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# International law and order

by Georg Schwarzenberger.

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*Die Verfassung der Spanischen Republik*, Königsberg 1933  
*William Ladd*, London 1935—2nd ed. 1936  
*The League of Nations and World Order*, London 1936  
*Making International Law Work* (together with G. W. Keeton), London 1939—2nd ed. 1946  
*Power Politics. A Study of World Society*, London 1941—3rd ed. 1964 (German ed. 1955—Spanish ed. 1960)  
*International Law and Totalitarian Lawlessness*, London 1943  
*International Law as Applied by International Courts and Tribunals*, First published London 1945—Vol. I: *General Principles*, 3rd ed. 1957; Vol. II: *The Law of Armed Conflict*, 1968; Vol. III: *The Law of International Institutions* (in preparation)  
*A Manual of International Law*, London 1947—5th ed. 1967 (German ed. 1949)  
*The Fundamental Principles of International Law*, Recueil, Hague Academy of International Law, 1955—Vol. 87  
*The Legality of Nuclear Weapons*, London 1958 (transl. into German, Italian and Spanish, 1958—59)  
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*The Principles and Standards of International Economic Law*, Recueil, Hague Academy of International Law, 1966—Vol. 117  
*Foreign Investments and International Law*, London 1969  
*Economic World Order? The Melland Schill Lectures*, 1970, Manchester 1970

INTERNATIONAL LAW  
AND ORDER

BY

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Georg Schwarzenberger

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To

PAUL AND ALAN

## PREFACE

SINCE I started working on *The League of Nations and World Order* (Constable, London — 1936), I have become increasingly fascinated by the relations between law and order in general, and international law and order in particular. The fourteen essays published in this book are concerned with various aspects of this fundamental legal problem. *International Law and Order* is also intended as a companion to *The Frontiers of International Law*, published in 1962.

Both books are addressed to three categories of reader:

(1) The increasing number of postgraduate students who desire to balance specialised work in the various branches of international law by the study of more basic problems and receive guidance on issues beyond the scope available in a textbook.

(2) Law teachers and students who wish to have some of these essays more easily accessible than in the form in which they had first been published and to have them brought up to date, interrelated, pruned or expanded as the case required.

(3) Legal practitioners, politicians, civil servants—national, international and supranational—and interested laymen who would like to make up their own minds on the relevance of international law in contemporary world society.

At various stages when I contemplated the publication of such a book, the editors and publishers of periodicals, in which the original version of these essays appeared, generously responded to my requests for permission to include material in the book. While more detailed references will be found in Chapter 1, the names of these periodicals should head the list of acknowledgments: *The British Year Book of International Law*; *Current Legal Problems*; *Indian Journal of International Law*; *Texas Law Journal*; the *Transactions of the Grotius Society* and the *Year Book of World Affairs*. As, again, will be indicated more fully in Chapter 1, most of these essays owe a great deal to the stimulation received from colleagues and students in lectures and seminar discussions at universities I was privileged to visit in this country and abroad.

I am under a greater debt than I can tell, to my own students, undergraduate and postgraduate alike, at University College London and the London Institute of World Affairs and my colleagues at both these



institutions: Mr. R. Austin, Dr. E. D. Brown, Professor Bin Cheng, Miss Alpha Connelly, Mrs. Margaret Homewood, Miss Eileen Landray and Mr. A. Sutton. They have splendidly assisted me by their critical, editorial and technical co-operation. Dr. Brown has also shouldered the burden of preparing the tables and indices. Again, it was a pleasure to work together in the production of this book with the Publishers and Printers.

G. S.

UNIVERSITY COLLEGE LONDON

January 14, 1971

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\* The Convention is not yet in force.

## LIST OF ABBREVIATIONS

A	...	...	Series A, containing the Judgments and Orders of the Permanent Court of International Justice, 1923-30
A/B	...	...	Series A/B, containing the Judgments, Orders and Advisory Opinions of the Permanent Court of International Justice, 1931-40
A.J. Comp. Law	...	...	<i>American Journal of Comparative Law</i>
A.J.I.L.	...	...	<i>American Journal of International Law</i>
Am. Pol. Science Rev.	...	...	<i>American Political Science Review</i>
Annuaire Français	...	...	<i>Annuaire français de droit international</i>
Annuaire de l'Institut	...	...	<i>Annuaire de l'Institut de Droit International</i>
Annual Digest	...	...	<i>Annual Digest and Reports of Public International Law Cases, 1929-55</i>
A.S.I.L. Proceedings	...	...	<i>Proceedings of the American Society of International Law</i>
A.V.R.	...	...	<i>Archiv des Völkerrechts</i>
B	...	...	Series B, containing the Advisory Opinions of the Permanent Court of International Justice, 1922-30
B.D.I.L.	...	...	Parry, C. (ed.), <i>A British Digest of International Law, 1965-</i>
B.I.L.C.	...	...	<i>British International Law Cases</i>
B.P.I.L.	...	...	Lauterpacht, E., <i>British Practice in International Law, 1963-</i>
Br. and For. St. Pap.	...	...	<i>British and Foreign State Papers</i>
B.Y.I.L.	...	...	<i>British Yearbook of International Law</i>
C.	...	...	Command Papers (United Kingdom) 1870-99
C.L.P.	...	...	<i>Current Legal Problems</i>
Can. Y.B.I.L.	...	...	<i>Canadian Yearbook of International Law</i>
Cheng, General Principles of Law	...	...	Cheng, B., <i>General Principles of Law as Applied by International Courts and Tribunals, 1953</i>
Cmd. ...	...	...	Command Papers (United Kingdom), 1956-
Diss. Op.	...	...	Dissenting Opinion
E.C.H.R.	...	...	European Commission of Human Rights
Economic World Order?	...	...	Schwarzenberger, G., <i>Economic World Order? (The Melland Schill Lectures, 1970) 1970</i>
Eur. Ct.	...	...	Court of Justice of the European Communities
European Y.B.	...	...	<i>European Yearbook</i>
F. O. Handbook	...	...	United Kingdom Foreign Office; <i>Handbook of Commercial Treaties, 1931</i>
Foreign Investments	...	...	Schwarzenberger, G., <i>Foreign Investments and International Law, 1969</i>
Frontiers	...	...	Schwarzenberger, G., <i>The Frontiers of International Law, 1962</i>
Fundamental Principles	...	...	Schwarzenberger, G., <i>The Fundamental Principles of International Law, 87 Hague Recueil (1955)</i>
GATT	...	...	General Agreement on Tariffs and Trade
G.B.	...	...	Great Britain
Grotius Transactions	...	...	<i>Transactions of the Grotius Society</i>
Hackworth, G. H., Digest	...	...	Hackworth, G. H., <i>Digest of International Law, 1940-44 (8 vols.)</i>
H.C. Deb.	...	...	House of Commons, Parliamentary Debates (Hansard)
Hague Recueil	...	...	<i>Recueil des Cours, Académie de Droit International de la Haye</i>
Hall, W. E. International Law	...	...	Hall, W. E., <i>International Law</i> (unless otherwise indicated, edition by A. P. Higgins, 1924)
I.A.E.A.	...	...	International Atomic Energy Agency
I.B.R.D.	...	...	International Bank for Reconstruction and Development
I.C.A.O.	...	...	International Civil Aviation Organisation

<i>I.C.J. Reports</i> ...	<i>Reports of Judgments, Advisory Opinions and Orders of the International Court of Justice</i>
<i>I.C.L.Q.</i> ...	<i>International and Comparative Law Quarterly</i>
<i>I.C.R.C.</i> ...	<i>International Committee of the Red Cross</i>
<i>I.E.L.</i> ...	<i>International Economic Law</i>
<i>I.L.A.</i> ...	<i>International Law Association</i>
<i>I.L.C.</i> ...	<i>International Law Commission</i>
<i>I.L.M.</i> ...	<i>International Legal Material</i>
<i>I.L.R.</i> ...	<i>International Law Reports, 1950-</i>
<i>I.M.T.</i> ...	<i>International Military Tribunal</i>
<i>Indian J.I.L.</i> ...	<i>Indian Journal of International Law</i>
<i>Inductive Approach</i> ...	Schwarzenberger, G., <i>The Inductive Approach to International Law</i> , 1965
<i>I.O.I.</i> ...	Panhuy, J. H. F. van, and Others, <i>International Organisation and Integration</i> , 1968
<i>J. of Legal Ed.</i> ...	<i>Journal of Legal Education</i>
<i>Kiss, Répertoire</i> ...	Kiss, A. Ch., <i>Répertoire de la pratique française en matière de droit international public</i> , 1962-
<i>L.N.T.S.</i> ...	<i>League of Nations Treaty Series</i>
<i>L.Q.R.</i> ...	<i>Law Quarterly Review</i>
<i>L. Rev.</i> ...	<i>Law Review</i> , for instance, <i>Alberta L. Rev.</i>
<i>Manual</i> ...	Schwarzenberger, G.: <i>A Manual of International Law</i> (5th ed.) 1967
<i>Martens, N. R.</i> ...	Martens, G. F. von, <i>Nouveau Recueil de Traités</i> , 1817-42
<i>Martens, N. R. G.</i> ...	Martens, G. F. von, <i>Nouveau Recueil Général de Traités</i> , 1908-
<i>Martens, R.</i> ...	Martens, G. F. von, <i>Recueil de Traités</i> , 1817-35
<i>M.A.T.</i> ...	Mixed Arbitral Tribunal (the references are to the <i>Recueil des décisions des tribunaux arbitraux mixtes</i> , 1921-30)
<i>m.f.n.</i> ...	most-favoured-nation
<i>M.L.R.</i> ...	<i>Modern Law Review</i>
<i>Mélanges de Luna</i> ...	<i>Estudios de Derecho Internacional Homenaje. A. D. Antonio de Luna</i> , 1968
<i>Mélanges Guggenheim</i> ...	<i>Recueil d'Études de Droit International en Hommage à Paul Guggenheim</i> , 1968
<i>Mélanges Modinos</i> ...	<i>Mélanges offerts à Polys Modinos</i> , 1968
<i>Moore, J. B., Digest of International Law</i> ...	Moore, J. B., <i>Digest of International Law</i> , 1906 (8 vols.)
<i>N.S. Journ. Soc. Comp. Leg.</i> ...	<i>Journal of Comparative Legislation and International Law, New Series</i>
<i>O.A.S.</i> ...	Organisation of American States
<i>O.A.U.</i> ...	Organisation of African Unity
<i>O.E.C.D.</i> ...	Organisation for Economic Co-operation and Development
<i>O.E.E.C.</i> ...	Organisation for European Economic Co-operation
<i>ONUC</i> ...	United Nations Force in the Congo
<i>Oppenheim, L., International Law</i> ...	Oppenheim, L., <i>International Law</i> (unless otherwise indicated, edition by H. Lauterpacht) 1952-55 (2 vols.)
<i>P.C.I.J.</i> ...	Permanent Court of International Justice
<i>Power Politics</i> ...	Schwarzenberger, G., <i>Power Politics. A Study of World Society</i> (3rd ed.) 1964
<i>Principles of I.E.L.</i> ...	Schwarzenberger, G., <i>The Principles and Standards of International Economic Law</i> , 117 Hague Recueil (1966)
<i>R.D.I.L.C.</i> ...	<i>Revue de droit international et de législation comparée</i>
<i>R.G.D.I.P.</i> ...	<i>Revue générale de droit international public</i>
<i>R.I.A.A.</i> ...	United Nations, <i>Reports of International Arbitral Awards</i> , 1948-

<i>Scand. Studies in Law</i> ...	<i>Scandinavian Studies in Law</i>
<i>Sep. Op.</i> ...	<i>Separate Opinion</i>
<i>Totalitarian Lawlessness</i> ...	Schwarzenberger, G., <i>International Law and Totalitarian Lawlessness</i> , 1943
<i>U.N.</i> ...	United Nations
<i>U.N. Adm. Trib.</i> ...	United Nations Administrative Tribunal
<i>U.N.C.T.A.D.</i> ...	United Nations Conference on Trade and Development
<i>UNFICYP</i> ...	United Nations Force in Cyprus
<i>U.N.T.S.</i> ...	United Nations Treaty Series
<i>U.N.Y.B.</i> ...	<i>Yearbook of the United Nations</i>
<i>Verdross Festschrift</i> ...	Heydte, F. A. von der, and Others (eds.), <i>Völkerrecht und rechtliches Weltbild. Festschrift für Alfred Verdross</i> , 1960
<i>Virginia J.I.L.</i> ...	<i>Virginia Journal of International Law</i>
<i>Vol. I</i> ...	Schwarzenberger, G., <i>International Law as Applied by International Courts and Tribunals</i> , Vol. I: <i>General Principles</i> 3rd ed., 1957
<i>Vol. II</i> ...	Schwarzenberger, G.: <i>International Law</i> , Vol. II: <i>The Law of Armed Conflict</i> , 1968
<i>Whiteman, M. M., Digest</i> ...	Whiteman, M. M., <i>Digest of International Law</i> , 1963-
<i>W.L.R.</i> ...	<i>Weekly Law Reports</i>
<i>Y.B.I.L.C.</i> ...	<i>Yearbook of the International Law Commission</i> , 1949-
<i>Y.B.W.A.</i> ...	<i>Year Book of World Affairs</i>
<i>Z.A.Ö.R.V.R.</i> ...	<i>Zeitschrift für ausländisches öffentliches Recht und Völkerrecht</i>
<i>Z.V.R.</i> ...	<i>Zeitschrift für Völkerrecht</i>

## CHAPTER 1

### FUNDAMENTALS

*"Law and order is a name for civilisation as a task."*

R. G. Collingwood, *The New Leviathan* (1942)

*"Revolution is the main trend in the world today."*

Mao Tse-tung (May 20, 1970)

THIS Chapter contains a discussion of the theme of the book, a restatement of the methods applied and a glossary of key words.

#### I—THE THEME

The criteria for the inclusion of the papers selected may be more apparent in some cases than others. Thus, in each case, a short explanation is offered.

This also provides an opportunity to express my sense of obligation to the many colleagues, students and institutions in four continents who, over the years, have allowed me to try out some of my ideas on them, and to the editors of a number of periodicals in which earlier versions of these chapters took their first shape.

Almost inevitably, any such summary also reveals the model of my own views on the relations between international law and order. Such a model may help readers to see at a glance the object of the exercise.<sup>1</sup>

The essentials of this model can be presented in six propositions:

(1) In a sociological view, order and law are distinct, if closely related, phenomena.

(2) Historically, the available evidence appears to suggest that order tends to precede law.

(3) If, and when, order and law coalesce, it depends on the circumstances of the individual case which of the two predominates, and whether any particular correlation of law and order serves the interests of a civilising process or accelerates movements in the opposite direction.

(4) In unorganised international society, international law is conditioned by the underlying quasi-order of power politics, rather than the reverse.

(5) In consensual international quasi-orders, such as those of the League of Nations or United Nations, the changes attained in the relations

<sup>1</sup> See, further, below, p. 255 *et seq.*



between international law and order are changes in degree, rather than in kind, from systems of open power politics to systems of power politics in disguise.

(6) So long as the basic structure of world society remains substantially unaltered, proposals for world peace through world law fulfil the functions of ideologies or utopias in the sociological meaning of these terms.<sup>2</sup>

Even from this preliminary survey, the intellectual debt I owe to philosophers, sociologists and lawyers such as Hobbes, Spinoza, Henry Sumner Maine, Max Weber, Collingwood, J. L. Brierly and Gustav Radbruch is apparent and is gratefully acknowledged.

To describe the contents of the book in greater detail:

Chapter 2 on *Law, Order and Legitimation* is a historical and sociological introduction to the problems posed by the dichotomy of law and order, with emphasis on the operative link: legitimation in its various forms.<sup>3</sup>

Chapter 3 on *International Law and Order* is an attempt to apply these findings to law and order in international society and the ambivalent notion of world law.<sup>4</sup>

Chapter 4 on *International Jus Cogens* is an analysis, in relation to international order, of the concept of *jus cogens*, borrowed from Roman Law and incorporated in the form of "peremptory" rules of international law in the 1969 Vienna Convention on the Law of Treaties.<sup>5</sup>

Chapter 5 on *The Forms of Sovereignty* is an application of the phenomenological method<sup>6</sup> to one of the central concepts of any legal system and, especially, legal systems based on conditioning *de facto* orders or quasi-orders,<sup>7</sup> with especial reference to the phenomenon of hegemony.<sup>8</sup>

Chapter 6 on *Prohibition of the Abuse of Rights* is a critical examination of doctrines which, without support from commensurate

<sup>2</sup> See, further, below, p. 23 *et seq.*

<sup>3</sup> This Chapter is based on lectures given in the Laws Faculty of the University of Khartoum (1963) and at the *Institut de Hautes Etudes Internationales* of the University of Paris (1969). See also 23 C.L.P. (1970), p. 240 *et seq.*

<sup>4</sup> This Chapter is based on lectures given at the Haile Selassie University of Addis Ababa (1963), the Laws Faculty of Tehran University (1967) and the Geneva *Cercle des Juristes Internationaux* (1970). See also *loc. cit.* above, note 3, p. 258 *et seq.*

<sup>5</sup> This Chapter is based on lectures given at the Laws Faculties of Bombay (1965), Kerala (1965) and San Marcos, Lima (1966), and contributions to discussions at the Lagonissi Conference, convened in 1966 by the European Office of the Carnegie Endowment for International Peace. See also 43 Texas L.R. (1965), p. 455 *et seq.*, and 18 C.L.P. (1965), p. 191 *et seq.*

<sup>6</sup> See, further, below, pp. 5-6 and 59 *et seq.*

<sup>7</sup> See, further, below, p. 5 *et seq.*

<sup>8</sup> See, further, below, pp. 5 and 65 *et seq.*

This Chapter is based on lectures, delivered at the Universities of McGill (1958) and Cologne (1960) and at El Colegio de Mexico (1968). See also 10 C.L.P. (1957), p. 264 *et seq.*

international orders, are supposed to transform on the grand scale international *jus strictum* into *jus aequum*.<sup>9</sup>

Chapter 7 on *Myths and Realities of Treaty Interpretation* is a re-examination, against the background of the 1969 Vienna Convention on the Law of Treaties, of one of the major issues of any consensual international order or quasi-order.<sup>10</sup>

Chapter 8 on *The Most-Favoured-Nation Standard in British Practice* is concerned with the evolution and structure of techniques which have made possible the growth of legal regimes<sup>11</sup> of remarkable stability and elasticity, but falling short of international economic orders.<sup>12</sup>

Chapter 9 on *Peace, War and Order* is a discussion of the interrelations between the three major states of international law—peace, war and *status mixtus*—and the problem of international order.<sup>13</sup>

Chapter 10 on *From the Laws of War to the Law of Armed Conflict* is an analysis of the dynamics of the laws of war, themselves a constant reminder of the weakness of the quasi-order sustaining international law.<sup>14</sup>

Chapter 11 on *The Legality of Nuclear Weapons* continues an earlier examination of this catalytic problem of international order and disorder,<sup>15</sup> especially the attempts made in recent years to develop a consensual world order in the nuclear field.<sup>16</sup>

Chapter 12 on *Terrorists, Guerrilleros and Mercenaries* deals with three perennial phenomena, which have assumed a new significance in contemporary national and international conflicts.<sup>17</sup>

<sup>9</sup> This Chapter is based on lectures given at the Hague Academy of International Law (1955), the Grotius Society (1956) and Heidelberg (1960) and Calcutta (1965) Universities. See, further, 87 Hague *Recueil* (1955), p. 290 *et seq.*; 42 *Transactions Grotius Society* (1956), p. 147 *et seq.*, and below, pp. 5-6.

<sup>10</sup> This Chapter is based on lectures given at the University of Madras (1965), the National University of Mexico (1968) and an introduction to a discussion in a seminar led by Professor Schwelb in the Law School of Yale University (1968). See also 22 C.L.P. (1969), p. 205 *et seq.*

<sup>11</sup> See, below, p. 6.

<sup>12</sup> This Chapter is based on lectures given at Tübingen University (1947), *l'Institut de Hautes Etudes Internationales* of the University of Paris (1949) and Madrid University (1957). See also 22 B.Y.I.L. (1945), p. 96 *et seq.*

On related problems of international economic order, including the application of economic sanctions in support of the *political* quasi-orders of the League of Nations and the United Nations, see the Schill Lectures 1970 on *Economic World Order?* (Manchester University Press).

<sup>13</sup> This Chapter is based on a lecture given at Tel-Aviv University (1965) and an address delivered at the Annual Conference of the Indian Society of International Law in New Delhi (1965). See also 6 Indian J.I.L. (1966), p. 1 *et seq.*

<sup>14</sup> This Chapter is based on the Sherrill Lecture, delivered at the Law School of Yale University (1968). See also 21 C.L.P. (1968), p. 239 *et seq.*

<sup>15</sup> See, further, Vol. II, p. 1 *et seq.*

<sup>16</sup> Published separately under this title in *The Library of World Affairs* (1958—out of print) and translated into German in 13 *Europa Archiv* (1958), p. 10671 *et seq.*; Italian in 1 *Diritto ed Economia Nucleare* (1959), p. 15 *et seq.*, and Spanish in 93 *Revista de Estudios Políticos* (1958), p. 83 *et seq.* See also International Law Association, *Report of the Brussels Conference 1962*, p. 192 *et seq.*

<sup>17</sup> This Chapter is based on lectures delivered at the University of Leuven (1970) and the Cambridge International Law Club (1970).

Chapter 13 on *The Eichmann Judgment* serves to illustrate the relative strength of national centres of order and the corresponding weakness of the existing international quasi-order under the United Nations in the field of criminal jurisdiction.<sup>18</sup>

Chapter 14 on *Images and Models of International Law* is offered as a tentative sketch of iconological techniques<sup>19</sup> which appear helpful for purposes of more articulate criticism (and self-criticism) of an increasing variety of approaches to problems of international law and order.<sup>20</sup>

Appendix I on *Letters on International Law and Order* brings together a number of letters to the Editors of *The Manchester Guardian*, *The Guardian* and *The Times*, concerned with various facets of international law and order and assembled for easier reference. While it would have been inadvisable to alter the text of these letters as published at the time, footnotes on relevant literature have been added. Finally, Appendix II contains a Note on *Hijacking and Air Piracy*, which should be read in the context of *Terrorism in Peacetime Situations* (p. 221).

## II—METHODS

As with earlier writings, the essays in this book are based on an inductive, inter-disciplinary and relativist approach to international law.

On the *normative* level, the *inductive* approach to international law is an empirical technique based on the authority of near-universal consent (as expressed in Article 38 of the Statute of the International Court of Justice), to safeguard international law against the subjectivism of destructive speculation and eclectic caprice, and the vested interests prone to use—and abuse—both.<sup>21</sup> It has four distinctive features:

(1) Emphasis on the exclusive character of the three primary law-creating processes in international law and their derivatives: consensual understandings in the widest sense, international customary law, and the general principles of law recognised by civilised nations.

(2) Establishment of the "means for the determination of rules of law," as they are termed in Article 38 of the Statute of the International Court of Justice—the law-determining agencies and their elements—in accordance with rationally verifiable criteria.

(3) Awareness of the character of the rules of international law as the only binding norms of international law unless evidence is forthcoming that a principle, which has been abstracted from such rules, has itself acquired the character of an overriding rule.

<sup>18</sup> Bibliographical and other formal references apart, the Chapter is published intentionally (see below, pp. 250–251) as written during the interval between the Judgment of the Israeli Court of first instance and that of the Israeli Supreme Court as a Court of Appeal. See also 15 C.L.P. (1962), p. 248 *et seq.*

<sup>19</sup> See below, pp. 5, 20 and 252 *et seq.*

<sup>20</sup> This Chapter is based on lectures delivered at the Geneva *Cercle des Juristes Internationaux* (1963) and the Law Faculty of the Hebrew University of Jerusalem (1965). See also 19 C.L.P. (1966), p. 192 *et seq.*

<sup>21</sup> See below, p. 252 *et seq.*

(4) Realisation of the differences which exist between international law as applied in unorganised, partly organised and fully organised international society.<sup>22</sup>

On the level of *social* studies, the *inter-disciplinary* approach makes use of any facet of a phenomenon that, in relation to any particular problem, may be of especial significance.

This description is formal in that it merely underlines the relevance, for international law, of other disciplines concerned with international studies. If the emphasis is put on the substance of such investigations, this inter-disciplinary technique can also be described as *phenomenological*.<sup>23</sup>

Again, the *caveat* may be repeated that any metalegal statements and evaluations made in this book are to be understood as such and are not to be given any intralegal meaning.

Finally, in the field of *lex ferenda*,<sup>24</sup> the *relativist* treatment of questions connected with the development of international law and organisation provides legitimate scope for imagination and creativeness, but imposes highly necessary controls of rational verification, indispensable in any field of serious study.

## III—KEY WORDS

*Absolute Universality*: including all relevant entities of a system, e.g., a United Nations which would include all subjects of international law (see also under *Relative Universality*).

*Community*: social group which is more highly integrated than a society (q.v.).

*Disorder*: see *Order*.

*Hegemony*: the position of factual pre-eminence in the relations between sovereign and equal States.

*Iconology*: the study of images.

*Ideology*: idea or argument, employed to disguise in terms of abstract ideas or principles undisclosed interests, e.g., alleged concern for human rights as an excuse for interfering with the affairs of another sovereign State (see also under *Utopia*).

*Jus ad bellum*: right to resort to war (see also under *Jus in bello*).

*Jus aequum*: legal system in which rights are relative and must be exercised reasonably and in good faith.

*Jus cogens*: law binding irrespective of will of individual parties.

*Jus dispositivum*: law capable of being modified by contrary consensual engagements.

*Jus in bello*: the laws and customs of warfare. (See also under *Jus ad bellum*).

<sup>22</sup> See, further, *Inductive Approach*, p. 4 *et seq.*

<sup>23</sup> See, further, below, pp. 6 and 5 *et seq.* and *Inductive Approach*, pp. 7, 54 and 75 *et seq.*

<sup>24</sup> See, further, below, p. 6, and *Inductive Approach*, pp. 7, 65 and 153 *et seq.*

*Jus strictum*: legal system in which rights are absolute and may be exercised irrespective of equitable considerations.

*Law*: includes any norms intended to regulate social conduct which, if required, can be authoritatively determined on a basis of consent or compulsion and enforced by the application of external sanctions.

*Law of Co-ordination*: the law of a community (*q.v.*) which is characterised by freely accepted duties, rather than rights.

*Law of Power*: the law of a society (*q.v.*), which is characterised by subservience to the interests of some, as distinct from those of the group as a whole.

*Law of Reciprocity*: the law of a social group which has features of a society and community (*q.v.*) and is characterised by a substantial equivalence of rights and duties.

*Legal Order*: legal system, embodying a *de facto* order (*q.v.*) and endowing it with the dignity of the law.

*Legal Regime*: system of legal rules which are reasonably coherent but are too specialised or subordinate to qualify as a legal order (*q.v.*).

*Legitimation*: recognition, confirmation, acceptance or justification of an existing or aspired to and, essentially, factual state of affairs.

*Lex ferenda*: the law which it is desired to establish.

*Lex lata*: the law in force.

*Norm*: legal or moral rule, expressing an *Ought*, as distinct from an *Is*.

*Order*: state of affairs, characterised by the effective control of those subject to such a system by an essentially factual rather than normative (see under *Norm*) apparatus of force and power (see also under *Legal Order*).

*Organised International Society*: international society on the level of, *e.g.*, the confederate organisation of the United Nations and its Specialised Agencies.

*Phenomenology*: the study of all or, at least, all significant manifestations of a problem.

*Power*: the mean between influence and force. Power distinguishes itself from *influence* by reliance on external pressure as a background threat, and from *force* by preference for achieving its ends without the actual use of physical pressure.

*Pseudo-Order*: a pretended order which lacks the sanctions sustaining any true society or community order (*q.v.*).

*Quasi-Order*: an order which, like the League of Nations, is too weak or precarious to achieve its appointed task.

*Relative Universality*: including the most important entities of a system, *e.g.*, the United Nations, which includes all the world Powers (see also under *Absolute Universality*).

*Society*: a loose type of association, as distinct from a community (*q.v.*).

*Standard*: optional norm (*e.g.*, the most-favoured-nation standard) which may be incorporated as a binding rule in a treaty and, in this case, qualifies the operation of an otherwise absolute principle, such as the principle of freedom of commerce.

*Universality*: see under *Absolute* and *Relative Universality*.

*Unorganised International Society*: international society, lacking significant institutional superstructures.

*Utopia*: proposal *de lege ferenda* (*q.v.*), incompatible with an existing political or social order (see also under *Ideology*).

(See, further, the Glossary in the *Manual*, p. 625 *et seq.*)