intermingled with the split between the free and the Communistic world, it should not be overlooked that the issue is a separate one which would still exist if there were no East-West split. The independence idea pervades also the non-Communistic states of Asia and Africa. Many of these peoples feel a deep resentment against centuries of Western conquest and domination. They no longer want to be regarded by the West merely as sources of raw materials, export markets, strategic bases or tourist curiosities. Theirs is a new nationalism learned from Europe. But in addition to political and economic independence, they insist on their own culture, their own legal and value systems; they demand not only to be heard in international affairs, but to make their own legal and value contributions to international law. A new world is emerging, a world in which two out of every three human beings are non-white, a world in which white superiority is no longer conceded *a priori,* but must be earned.

Even the primitive legal and value systems of the Africa south of the Sahara begin to make themselves felt on the international stage. But most important is the active appearance of the states of the three great non-Occidental cultures. There is, first, the legal and value system of Islam, forming a vast belt from Morocco to Indonesia. There is a renaissance of Islam which wants to bring back the great days of Arabic and Islamic culture; there is a movement in Syria and Pakistan to base the constitutions on the Koran, on Islamic law [20] and on the Islamic system of values. The emergence of an Islamic ideology not only explains the Arab diffidence toward the West, but also the ideological abyss between the Arab states and Israel, the conflict between Pakistan and India.

[18] For a broader treatment, see Josef L. Kunz, "Pluralismus de Naturrechte und Völkerrecht," 6 Österreichische Zeitschrift für öffentliches Recht 185–220 (1954).

[19] See this writer's editorial in 48 A.J.I.L. 103–110 (1954).

[20] Moslem law has been studied, as far as the West is concerned, in England and France; see Louis Milliot, Introduction à l'étude du droit musulman (Paris, 1953). Recently it has also attracted attention in the United States; see Symposium on Moslem Law in 22 Geo. Wash. L. Rev. 1–39, and 127–186 (1953). In September, 1953, a Conference on Islamic Culture was held at Princeton University.

There is the legal and value system of India. India's influence under Prime Minister Jawaharlal Nehru is very pronounced in international politics, law, the United Nations, and its leadership in the "Asia for the Asians" movement. There is finally the attitude of ancient China [21] toward law, so entirely different and far removed from the Occidental approach, the value systems of Confucius, Lao-Tse and Buddha.

The question of an effective international law, in spite of these wide differences in legal and value systems, is one of the principal problems of Professor F. S. C. Northrop's [22] research. His proposal of solution is to reduce the United Nations Charter to two main articles. The first article would declare the pluralism of ideologies as the basic principle. Each Member would be requested to state its specific ideology. The Charter would guarantee to each Member the protection of its ideology within its geographical area. An international judge would know that in every decision the specific ideology of each Member within its geographical area must be protected, as long as this Member has not itself changed its ideology and so informed the United Nations. Any speaker in the United Nations, attacking the ideology of another Member, would be automatically ruled to be out of order. Thus, the author hopes, the "cold war" could be ended. Each Member, as stated, would inform the United Nations of its ideology and of each change of it made voluntarily by this Member. But experts must investigate this ideology as far as its theory of international law is concerned. If this investigation shows that this ideology is also regarded as the only valid norm for the decision of international conflicts, the nation must, before being admitted, reject this part of its ideology in writing and take an oath to recognize instead the principle of the pluralism of ideologies. The second article would impose upon each Member the duty to subject that part of its life which is international in character to the international organization. Every aggressive intervention or use of force against the ideology of another state is banned and each Member obligates itself to participate in common action against the aggressor. Thus, the author hopes, the "veto" could be eliminated and at the same time an "international police force" of such strength might be created as to make resistance sheer insanity.

This writer has no space to refute this proposal in detail. He believes that it suffices to have given an exposé of it in order to make it clear that this proposal is wholly utopian. It is incapable of being realized; it cannot be translated into effective legal norms; and even if it could, it would be wholly illusory and insufficient. The pluralism of legal and value systems is, indeed, one of the problems for an effective international law, although not the only one. Hence, a comparative study of these legal and value systems on a grand scale and in a truly scientific manner would be

[21] See F. A. Schnitzer, Vergleichende Rechtswissenschaft 260–267 (Basle, 1945); René David, Traité Élémentaire de Droit Comparé 377–393 (Paris, 1950). See also Jean Escarra, Le Droit Chinois.

[22] See his books: The Meeting of East and West (New York, 1947); Editor: Ideological Differences and World Order (New Haven, 1949); *id.*, The Taming of the Nations (New York, 1952), and his article, *loc. cit. supra*, note 5.

of great importance. Such comparative analysis must not only study the non-Occidental systems in their purity, but also take into consideration the far-reaching influences exercised on non-Occidental systems by the civil and the common law. It must take into consideration that these non-Occidental states are striving, out of poverty and misery, for prosperity, for industrial progress, for effective government and higher living standards. In these respects they must look to the West; technical assistance has a very great rôle to play, if it is given with no idea of domination. This writer believes that the non-Occidental legal and value systems are different from, but not incompatible with, those of the Occidental culture of the free world. They threaten neither the existence nor the development of universal international law. But they cannot be ignored; for they certainly will make their influence felt on the contents of international law: they will play a rôle in the formation of customary international law, in the contents of treaty-created norms, in the "general principles of law, recognized by civilized nations" and in the development of the law of international organizations.

JOSEF L. KUNZ

THE REALIST THEORY IN PYRRHIC VICTORY

The new edition of Professor Morgenthau's well-known work on *Politics Among Nations*[1] merits brief editorial comment. It is designed, the Preface tells us, to take into account such recent "political experience" as "the emergence of new trends in the structure of world politics, the development of the colonial revolution, the establishment of supranational regional institutions, and the activities of the United Nations" (p. viii). The author introduces new concepts of "containment, cold war, uncommitted nations, and Point Four" and offers "elaboration, clarification, refinement, and change" of such earlier concepts as "political power, cultural imperialism, world public opinion, disarmament, collective security, and peaceful change," with application of these concepts "to the novel developments of recent years" (p. viii). In the faith that a "realist" theory of international politics has been "largely won," a new introductory chapter has been added for outlining the major tenets of this theory.

In basic structure of organization and in general orientation of thought, this edition of Professor Morgenthau's book remains, however, substantially the same as the earlier and is, accordingly, subject to both the same praise and the same criticism.[2] The exploratory map of world politics presented is still largely that of nation states, possessed of certain "elements" of power, pursuing through certain conflicting policies of "*status*

[1] Hans J. Morgenthau, Politics Among Nations (New York: Alfred A. Knopf, 2nd ed., revised and enlarged, 1954). pp. xxviii, 626. Appendix. Bibliography, Historical Glossary and Index. $5.75.

[2] L. H. Woolsey, in reviewing the first edition, outlines the structure of the book and concludes that it "is the most incisive book of its kind that has come the way of this reviewer." 44 A.J.I.L. 221 (1950). Some criticism of basic assumptions is offered in McDougal, "Law and Power," 46 *ibid.* 102 (1952).