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**Experiments Great and Small:
Centenary Reflections on the
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Experiments Great and Small: Centenary Reflections on the League of Nations

Christian J Tams

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I. Introduction: The Birth of a New World?

A century ago, in mid-January 1920, a new world was born. Or so thought Léon Bourgeois. Opening the first session of the Council of the League of Nations, he declared that

[I]a date du 16 janvier 1920 sera inscrite dans l’histoire comme celle de la naissance d’un monde nouveau’ – a new world on which ‘les nations libres, pour la première fois ... se seront liguées pour substituer au règne de la force, l’empire du droit.’¹

The Council’s first session marked the culmination of a relatively swift process of establishing an ambitious institution, the League of Nations. Like most other ‘great organisational endeavours of the modern world’, the League was established in the ‘aftermath[] of [a] great war’.² Planning for it had begun well before the armistice,³ and it received a boost when President Wilson, in the last of his *Fourteen Points*, called for the creation of ‘a general association of nations’.⁴ British and French Committees (chaired by Lord Phillimore and Léon Bourgeois) drew up preparatory reports between 1917 and 1918, as did Wilson and his advisor, Colonel House. In late 1918, the South African general Jan Smuts published ‘The League of

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¹ Statement of Léon Bourgeois in League of Nations, Procès-verbal de la première réunion du Conseil de la Société des Nations, Doc. 27A/2764/2764, 29 January 1920, available at http://webapp1.dlib.indiana.edu/collections/lon-un/league_era/bourgeois/docs/boure003.pdf, at 4.

² Inis L. Claude, *Swords into Plowshares*, (4th ed., 1971), at 46.

³ For succinct accounts see Claude, *supra* note 2, at 41-50; and Clive Archer, *International Organizations* (3rd ed., 2001), at 14-18; Zara Steiner, *The Lights That Failed: European International History, 1919–1933* (2007), at 40-46; and Christian J. Tams, ‘League of Nations’, in *Max Planck Encyclopedia of Public International Law*, at www.mpepil.com, paras. 1-4. For much more see Florian Couveinhes-Matsumoto, ‘Les travaux préparatoires’ in Robert Kolb (ed.), *Commentaire sur le Pacte de la Société des Nations* (2015), at 7-78; as well as Alfred Zimmermann, *The League of Nations and the Rule of Law* (1936), at 137-274; F.P. Walters, *A History of the League of Nations*, vol. 1 (1952); D.H. Miller *The Drafting of the Covenant* (1928).

⁴ Reproduced in *President Wilson’s State Papers and Addresses*, The Review of Reviews Company New York 1918, at 470.

Nations’, a widely-read pamphlet whose subtitle (‘A practical suggestion’) marked a shift from reflection to pragmatic implementation.⁵ And then it all went very fast: At the Paris Peace Conference, the League’s founding document, the Covenant, was agreed to in record time - not least because, at Wilson’s insistence, League matters were given precedence.⁶ A first working draft, prepared by David Hunter Miller and Cecil Hurst, was circulated in early February 1919. After 11 days of debates, the Conference’s League Commission adopted a full text on 14 February 1919.⁷ After a break, and only some further substantive discussion, the Plenary Assembly of the Conference agreed on the Covenant’s final version on 28 April 1919, and decided to include it in the Peace Treaties to be concluded with the defeated powers.⁸ So began the official life of the new world organisation on 10 January 1920, six days before Bourgeois proclaimed the birth of a new world, when the first of the Peace Treaties (that of Versailles) entered into force.

A quarter of a century later, it was all over. Born of a Great War, the League had proven powerless to prevent an even greater one. Associated with failure, the League had become toxic. A fresh start was needed; the new world organisation had to distance itself from the old one. The League Assembly obliged: on 19 April 1946, it dissolved the League and transferred what remained of it to the United Nations.⁹

During its quarter-century of existence, the League was a projection of hopes and the object of scorn and ridicule. ‘[T]he world’s first sustained and consequential experiment in internationalism’¹⁰ did not transform international relations, but rather added new layers by creating an international forum for debates and a new site for contestation. In domestic policy debates, the League became a reference point; for internationally-minded ‘Geneva men and

⁵ J.C. Smuts, *The League of Nations: A Practical Suggestion* (1918).

⁶ See Walters, *supra* note 3, at 31, 32; Margaret MacMillan, *Peacemakers. The Paris Conference of 1919 and Its Attempt to End War* (2001), at 30, 31, 95. Even in Harold Nicolson’s caustic account of the Conference, the League Commission is credited with having ‘worked rapidly; its sessions took place on almost every occasion after office hours’: *Peacemaking 1919* (1933), at 56.

⁷ See MacMillan, *supra* note 7, at 100; Archer, *supra* note 3, at 15.

⁸ See Claude, *supra* note 49; Walters, *supra* note 3, at 32-34, 37, 38.

⁹ Resolution for the Dissolution of the League of Nations, adopted by the Assembly on April 18, 1946, reprinted in 1 *International Organization* (1947), at 246.

¹⁰ Susan Pedersen, ‘Back to the League of Nations’, 112/4 *American Historical Review* (2007) 1091, at 1116.

women' it offered employment opportunities; for smaller States, access to a new form of multilateral diplomacy. The League came to life (and to light, although not always favourably) in Derso's and Kelen's cartoons,¹¹ and in literary novels, which soon began to explore the literary potential of the new internationalist terrain.¹² This was a far cry from Léon Bourgeois' 'new world'. It was a relevant opening towards a new level of discourse and interaction, reflecting the view that in many senses, the League did matter somehow.

After 1946, the League has remained of interest. The stigma of 'failure' had proven (and continues to prove) difficult to overcome.¹³ Yet, the 'Great Experiment'¹⁴ in world affairs – noble, naïve, or a non-starter, depending on one's perspective – has continued to fascinate scholars, diplomats, activists, and novelists. Since the end of the Cold War, and more so since the turn of the century, the League is once more being 'rediscovered'.¹⁵ Recent historical and International Relations (IR) scholarship in particular offers richer assessment of the diverse forms of international cooperation developed during the League era;¹⁶ in Frank Moorhouse's *Edith* trilogy (which follows fictional character Edith Campbell Berry, a young member of staff from the Australian foreign service based in Europe, through two decades of the League's life) these find an entertaining literary equivalent.¹⁷

Given the abundance of existing League scholarship, the aims of the present contribution cannot but be modest. What it offers is a series of sketches of the League, as seen from the distance of a centenary. These sketches approach their object from two perspectives: three of them provide a highly condensed account of the League's life (section II); two others draw out some of its legacies (section III). Needless to say, the engagement is selective, the treatment unfinished.

¹¹ See Alois Derso and Emery Kelen, *Le Testament de Genève* (1931) and *Au banquet des Nations* (1937).

¹² Rose Macauley's *Mystery at Geneva* (1922) is an early (benevolent) example, George Bernard Shaw's *Geneva. Another Political Extravaganza* (in *Plays Political*, 1986) a late (and not so benevolent) one. Albert Cohen's *Solal* tetralogy stands out: two volumes appeared in the 1930s, the most famous one, *Belle du Seigneur*, in 1968. Benjamin Auberer offers a useful primer: 'Murder, Intrigue, Sex and Internationalism - Novels about the League of Nations', (2018) available at <https://projects.au.dk/inventingbureaucracy/blog/show/artikel/murder-intrigue-sex-and-internationalism-novels-about-the-league-of-nations/>.

¹³ When searching for 'League of Nations' online, the Google search engine's first suggested question is: 'People also ask: Why did the League of Nations fail?'.

¹⁴ See Lord Robert Cecil, *A Great Experiment* (1941).

¹⁵ Susan Pedersen's 'Back to the League', *supra* note 10, while taking stock of a revival under way – is widely considered to have consolidated the trend.

¹⁶ For selective references see notably below, section II.3.

¹⁷ See especially Frank Moorhouse, *Grand Days* (1993); and Frank Moorhouse, *Dark Palace* (2002). In the final volume of the trilogy, *Cold Light* (2011), Edith is back in Australia: The League features here and there, but the focus is on Australia, and on Canberra's 'coming of age'.

But the sketches hopefully capture essential aspects of the League and draw the readers' eye to features that are worth remembering a century later.

II. The League's Life: Three Sketches

So what was the League of Nations, that beacon of hope and object of scorn and ridicule? It was clearly many things – and one problem (for Léon Bourgeois' wildly optimistic expectations as much as for later summary dismissals of the League as a complete failure) is that so many of the verdicts pretend there could be one, all-encompassing answer. This ignores what, realised with the benefit of hindsight, was the League's most distinctive feature: the diversity of its activities. The League was *a common institutional framework*, no doubt, but it was *no more than a framework*. Within this framework, the League and its members pursued a broad range of different projects. Some were dramatic and ambitious, others less so: The League sought to preserve world peace but it also prided itself on producing highly-regarded reports on double taxation. Rather than viewed as 'a [i.e. *one*] great experiment', as widely suggested in the wake of Lord Cecil's famous account,¹⁸ the League is best viewed as a laboratory in which, over a quarter of a century, a series of experiments were carried out - some great, many small.

To bring out as much may be the most fundamental aim of the three rough sketches offered in the following. The first (A.) identifies the basic elements of the League's founding document, the Covenant, which foreshadowed the diversity just referred to. The second and third highlight key aspects of the League's diverse activities by (B.) commenting on its efforts to maintain international peace and security before (C.) identifying aspects of international cooperation beyond peace and security that would come to dominate much of the League's practical life.

A. The Covenant

The League's founding document bore an ambitious name, at least in English ('Covenant'),¹⁹ which was subsequently integrated into the Paris Peace Treaties. Beyond these unusual characteristics, the Covenant contained features common to many foundational documents of international organisations: it functioned both as an organisational statute and a statement of principles setting out the League's 'brief'.

¹⁸ Cecil, *supra* note 14.

¹⁹ In other languages, more neutral terminology was preferred ('pacte', 'pacto', 'patto', 'Satzung').

1. An organisational statute

As an organisational statute, the Covenant created organs through which the League would act, and laid down rules that would govern their actions. It established two main political bodies: a plenary forum (the Assembly) where all members had a place; and a smaller, representative body (the Council) for influential powers - some represented permanently whilst others were elected for three-year periods.²⁰ As a third organ, the Covenant set up the League's Secretariat²¹ to assist the Assembly and Council, the nucleus of an international civil service.²²

Built around these three organs, the 'core League' was meant to integrate existing international organisations, which were to be 'placed under the direction of the League':²³ a seemingly innocent phrase that reflected the League's intention to absorb prior organisations and administrative unions into a unified system of international cooperation.²⁴ Similarly, Article 14 foreshadowed the establishment of a 'Permanent Court of International Justice', 'competent to hear ... any dispute ... which the parties submit to it', which could 'give an advisory opinion [upon the request of] the Council or ... the Assembly'. The world organisation was to have a world court, and soon enough it did: not formally integrated into the League structure, but closely linked to it through voting procedures, powers to initiate advisory proceedings, and budgetary control.²⁵ And so with some goodwill, the Covenant could be said to have established an institutional system built around functions of governance: representation, administration, executive conduct, and adjudication.

²⁰ See Articles 2-5 of the Covenant.

²¹ Articles 2 and 6 of the Covenant.

²² See further below, III.1.c.

²³ Article 24 of the Covenant.

²⁴ For details see Gleider I. Hernandez, 'Article 24', in Kolb, *Commentaire, supra* note 3, at 1033.

²⁵ Karin Oellers-Frahm outlines the process succinctly: 'Article 14', in Kolb, *Commentaire, supra* note 3, at 594-596. Contrary to the wishes of many international lawyers of legalist persuasion, this Court operated on the margins of the League's collective security system dominated by the organisation's political organs: the Covenant, in von Bernstorff's words, 'enshrined the primacy of politics over international law institutionally within the powerful organ of the Council': see Jochen von Bernstorff, *The Public International Law Theory of Hans Kelsen* (2010), at 195. For more on the role of the Permanent Court of Justice (PCIJ) in the post-war order see Tams, 'Peace Through International Adjudication', in Michel Erpelding, Burkhard Hess, and Hélène Ruiz Fabri, *Peace Through Law* (2019) 217; for a much more on the attendant move away from legal dispute resolution see Stephen Wertheim, 'The League of Nations: A Retreat from International Law?', *7 Journal of Global History* (2012) 210.

2. A statement of aims

The Covenant also set out the principal aims of the League. It did so in a relatively austere Preamble (no ‘scourges of war’ there),²⁶ whose opening phrase tasked the League ‘to promote international co-operation and to achieve international peace and security’. The distinction between ‘international cooperation’ on the one hand, and ‘peace and security’ on the other, was anything but clear. However, it foreshadowed the diverse roles that the League would come to play in its *great and small experiments*. The Preamble had these two aims in the wrong order, though. Judging from the text of the Covenant, ‘achiev[ing] international peace and security’ clearly was the League’s primary aim. Achieving peace was the motivation that had inspired the founders: Bourgeois proclaimed ‘the birth of a new world’,²⁷ not because he hoped the League would develop model tax treaties or integrate the work of the Universal Postal Union (to pick two random examples), but because in the post-war order, mankind would for once be able to preserve peace.

The Covenant reflected this prioritisation better than the Preamble. Its core provisions addressed questions of peace and security.²⁸ Articles 8 and 9 encouraged disarmament. Articles 10-17 set up a rudimentary system of collective security, based on a solidarist idea that ‘[a]ny war or threat of war [is] a matter of concern to the whole League’.²⁹ League members were to bring before the League organs (or submit to dispute settlement) all crises that were ‘likely to lead to a rupture’.³⁰ If that happened, the Council could investigate the facts of a dispute, draw up reports, and impose military and economic sanctions against an aggressor state. There was no equivalent to the UN Charter’s comprehensive ban on military force, but the Covenant did outlaw recourse to war during cooling-off periods and when conflicts had been addressed by international institutions.³¹

²⁶ Cf. the Preamble to the UN Charter, entered into force ‘to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind’.

²⁷ Bourgeois, *supra* note 1.

²⁸ For a clear account of the Covenant’s regime governing recourse to force see Robert Kolb, *International Law on the Maintenance of Peace* (2018), at 45-67.

²⁹ See Article 11 of the Covenant – which, in Archer’s words, *supra* note 3, at 16, set out the League’s version of the ‘musketeers’ oath’.

³⁰ Article 15 of the Covenant.

³¹ See Articles 12, 13(4) and 15(7) of the Covenant.

Such action by the Council (as well as action by the Assembly) typically required a unanimous decision, which complicated matters considerably.³² Yet on paper it could hardly be denied that the Covenant established an ambitious system: one that made a serious effort to translate the Preamble's words into normative prescriptions, that sought to organise international solidarity against rogue States and set up what Philip Jessup would later call an institutionalised 'peace machinery',³³ with the Council as its main engine.

Clearly, the League was more than a security organisation. It aimed for international cooperation in a broader sense. This too was reflected in the Covenant, but was hinted at rather than explored. Where the Covenant looked beyond peace and security, its language became that of options and aspirations. This applied to the Covenant's idea (already briefly touched upon)³⁴ of integrating existing international organisations into the League: the relevant provision (Article 24) at the very least required agreement on the modalities of such integration. Beyond that, Articles 22-23 identified areas in which the League would seek to 'promote international cooperation'. However, it was only in the field of mandates that the Covenant was able to reach some degree of specificity. They did so by prescribing that 'colonies and territories which as a consequence of the late war have ceased to be under the sovereignty of the States which formerly governed them' should become League mandates, dividing these colonies and territories into three categories, and decreeing that they would be placed under the 'tutelage' of 'advanced nations' who should act 'as Mandatories on behalf of the League.'³⁵

Mandates aside, the Covenant's provision on international cooperation beyond security remained sketchy. Article 23 listed fields of international relations in which the members of the League would seek to cooperate more closely, among them freedom of commerce and transit, the suppression of the drug trade and slavery, and disease control. Such lists served as normative signals that some action was desirable, but did not go beyond that. Whether such signals would be picked up was left to the discretion of the League and its members.³⁶

³² See Article 5 of the Covenant, with exceptions in para. 2 (for procedural matters) and qualifications (mandatory abstentions of disputants) e.g. in Articles 15 (7) and (8)). For details see Giulio Bartolini, 'Article 5', in Kolb, *Commentaire*, *supra* note 3, at 220, 223.

³³ See Philip C. Jessup, 'A Half-Century of Efforts to Substitute Law for War' in 99 *Recueil des Cours* (1960) 18.

³⁴ *Supra*, text at, *supra* notes 22 and 23.

³⁵ See Article 22 of the Covenant.

³⁶ Article 23 was explicit in this regard; its reference to particular fields of action was preceded by the words 'Subject to and in accordance with the provisions of international conventions existing or hereafter to be agreed upon, the Members of the League'. Other progressive innovations – e.g. provisions on racial equality and

3. Fluctuating membership

Did the Covenant make for an attractive offer that States were keen to sign up to? It is trite to observe that, notwithstanding President Wilson's crucial role, the United States never joined the League: it was the missing keystone that left a 'gap in the bridge', as depicted in the famous Punch cartoon.³⁷ However, the League's problems went deeper than this, and the League's failures can be traced to more than just the United States' abstention. To begin with, grown out of a war-time alliance, the League at least initially favoured coherence over universality.³⁸ Original membership was reserved to the victorious signatories of the Peace Treaties and certain neutral States: the proverbial bridge only had so many stones.³⁹ The vanquished powers in particular were left out⁴⁰ and had to seek admission.⁴¹

Whatever the initial scheme, the League opened up over time and sought to integrate non-members. However, its attempts were only partly successful. Between 1920 and 1937, 21 new members joined, including the defeated powers and Russia (which had not participated in the Peace Conference). However, no fewer than 20 members left the organisation during the same period, among them Axis powers during the 1930s and no less than 11 Latin American States.⁴² In other words, the League never came close to universality, and its membership was never stable.

women's rights – were mooted, but not adopted. As for the former initiative, the Japanese attempt to enshrine references to racial equality in the preamble was supported by a majority of states, but rejected by President Wilson who as chair insisted on unanimity: see Glenda Sluga, *Internationalism in the Age of Nationalism* (2013), at 50-51.

³⁷ Raven Hill in Punch Magazine, *The Gap in the Bridge* (1919), available at <https://punch.photoshelter.com/image/I0000JMDAJHNJDn4>. Mazower offers a succinct account of the US predicament: Mark Mazower, *Governing the World. The History of an Idea* (2013), at 137-141.

³⁸ The juxtaposition – coherence versus universality – is borrowed from Thomas D. Grant: see his 'Universality versus Coherence. Membership, Participation and the Crisis of the League of Nations', 17 *International Community Law Review* (2015) 138.

³⁹ There were 27 victorious powers (incl. the British Empire) and 13 neutral States. In addition to the United Kingdom, five members of the British Empire became League members in their own right (Canada, Australia, New Zealand, India, South Africa). Of these potential 45 League members, three failed to ratify the Peace Treaty and to take up membership: the US, the Hedjaz, and Ecuador.

⁴⁰ As MacMillan noted with respect to one of the vanquished powers, 'Germany was to be in the curious position of agreeing in the Treaty of Versailles to a club that it could not join': MacMillan, *supra* note 6, at 103.

⁴¹ Article 1(2) of the Covenant envisaged admission by any 'other fully self-governing State, Dominion or Colony'. That League membership was not reserved to States, is widely noted; as is the fact that this potential opening was hardly used: see Grant, *supra* note 38, at 143-144 (with references).

⁴² United Nations Treaty Collection, *League of Nations Treaty Series*, available at https://treaties.un.org/pages/Content.aspx?path=DB/LoNOnline/pageIntro_en.xml.

B. The League's 'Peace Machinery' in Practice

During its lifetime, fluctuating membership prevented the League from gaining much relevance. While the League found pragmatic ways of integrating third States into some of its technical work, inconsistent membership notably affected the organisation's capacity 'to achieve international peace and security'.⁴³ In practice, the Covenant's 'peace machinery' was rarely used effectively; and from the mid-1930s onwards it had become irrelevant. The story is well known and reflected in the many 'decline and fall' narratives and 'analytical post mortems' of the League, typically written to 'reinforce "realist" analyses of international relations'.⁴⁴ Looked at from the perspective of the late 1930s, or indeed 1945 (when the 'règne de la force' had long replaced Bourgeois' 'empire du droit'⁴⁵), these narratives are eminently plausible: in Lord Cecil's highly benevolent autobiographic account, the chapter covering the League of the 1930s has a short and poignant title: 'downhill'.⁴⁶

1. Early successes

Things had not started all that badly.⁴⁷ In its early years, the League managed to defuse or contain a number of conflicts including the Åland conflict in the early 1920s, the Greek-Bulgarian dispute in the mid-1920s, German-Polish tensions relating to Upper Silesia, and British Turkish tensions over Mosul (which, under League influence, was to remain part of the British mandate of Iraq – which has consequences that persist to this day). In these and other disputes, the League was seen not as a failure but a useful forum, and a significant number of States were keen to engage with it. A speech given by the British Foreign Secretary Austen Chamberlain to Glasgow students in 1926 provides a useful contemporary assessment.⁴⁸ In his presentation, Chamberlain largely avoided the grand rhetoric favoured by many of the League's founders. He saw no 'new worlds' nor did he hope for powerful 'empires of law'.⁴⁹ Instead, he

⁴³ Cf. the Preamble of the Covenant.

⁴⁴ Pedersen 'Back to the League', *supra* note 10, at 1091.

⁴⁵ Bourgeois, *supra* note 1.

⁴⁶ Cecil, *supra* note 14.

⁴⁷ For summary accounts see Martyn Housden, *The League of Nations and the Organization of Peace* (London 2012), chapter 3 ('A Promising Start?'); and Tams, *League of Nations*, *supra* note 3, at para 30.

⁴⁸ Austen Chamberlain, *The League of Nations: Address delivered to the students of the University of Glasgow, on November 2nd, 1926, on the occasion of his installation as rector* (1926).

⁴⁹ Cf. Bourgeois, *supra* note 1.

viewed the League as ‘an established fact’: a mediator with skills that commanded respect; a factor that States engaged in international disputes ignored at their peril and an institution that had ‘solved problems which, without its aid, would have been a danger to the peace of the world’.⁵⁰

2. ‘Downhill’

For a newcomer on the international stage, this may not have been all too bad. Yet over time, States’ willingness to engage with the League (and work, dare one say, ‘through it, and with it and in it’) waned. Traditional security structures created outside the League – the Locarno system prominent among them, in which Chamberlain placed great hope – gained traction.⁵¹ Faced with economic crises at home, from the late 1920s, governments felt they had less room for conciliation internationally. In Germany and elsewhere, fascist movements derided the League, tied as it was to the post-war settlement, as an instrument of the hated ‘Versailles order’.⁵² The Geneva Disarmament Conference of the early 1930s ended in failure.⁵³

Most importantly, during the crises of the 1930s, the League proved itself ineffective. In its journey ‘downhill’, two crises stand out: Manchuria and Abyssinia. Both demonstrated the League’s dependence on the political will of its key members and illustrated the difficulty it faced in overcoming sustained opposition. In 1931, the League established a commission of inquiry that documented Japan’s aggressive policies in Manchuria, but it could not agree to follow through by (for example) imposing sanctions on Japan under Article 16 of the Covenant.⁵⁴ Japan withdrew nonetheless, but the League appeared powerless in the face of such aggressive policies: the ‘doormat’ in David Low’s famous cartoon over which a Japanese soldier walks while diplomats sought to apply a face-saving kit.⁵⁵

⁵⁰ Chamberlain, *supra* note 48, at 12 and 13.

⁵¹ Whether these weakened or complemented the League, remains discussed. Zara Steiner’s assessment is balanced: she sees the League’s ‘Geneva system’ not as ‘a substitute for great-power politics’ finding expression in inter-State arrangements of the ‘Concert’ type, ‘but rather an adjunct to it’, *supra* note 3, at 299.

⁵² Archer, *supra* note 3, at 21.

⁵³ Walters, *supra* note 3, at 500-516, 541-555.

⁵⁴ Steiner, *supra* note 3, at 720-722, 810-812.

⁵⁵ British Cartoon Archive, The doormat by David Low (19 January 1933), available at <https://archive.cartoons.ac.uk/Record.aspx?src=CalmView.Catalog&id=DL0700>.

When Italy invaded Abyssinia four years later, the League (further weakened by Germany's withdrawal and the limited impact of its attempts to contain the Chaco war)⁵⁶ did impose sanctions, but these were half-hearted.⁵⁷ The League's failure was plain for all when Emperor Haile Selassie of Abyssinia addressed the Assembly in 1936 and pleaded for international help. The Assembly listened, but it let Haile Selassie be shouted down by Italian journalists sitting in the audience.⁵⁸ The South African representative noted that '[f]ifty nations, led by the three most powerful nations in the world, [had] declare[d] their powerlessness to protect the weakest in their midst'.⁵⁹

After Abyssinia, the League's collective security mechanism ceased to be relevant. The League's attempts to intervene in the Spanish Civil War were in vain. In 1939, the League did not even discuss the outbreak of World War 2 (although it did expel the Soviet Union for its attack on Finland).⁶⁰ As an attempt to 'achieve international peace and security', the experiment begun in 1919 had effectively ended two decades later.

3. Simple and complex explanations

What went wrong? Two strands of argument dominate the many 'post-mortems' conducted since 1945. The easy response is that the League was let down by its members⁶¹ – analogous to how today States are often criticised for letting down the UN in Syria, South Sudan, and elsewhere. There is some truth to this easy assertion: as a member-driven organisation, the League depended on the commitment of States willing to activate its collective security

⁵⁶ Zimmern, *supra* note 3, at 424-430.

⁵⁷ Zimmern, *supra* note 3, at 430-446; Walters, *supra* note 3, at 632. The League notably did *not* decide to cut oil supplies and close the Suez Canal – two measures that might have had a more significant impact.

⁵⁸ See Steiner, *supra* note 3, at 334, 335; Walters, *supra* note 3, at 684.

⁵⁹ League of Nations, Official Journal, Special Supplement No. 151, 1 July 1936: Records of the Sixteenth Ordinary Session of the Assembly, Twentieth Plenary Meeting. Only South Africa and New Zealand supported the maintenance of sanctions: see Walters, *supra* note 3, at 623 et seq.; and the detailed contemporary discussion in André N. Mandelstam, *Le conflit Italo-Éthiopien devant la Société des Nations* (1937).

⁶⁰ League of Nations, Official Journal 20 (1939), 506 et seq. See Christian J. Tams, 'Article 6', in Bruno Simma et al. (eds.), *The Charter of the United Nations. A Commentary* (3rd ed., 2012), 375-376, for context.

⁶¹ For versions of this first argument, see e.g. Lord Cecil's speech at the final session of the League Assembly, 9 April 1946 (League of Nations Special Supplement 194, 20th and 21st Assembly, 65); Walters, *supra* note 3, at 680; Marit Fosse and John Fox, *The League of Nations. From Collective Security to Global Rearmament* (2012), at 123-124. Brierly's version is as follows: 'That the League failed to deal with the aggressions of the inter-war period cannot, therefore, fairly be held to prove anything one way or the other about the merits of the Covenant, for, if the circumstances had been the same, it would have failed just as certainly if the Covenant had been the most perfect document ever drafted' (The Covenant and the Charter, 23 *British Yearbook of International Law* (BYIL) (1946), 83-94, 84).

mechanism. At no point did the League have the backing of all significant States; and in the course of the 1930s, its base of supporters had dramatically dwindled.

However, the easy answer is rather *too* easy. The more complex response is that the structural deficiencies of the Covenant's peace machinery had been thrown into stark relief by the crises of the 1930s⁶² Unanimity requirements made decision-making cumbersome. As importantly, collective security under the Covenant was essentially a matter of process: of cooling-off periods, of inquiries, of States accepting some form of dispute resolution. In that respect, as Inis Claude noted decades ago, the Covenant was the product of a 'retrospective mentality'.⁶³ Adapting to modern phraseology, one might say that these cooling off periods sought to prevent States from 'sleepwalking' into war⁶⁴ the way they had done in 1914. And indeed, standing institutions like the League Council might have defused another 'July crisis'. Processes envisaged in the Covenant's security provision might have provided disputing States – Austro-Hungary, Serbia, Russia, and their allies – with a necessary 'time out'. However, the League's journey 'downhill' during the 1930s was defined by crises and challenges of a very different nature. Japan and Italy did not sleepwalk into Manchuria and Abyssinia; and no procedural 'time out' would have stopped Nazi Germany from invading Poland: the conflicts of the 1930s were not accidental conflicts, but aggressive campaigns, deliberately sought. For these crises, for these challenges, the Covenant's collective security system simply was not designed. To quote Inis Claude again: 'The League, established to prevent the accidental war, was unable to cope with Hitler's deliberately plotted campaign of conquest'.⁶⁵ The drafters of the Covenant had studied the immediate past, but had lacked the imagination to anticipate the conflicts of the future. Both aspects taken together – failing support by its members, and inadequate structures – account for the demise of the Covenant's collective security system.

⁶² The general point is e.g. explored in Gerhart Niemeyer, *The Balance-Sheet of the League Experiment*, 6 *International Organization* (1952), 537-558 (a review and critique of Walters' monumental account).

⁶³ Claude, *supra* note 2, at 46.

⁶⁴ See Christopher Clark, *The Sleepwalkers. How Europe Went to War in 1914* (2014).

⁶⁵ Claude, *supra* note 2, at 45.

C. Expanding Horizons for International Cooperation: The League beyond Peace and Security

The account so far is as sobering as it is well-known – ‘the word “failure” (as Robert Kolb notes) ‘is surely the single most frequently used word when discussion turns to the League’.⁶⁶ And yet it is based on a selective engagement that ignores the diversity of the League’s activities and views it exclusively as a peace and security project. Whilst it was that, it was also much more. As noted previously, in the Covenant’s Preamble, League members pledged to ‘promote international co-operation’ in other fields – social and economic, technical, humanitarian, cultural and much more – and these activities were often simplistically and misleadingly categorised in the League’s early years as ‘non-political’ . These aspects of the League’s life story are anything but new, but as ‘decline and fall’ narratives and realist ‘post-mortems’ continue to dominate so much of the literature, they deserve to be mentioned. For the purposes of this summary, two points are worth stressing. First, while the maintenance of peace proved an elusive goal, the League and its members filled the Covenant’s vague provisions on international cooperation – the League’s second principal aim – with much life. And second, to the extent that these allegedly ‘non-political’ activities are taken into account, the simple idea that the League as such was a failure becomes more difficult to sustain.

1. Branching out

The first point is fairly straightforward. The League and its members were serious - at times imaginative - about the League’s second principal aim. By the 1940s, international cooperation in the social and economic, technical, humanitarian and cultural fields had been much expanded and transformed. It is worth noting, as the point is not often made,⁶⁷ that this expansion did not strictly follow the Covenant’s design. It is true that Article 22’s plan for a system of mandates was implemented, and the Mandates Commission became a focus of much League activity.⁶⁸ However, the Covenant’s most ingenious strategy for turning the League into the centre of

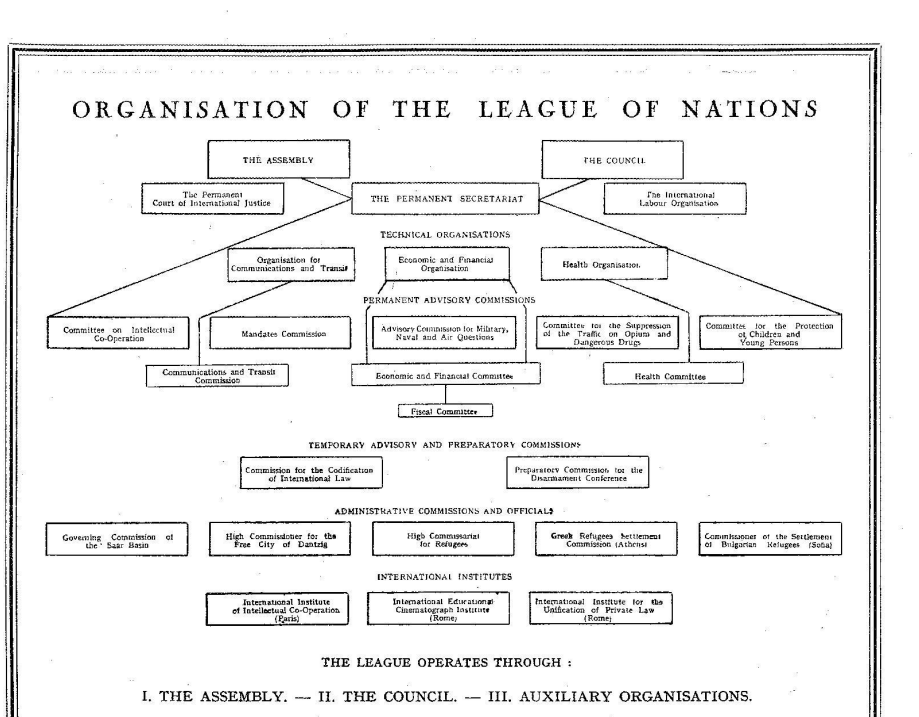
⁶⁶ Robert Kolb, ‘The League of Nations in Retrospect’, 22 *Uniform Law Review* (2017) 145.

⁶⁷ But see Jean Sítios, ‘The Institutions of the League’, in United Nations Library and Graduate Institute of International Studies (eds.), *The League of Nations in Retrospect* (1983), 19, at 27-28.

⁶⁸ For recent studies (offering complementary and at times rival perspectives) see Nele Matz-Lück, ‘Civilization and the Mandate System under the League of Nations as Origin of Trusteeship’ 9 *Max Planck Yearbook of UN Law* (2005), 47; Giovanni Distefano, ‘Article 22’, in Kolb, *supra* note 3, at 841; Anthony Anghie, *Imperialism, Sovereignty and the Making of International Law* (2004), chapter 1; and Susan Pedersen, *The Guardians. The League of Nations and the Crisis of Empire* (2015).

international cooperation failed: Article 24's idea of absorbing pre-existing international administrative unions into the League's system completely fell flat because the organisations in question, preferring autonomy over integration, refused to be subsumed.⁶⁹

Of the Covenant's provisions addressing matters of cooperation beyond the topic of peace and security, Article 23 proved to be the most relevant.⁷⁰ Its vague terms provided the basis for a massive expansion of League activities in the social, humanitarian, cultural and scientific fields, covering aspects mentioned in the Covenant (such as health, labour, transit, etc.), but also moving past them. Often beginning with ad hoc responses or projects, the League established a significant number of subsidiary bodies and witnessed the gradual emergence of a 'League system'. In 1929, the League Secretariat produced its now well-known organisational chart⁷¹ which reflected the Organisation's expansion:



⁶⁹ See Hernandez, *supra* note 24, 1040-1041; as well as Werner Meng, 'Article 57', in Simma et al., *supra* note 60, at 1622-1623 (with reference to exceptions that proved the rule). As Reinalda notes, the scheme of Article 24 was overly ambitious: 'the Covenant mentioned placing these [preexisting] unions "under the direction of the League", and it was to this hierarchical arrangement that the unions objected. They preferred to remain independent of any "political" organization. ... The League was thus not able to establish itself as the coordinator of those unions that had remained active during and after the war.' (*Routledge History of International Organizations. From 1815 to the Present Day*, at 245).

⁷⁰ For further details on the process of expansion summarised in the following see notably Hernandez, 'Article', in Kolb, *supra* note 3, at 1003; and Victor-Yves Ghebali, 'The League of Nations and Functionalism', in J. R. Groom and Paul Taylor (eds.), *Functionalism: Theory and Practice in International Relations* (1975), 141.

⁷¹ In *The League of Nations. A Pictorial Survey* (Geneva 1929), and available at <http://www.indiana.edu/~league/pictorialsurvey/lonapspg7.htm>.

To be sure, this embodied a rather eclectic take on international cooperation that was clustered around disparate centres of activity that was not always linked up or coordinated. It mixed the particular (Saar, Bulgarian refugees, etc.) with the general (health, economics and finances, communication and transit, etc.), reflecting the League's forays into particular fields (minorities, territorial administration, etc) as well as the curious prioritisations within them (e.g. in the focus on Opium, Cinematography, etc.). What is more, the central League's control over the different fields of international cooperation was varied; notably in relation to international labour relations, which under the aegis of the International Labour Organization (ILO) evolved rather more autonomously than the central League would have wished.⁷² The League's activities were a patchwork, then. But the overall trend is clear, and is captured in the words of US Secretary of State Cordell Hull, who declared on 2 February 1939 that

The League . . . has been responsible for the development of mutual exchange and discussion of ideas and methods to a greater extent and in more fields of humanitarian and scientific endeavor than any other organization in history.⁷³

2. Beyond 'decline and fall'

Second, as confirmed by a glance at the organisational chart, it is apparent that the forms of international cooperation envisioned by the League system were very diverse, and much of it was rather pedestrian. In their work beyond peace and security, the League and its officers (for the most part) did not appear as a valiant saviour boldly interfering with State sovereignty, but as patient pleaders encouraging some modest government action (e.g. the commission of funds); as data collectors; as facilitators convening expert get-togethers, and above all, as readers and compilers of reports. For the League's work on mandates – clearly one of the more high-profile activities, where cynicism and idealism often clashed – Susan Pedersen has shown how the Covenant's dramatic and high-minded rhetoric ('sacred trusts' and all that) became operational through reporting duties and procedural niceties and 'how much store the

⁷² Not without reason, the 'ILO box' (in the top right corner) is an awkward addition to the League's organisational chart: technically pre-existing the League, the ILO did become a specialized agency, but retained a significant degree of organisational autonomy.

⁷³ Cordell Hull, as cited in Arthur Sweetser, *The Non-Political Achievements of the League*, 19/1 *Foreign Affairs* (Oct., 1940), at 179, 181. For clear accounts of the rise of 'non-political activities' see Ghébal, *Functionalism*, *supra* note 70; as well as Martin D. Dubin, 'Transgovernmental Processes in the League of Nations', 37 *International Organization* (1983), 469 at 482 et seq.; and Klaus Dicke, *Effizienz und Effektivität internationaler Organisationen* (1994), at 69 et seq.

[Permanent Mandates] Commission set on formal adherence to the system's procedures and on verbal deference to its stated aims'.⁷⁴ In Frank Moorhouse's *Edith* trilogy, some emphasis is placed on the League's filing system, which Edith Berry is encouraged to master as part of her job.⁷⁵

But there are other episodes, too; and they help nuance perceptions of the League as a hapless paper tiger. A few illustrations must suffice: To observers of the early 1920s, the League appeared to be a rather effective lender of last resort, and a guardian of financial stability.⁷⁶ Many newly-emerged countries in central and eastern Europe, suddenly needing to function economically overnight, faced financial meltdown. Vienna, the former banking centre of an empire, was reduced to a capital of a small republic. 'Austria', noted Austen Chamberlain in his address to Glasgow students, 'was on the brink of chaos'.⁷⁷ Four years later, its financial stability had been restored through a combination of international loans and robust austerity measures, among them 'the appointment of a League High Commissioner ... to ... enforce budgetary discipline'.⁷⁸ The precise impact of the League on the scheme (as opposed to that of major powers) remains a topic of discussion, but in Chamberlain's contemporary assessment, it appears to have been vital: 'what body other than the League' could have done it? 'No lesser security than the supervision of the League would have persuaded foreign lenders that a loan was safe'. Only to the 'unselfish authority' of the League was Austria (and other countries) willing to confer a large part of its economic and financial sovereignty.⁷⁹

By the same token, the League's efforts to bring about cooperation in the field of health are anything but stories of decline and fall. Writing in 1940, Arthur Sweetser felt that '[i]n the field of health, the success of the League has been outstanding'.⁸⁰ That was the view of a benevolent observer, but it is echoed in current studies, which credits the League for having established the

⁷⁴ Pedersen, *Guardians*, *supra* note 68, at 68.

⁷⁵ See notably Moorhouse, *Grand Days*, *supra* note 17, at 544-548 (an annex to the book, describing the working of the League's Registry, and emphasizing the importance of the 'duplication machine').

⁷⁶ For more on the 'Austrian bailout' see Patricia Clavin, *Securing the World Economy* (2013), at 24-30; and Barbara Susan Warnock, *The First Bailout – The Financial Reconstruction of Austria 1922 – 1926* (2015) (Ph.D., Birkbeck College, available at <https://core.ac.uk/download/pdf/83926002.pdf>).

⁷⁷ Chamberlain, *supra* note 48, at 16.

⁷⁸ Warnock, *supra* note 76, at 8.

⁷⁹ Chamberlain, *supra* note 48, at 17 and 16.

⁸⁰ Sweetser, *supra* note 73, at 184.

basis of global health law and governance.⁸¹ In retrospect, the League of Nations Health Organization is chiefly remembered for having done most of the conceptual groundwork as mankind was ‘coming to terms with world health’.⁸² However, its record also includes rather more dramatic ‘on the spot’ responses, such as organising an international assistance mission to contain typhus in Poland - this included mass vaccinations and the establishment of a *cordon sanitaire* on Poland’s eastern border. The League was not alone in that quest, far from it; but the relief effort it helped mount was effective under the circumstances, and it paved the way for the setting up of a global health warning system that linked 186 ports worldwide.⁸³

The League’s work on refugees is equally remarkable, and does not fit any decline and fall narratives either.⁸⁴ It is remarkable, for one, because the League willingly went along with massive forced resettlements during the post-war period (which would be viewed much more critically today);⁸⁵ and remarkable because it often came up with ingenious solutions. The ‘Nansen passport’ was prominent among them – a ‘refugee card’ of sorts, ensuring the freedom of movement of refugees, named after its promoter, the League’s High Commissioner for Refugees (and polar explorer). By the late 1930s, according to Skran, the League had provided ‘legal protection and durable solutions for more than one million refugees’⁸⁶ – including by handing out Nansen passports to people like Sergej Rachmaninov and Aristotle Onassis: would they have viewed the League as a paper tiger? Thus, the contours of an international regime of refugee law were beginning to emerge.

⁸¹ See e.g. Martin D. Dubin, ‘The League of Nations Health Organization’, in Paul Weindling (ed.), *International Health Organisations and Movements, 1918-1939* (1995), at 56–80; Marta Aleksandra Balińska, ‘Assistance and Not Mere Relief: the Epidemic Commission of the League of Nations, 1920-1923’, *ibid.*, at 81-96; and the comprehensive account offered by Iris Borowy, *Coming to Terms with World Health. The League of Nations Health Organisation 1921-1946* (2009).

⁸² Cf. Borowy, *supra* note 81.

⁸³ Borowy, *supra* note 81, at 49 et seq.

⁸⁴ For contemporary accounts see e.g. Norman Bentwich, ‘The League of Nations and Refugees’, 16 *BYIL* (1935), 114; Louise W. Holborn, ‘The League of Nations and the Refugee Problem’, 203 *The Annals of the American Academy of Political and Social Science* (1939) 124; for subsequent perspectives Claudena M. Skran, *Refugees in Inter-War Europe: The Emergence of a Regime* (1995); Dieter Kugelmann, ‘Refugees, League of Nations Offices’, in Max Planck Encyclopedia of Public International Law, available at www.mpepil.com.

⁸⁵ This notably applies to the Greek-Turkish population ‘exchange’ of 1922-1923, which the League administered and in fact counted among its significant successes: see e.g. Atle Grahl-Madsen, ‘The League of Nations and the Refugees’, in *The League in Retrospect*, *supra* note 67, at 358, 363-364 (noting that Greek-Turkish resettlements, ‘involving some two million persons, were highlights of [the League High Commissioner] Nansen’s and his colleagues’ achievements in this area’). For a critical account cf. Umut Özsu, *Formalizing Displacement. International Law and Populations Transfers* (2015).

⁸⁶ Skran, *supra* note 84, at 292.

3. Consolidating growth

It is apparent that the League did not achieve what ambitious internationalists would have wanted in these fields. Many a design -- by ambitious international civil servants such as Ludwik Rajchman (health), Nansen himself (refugees) and Albert Thomas (ILO) -- was scaled back. In many of the areas touched upon, States kept the League on a tight leash and were parsimonious in providing funds (private foundations, notably the Rockefeller Foundation, often stepped in).⁸⁷ But to state as much is to miss the point. In areas misleadingly classified as ‘non-political’, the League could be remarkably successful, often innovative, and at times rather effective, in mobilising international action.

More fundamentally, the preceding sections highlight that, fairly quickly, the League was able to occupy the fields of international cooperation that the Covenant had merely hinted at. This only increased with time: by the 1930s, the League’s focus had shifted towards the technical, social and economic fields, which absorbed the bulk of its budget.⁸⁸ The League’s second Secretary-General, Joseph Avenol, sought to curb the autonomy of League committees and commissions in a drive towards centralisation. And in its final years, the League itself had started to pursue a consolidation agenda that emphasised its work beyond peace and security. This was indicated in the Bruce Report for League reform - a predecessor to the High Level Panels of the UN era - which encouraged the creation of a Council for Economic and Social affairs, in order to reflect and consolidate the significance of League activities in these fields.⁸⁹ In parallel to these attempts at rearranging the parameters of practical internationalism, social scientists began to re-appreciate forms of technical (‘functional’) cooperation, which – echoing

⁸⁷ Paul Weindling has many details: ‘Philanthropy and World Health: The Rockefeller Foundation and the League of Nations Health Organisation’, 35 *Minerva* (1997) 269.

⁸⁸ See Pedersen, Back to the League, *supra* note 10, at 1108.

⁸⁹ See *The Development of International Cooperation in Economic and Social Affairs* (22/8/1939), LNA A.23.1939. The Report was drawn up by a committee chaired by Stanley Bruce and is frequently named after its chairman. For succinct accounts see Dicke, *supra* note 73, at 71-76; and Housden, *supra* note 47, Chapter 30; for a fuller, critical discussion see Martin D. Dubin, ‘Toward the Bruce Report. The Economic and Social Programs of the League of Nations in the Avenol Era’, in *The League of Nations in Retrospect*, *supra* note 67, at 42; and Victor-Yves Ghébal, *La Société des Nations et la réforme Bruce 1939-1940* (1970).

insights by League officials such as Monnet, Salter, or Fosdick⁹⁰ – came to be appreciated as part of ‘A Working Peace System’.⁹¹ By the end of the League’s era, the lines between peace and security, and allegedly non-political forms of cooperation, had become blurred.

Whilst the picture of the League emerging from these three sketches is patchy, it is hopefully sufficient to accentuate the bigger point made in the introduction to this contribution – namely that the League ought not to be viewed as one great experiment in peace and security, but as a series of experiments in internationalism. This perspective allows for a nuanced appreciation of the League’s diverse activities, which moves beyond the simplistic ‘decline and fall’ narrative: some of the experiments carried out within the League’s laboratory plainly failed to yield the results anticipated by Léon Bourgeois and his fellow drafters; others resulted in surprising successes that exceeded expectations. For most, the picture is somehow mixed. To emphasise as much should not be read as a plea for a ‘relativism’ where all things are equally pertinent; and still less as a plea for ‘set-offs’ (a thousand Nansen passports obviously cannot make up for one Manchuria). But given how persistently the stigma of failure has followed the league for decades, and how firmly it has been tied to the League’s performance in the field of peace and security, an emphasis on the diversity of the organisation’s activities seems necessary. This broader view yields ‘a more complex and variegated portrait of [the League’s] operation’.⁹²

⁹⁰ *Pars pro toto*, see Raymond Fosdick, Letter to Secretary of War Newton Baker (1919), reprinted in his *Letters on the League of Nations* (Princeton University Press 1966), at 20: ‘The non-political activities of the League are going to be immensely important ... I mean the functions outlined in articles 23-24 of the Covenant - the control of disease, drugs, traffic in women and children, arms communications and transit etc. Through these relatively non-controversial matters we can build a technique, we can establish a procedure and develop precedents; we can get the “feel” of international cooperation in pursuit of a common goal. Each step that we take however halting, every decision that we reach as a result of frank discussion, will be a definite advance toward ultimate world peace.’

⁹¹ See notably David Mitrany, *A Working Peace System: An Argument for the Functional Development of International Organization* (1943). It is worth noting that Mitrany himself – while emphasising the importance of functional cooperation – seemed to underplay quite how significant it had become to the League. For brief comment see MacFadyen et al, *Eric Drummond and his Legacies* (2019), at 253-254; and further Ghébali, *Functionalism*, *supra* note 73.

⁹² Pedersen, *Back to the League*, *supra* note 10, at 1115.

III. The League's Legacies: Two Sketches

In the specialist research on the League, the finer details of this 'complex and variegated portrait'⁹³ are becoming increasingly clear. While the 'failure narrative' remains powerful (and of course continues to have its place), scholarship on the League – especially in global history and international relations – has moved on and 'brought many of th[e] forgotten efforts [at international cooperation] to light'.⁹⁴ In this conscious move beyond peace and security, mandates, health, and economics are obvious areas of interest.⁹⁵ The many 'centenary' reflections offered over the past year also point to more specific legacies. Scholars have, amongst other things, identified roots of economic multilateralism in the League era, explored the Organization's impact on 'the emergence of international administration', identified forms of early 'environmental diplomacy in times of international inequality', and traced links between 'double taxation and the League of Nations'.⁹⁶

The following considerations, too, seek to identify legacies, but these are of a more general character. Rather than assessing its impact within particular fields of international cooperation, they are concerned with the League as a structure, and as an agent: a structure for going about organising international cooperation, and an agent for the development of one of the 'glues' of international cooperation, namely 'international law'. They suggest that the League remains relevant (and deserving of our continued engagement) because (A.) it left us with a template for organising international cooperation at the global level, and (B.) it ushered in an era of institutionalised international law.

A. The League and International Organisation

The institutional point is the more obvious, and going beyond the brief claim mentioned in the last paragraph, it can be put as follows: if we step back from the failures and successes of

⁹³ Pedersen, Back to the League, *supra* note 10, at 1115.

⁹⁴ Susan Pedersen, Foreword, in Jackson/O'Malley, *supra* note 96, at x.

⁹⁵ Key accounts are Clavin, *supra* note 76, Borowy, *supra* note 81 and Pedersen, *Guardians*, *supra* note 68.

⁹⁶ See, respectively, José Antonio Sánchez Román, From the Tigris to the Amazon: Peripheral Expertise, Impossible Cooperation and Economic Multilateralism at the League of Nations, 1920-1946, in Simon Jackson and Alanna O'Malley (eds.), *The Institution of International Order* (2018), 43-64; the titles of two paper presentations at a Conference entitled 'The Legacy of the League of Nations', Leicester 31 January 2019 available at <https://www2.le.ac.uk/departments/law/research/ceii/league-of-nations-programme>; and Sunita Jogarajan, *Double Taxation and the League of Nations* (2018).

particular areas, we can see in the ‘League model’, for better or worse, a template for organising structured forms of international cooperation at the global level. The League, in Inis Claude’s words, can claim ‘parentage of international organisation as we know it today’.⁹⁷

In 1945, any such claim would have seemed implausible. The League needed to be discarded, after all; and the UN, for one, clearly sought to mark a break from the past. The final section of *Dark Palace*, the middle volume of the *Edith* trilogy, brings home how brutal this rupture felt for those involved. In Frank Moorhouse’s account, a small group of League staff – among them Sean Lester (the League’s last Secretary-General), Alexander Loveday (who directed the League’s Economic, Financial and Transit Department) and Edith Campbell Berry, the trilogy’s protagonist – travel to San Francisco to witness the UN’s creation. As ‘old hands’ in international governance, they graciously offer advice on how to organise international cooperation. Lester has prepared a speech which he expects to give from the Conference floor. But San Francisco can very well do without them. No one seeks their views. Committee and commissions meet without them. They cannot get access to the plenary sessions. Loveday is allowed to listen in from ‘the top visitor’s gallery’, but it is made clear to him that his is an ‘observer’s ticket’.⁹⁸ For the rest of the League delegation, even observer tickets are beyond reach. Lester stays in the hotel room and ‘want[s] to be alone’. ‘I don’t understand’, [Edith] said, bitterly. ‘How did we become the enemy?’⁹⁹

As brutal as it may have felt in 1945, the rupture with the League was more symbolic than substantive. Soon after San Francisco, League officials would again be in demand. And quite apart from the individuals involved, the institutional ‘break’ of 1945/1946 cannot mask clear structural continuities between the League and its successors. While much of the debate centres on differences and ‘lessons’ that had to be learned from the League experience, from a ‘centenary’ vantage point, these continuities appear in sharp relief. The three following comments illustrate the broader point.

⁹⁷ Claude, *supra* note 2, at 41. For more on many of the points sketched out in the following see the recent piece by Richard Collins, ‘The League of Nations and the Emergence of International Administration: Finding the Origins of International Institutional Law’, 71 *Revista Española de Derecho Internacional* (2019), 285.

⁹⁸ Moorhouse, *Dark Palace*, *supra* note 17, at 649.

⁹⁹ Moorhouse, *Dark Palace*, *supra* note 17, at 653. In the words of Patricia Clavin, ‘Lester and Loveday were guests at their own funeral’, *supra* note 76, at 341.

1. Institutional architecture

The first concerns the institutional architecture of the League, which has proved popular. The basic decisions about the set-up of the League – one organisation with a broad mandate, autonomous of States but building upon them as the central unit – have regularly been replicated; they continue to shape the contemporary universe of institutionalisation. At the operational level, the League’s internal structure has been copied, most obviously in the UN (notwithstanding its desire for a fresh start). Like the League, the UN has two main political bodies, the Assembly and the Council, which are aided by a Secretariat. This, like in the League era, is more relevant in practice than the text of the Charter might suggest.¹⁰⁰ The UN adapted the mandates concept and integrated it into the (now defunct) Trusteeship System.¹⁰¹ The Permanent Court of International Justice was reborn as the International Court of Justice, the World Court’s ‘second incarnation’ and the UN’s ‘principal judicial organ’: better integrated into the world organisation, but kept in check, its jurisdiction dependent on State consent like that of the PCIJ.¹⁰² In the vast field of economic and social cooperation, the UN’s founders took on board proposals made in the Bruce Report when they established the ECOSOC as a central steering body – but like the League in the inter-war era, the UN struggles to ensure coherence across the wide range of mushrooming initiatives in the social and economic field.¹⁰³ And

¹⁰⁰ As Paulus and Lippold note, ‘Article 7 [listing the UN’s principal organs] can be regarded as the successor to Art. 2 of the League of Nations [Covenant]’: ‘Article 7’, in Simma et al., *supra* note 60, at 388.

¹⁰¹ Article 77 of the UN Charter brings out the link. It provides: ‘The trusteeship system shall apply to such territories in the following categories as may be placed thereunder by means of trusteeship agreements: a. territories now held under mandate; [...]’. All League mandates but two (Palestine, South-West Africa) were brought into the UN’s trusteeship system. See further Ruth Gordon, ‘Mandates’, in Max Planck Encyclopedia of Public International Law, www.mpepil.com., para. 56: ‘The UN Trusteeship Council was established in Chapter XII and it incorporated and built upon many of the institutional developments established under Art. 22 League Covenant as well as those debated and sought by the [Permanent Mandates Commission].’

¹⁰² See Articles 92 and 7 of the UN Charter. That the ICJ is more fully integrated into the UN than the PCIJ had been into the League, is widely noted, but equally widely viewed as an adaptation of the approach of the inter-war era. See e.g. Gowlland-Debbas/Forteau, ‘Article 7 UN Charter’, in Zimmermann/Tams (eds.), *The Statute of the International Court of Justice. A Commentary* (3rd ed., 2019), at 137: ‘The organic connection between the ICJ and the United Nations has its roots in the relationship between the PCIJ and the League of Nations.’ Rosenne aptly characterises the relationship between the PCIJ and the ICJ as one of ‘functional continuity between the two Courts’ in Shabtai Rosenne, *The Law and Practice of the International Court, 1920–2005*, vol 1 (2006), at 73.

¹⁰³ See e.g. Volker Roeben, ‘Article 61’, in Simma et al., *supra* note 60, at 1668-1669: ‘The origins of ECOSOC can be traced back from the League of Nations, particularly, Art. 23 (e) of the Covenant ... During the Dumbarton Oak Conference, the States having faced at first hand World War II embraced the idea of having economic and social cooperation incorporated in the United Nations agenda. This was to be a continuation of what had been proposed in August 1939 by the Special Committee of the League of Nations on the Development of International Co-operation in the Economic and Social Affairs (the Bruce Committee): the establishment of a new Central Committee for the Economic and Social Questions to manage those particular areas.’ For further details on the transition see Victor-Yves Ghébali, ‘Aux origines de l'Ecosoc - l'évolution des commissions et organisations techniques de la Société des Nations’, 18 *Annuaire français de droit international* (1972) 469.

lastly, continuity was particularly prominent below the surface, i.e. outside the core organisation. Many sectoral organisations set up during the inter-war period – in the fields of labour, health, refugees, culture – were carried over into the UN era, at times with broader mandates, at times with different names, but consciously building on the inter-war *acquis*. Writing in the early 1950s, Gerhart Niemeyer viewed the ‘United Nations [as] essentially a mutation of the League’.¹⁰⁴

2. Aims and strategies

A glance at the organisation’s aims reveals a similar picture. As set out in the preceding sections, the League was a framework for cooperation, and shaped by the breadth and diversity of its aims: from international security to health to minorities to technical cooperation in the broadest sense – much was brought under one roof. Of course, the contemporary understanding of these aims has changed, as have some of the modalities of pursuing them. However, there is a significant measure of continuity apparent in these aims and objectives.

The most obvious point is that the preference for organisations with broad mandates has continued unabated. International organisations today are widely viewed as frameworks within which cooperation in diverse fields are organised. To focus on the League’s successor, the UN’s purposes clearly reflect the League experience: the UN Charter maintains the basic distinction between the maintenance of peace and security on the one hand and the promotion of international cooperation on the other; reflecting the importance of cooperation beyond peace and security, it tasks the UN with ‘developing friendly relations between states’ and fostering ‘international cooperation in solving international problems of a social, economic, and humanitarian character’.¹⁰⁵ Just as the League was defined during the inter-war era, so is the UN characterised by the extremely broad scope of its diverse aims.¹⁰⁶

Continuities extend to the modalities of attaining these aims. ‘[T]o achieve international peace

¹⁰⁴ Niemeyer, *supra* note 62, at 537.

¹⁰⁵ Article 1 of the UN Charter.

¹⁰⁶ As Benedetto Conforti aptly notes, having described the ‘very general nature’ of the UN’s purposes: ‘the scope of activity of the United Nations can be better identified in negative rather than in positive terms. It is easier to single out the matters with which the Organization cannot be concerned than those which are within its competence’ (*The Law and Practice of the United Nations*, 3rd ed., 2005), at 7-8.

and security'¹⁰⁷ remains central; among the UN's purposes, it occupies 'the primary place'.¹⁰⁸ Provisions on how to move from 'aim' to 'reality' dominate the Charter text, as was previously the case with the Covenant. Like in the League era, institutionalised collective security is the preferred strategy. A Council remains at the heart of the international 'peace machinery'; international courts – which in the half-century preceding the League had dominated debates – operate on the periphery.¹⁰⁹ Collective decision-making no longer requires unanimity of all Council members (but 'merely' the absence of a veto of five of them),¹¹⁰ but remains crucial to the multilateral process that confers legitimacy. Outside the field of peace and security, continuities are not difficult to identify either. As was true for the Covenant, so the UN Charter too is vague and aspirational in its provisions addressing international cooperation in the social, economic, cultural and humanitarian fields. Yet, like in the League era, cooperation in these fields dominates UN practice. The proliferation of international agencies has continued, and the challenge of imposing a measure of coherence across the 'complexified United Nations system' remains.¹¹¹ All this, admittedly, is put at a significant level of generality. Clearly, the UN has massively outgrown the League in its reach and scope of activity. However, it faces issues that are structurally similar to those of the League, and that result from the deliberate decision to integrate diverse forms of international cooperation into one overarching international organisation with a comprehensive mandate. What was innovative in 1919 has become the norm.

3. An international civil service

A third legacy of the League is worth considering, precisely because it is at times overlooked in legal scholarship.¹¹² It concerns neither organisational structures nor aims – but the people

¹⁰⁷ Covenant, Preamble.

¹⁰⁸ *Certain Expenses case*, ICJ Reports 1962, 151, at 168.

¹⁰⁹ For more on this see Christian J. Tams, 'World Peace through International Adjudication?', in Heinz-Gerhard Justenhoven/ Mary Ellen O'Connell (eds.), *Peace Through Law* (2016), at 215.

¹¹⁰ See Article 27 of the UN Charter.

¹¹¹ See Paul Szasz, 'The Complexification of the United Nations System', 3 Max Planck Yearbook of United Nations Law (1999) 1. The fact that the UN largely succeeded in bringing pre-existing international organisations into the UN system – an idea envisaged in Article 24 of the Covenant, but not realised in the inter-war practice – has added to this 'complexification': on Article 24 see *supra*, II.1. and II.3; on the UN's approach see Articles 57 and 63 of the UN Charter and the references in Meng, *supra* note 69.

¹¹² Not so in recent historical scholarship, in which (as Susan Pedersen notes) '[b]ureaucrats occupy centre stage and sometimes even emerge as the heroes of that new historiography': Pedersen, Foreword, *supra* note 94, at x. *Pars pro toto*, see MacFadyen et al., *supra* note 91; Karen Gram-Skjoldager and Haakon A. Ikonomou, 'The Construction of the League of Nations Secretariat', 41(2) *The International History Review* (2017) 257.

behind them. As noted above, the League was the first organisation to rely on an international civil service. This service was of relatively limited size, to be sure: at their peak, the League and ILO combined employed around 1,100 staff; an almost negligible figure compared to today's 38,000 staff employed by the UN Secretariat, and around 170,000 international civil servants in total (not including peacekeepers).¹¹³

And yet, while the numbers have grown, the organising principle has remained the same, and it can be traced back to the League. Unlike the international administrative unions of the 19th century, the League did not depend on national civil servants seconded to it, but possessed 'a truly international civil service ... officials who would be solely the servants of the League alone'.¹¹⁴ These in turn enjoyed diplomatic privileges and immunities hitherto reserved to state agents; in disputes concerning their employment, they had access to an autonomous international mechanism, which gained firmer contours with the establishment of the Administrative Tribunal of the League of Nations in 1927.

None of this was, or is, the stuff of headlines. However, it marked a break with prior diplomatic practices. The League's first Secretary-General was a British diplomat with Scottish roots. Sir Eric Drummond is credited with having persuaded (initially reluctant) governments to accept a move towards a truly international service, which the Staff Regulations would reflect.¹¹⁵ Implementing it required compromise and prudence; the League, just as the UN and many other international organisations today, made sure to guarantee geographical representation and allocated top positions on the basis of nationality in order to integrate state interests and national experiences: a mix that could result in conflicts of interest, which officeholders experienced. But most observers agree that the League managed to foster an internationalist *esprit de corps*

¹¹³ For details see MacFadyen et al., *supra* note 91, at 300 and 309-310; as well as UN Doc. A/74/82 (Composition of the Secretariat: staff demographics).

¹¹⁴ As noted by the League's first Secretary-General Sir Eric Drummond: 'The Secretariat of the League of Nations', ix *International Public Administration* (1931), 228. As has been noted (citing Drummond, *ibid.*, 235), 'Drummond's decisions regarding the set-up of the Secretariat were based on the assumption that national interests were properly represented in the Council and the Assembly, while the members of the Secretariat were to "serve the League as a whole and not any particular Government"': see Gram-Skjoldager and Ikononou, *supra* note 112, at 261.

¹¹⁵ Pursuant to its Article 1, League employees were 'exclusive international officials', their 'duties ... not national, but international': see 'Statutes for the Personnel of the Secretariat' (1922), LNA 30/11713, 4. For a comprehensive account of Drummond's life and influence, see MacFadyen et al., *supra* note 91.

that was a source of pride for its employees: ‘a punctilious Scot [had] beg[un] building a new model army’.¹¹⁶

With the benefit of hindsight, it is clear that the League’s decisions to create conditions in which such an *esprit* could emerge have influenced the staffing practices of international organisations. They were embraced by the UN and, from 1949 onwards, have guided the work of the International Civil Service Advisory Board tasked to develop a standard of conduct for international civil servants.¹¹⁷ As Gram-Skjoldager and Ikonomou note, in the Board’s ‘Standards of Conduct’ code, ‘autonomy and internationality is valued and presented much in the same way as in the Secretariat’.¹¹⁸ And further: the code’s

specific model of balancing autonomy and legitimacy seems almost self-evident today but it is – in large part – the product of specific institutional choices and practices of staffing within the League Secretariat, performed in the peculiar historical context of the aftermath of the Great War.¹¹⁹

In this sense, League practices are indeed ‘one of the foundational roots of the omnipresent and contested international bureaucracy we know today.’¹²⁰

By the 1940s, the League had become toxic. There had to be a break; it had to be dissolved. But later efforts at international organisation remain premised on the League template of international governance: as Mark Mazower observed, the League offered a ‘flexible and multivalent ... model of international government that would not only survive the second world war, but would be greatly expanded and refined’.¹²¹ None of this, one hastens to add, is necessarily positive. Perhaps structures devised a century ago – before decolonisation, before the age of rights, before the rise of non-state actors – have become stumbling blocks. But enduring they have proved; for better or worse, in their institutional architecture, the breadth of

¹¹⁶ Pedersen, *Guardians*, *supra* note 68, at 46. For a comprehensive account of Drummond see MacFadyen et al., *supra* note 91.

¹¹⁷ International Civil Service Advisory Board, *Report on Standards of Conduct in the International Civil Service* (1954); and see <https://icsc.un.org/Resources/General/Publications/standardsE.pdf> for the most recent version.

¹¹⁸ Gram-Skjoldager and Ikonomou, *supra* note 112, at 274.

¹¹⁹ *Ibid.*, at 275.

¹²⁰ *Ibid.*, at 275.

¹²¹ Mazower, *supra* note 37, at 153.

their aims, their reliance on an international civil service and the importance of that service's bureaucratic routines – the project of international organisation remains true to the League's 'blueprint'.¹²² For this reason, there is indeed a strong reason to focus – quite apart from centenary reflections – on the League's 'enduring influence'¹²³ on our understanding of international organisation.

B. The League and International Law

Whether the League has had an enduring influence on international law is more difficult to assess. The subsequent sections suggest that it did in some way, and identify this influence as a second general legacy. However, identification of this influence is not a straightforward exercise. The League did not dominate the international law of the inter-war era in the way it dominated the project of the international organisation. The bulk of international law remained non-institutional and was unaffected by the League's establishment. Notwithstanding some cautious hints,¹²⁴ the international law of the inter-war era largely remained an inter-State law; it continued to be made by, and primarily for, States. As before, rights and obligations would derive from treaty and custom, with general principles in a curious supporting role: in its work resulting in Article 38 of the PCIJ Statute, the Advisory Committee of Jurists provided a useful conspectus of these three sources, but it did not invent it.¹²⁵ Finally, with the exception of the tentatively-worded Article 19,¹²⁶ the Covenant accepted the continued validity of old, pre-war law. Reflecting as much, many international law textbooks straddled the 'break' of 1918/1919 with relative ease. *Oppenheim's International Law* is illustrative: Roxburgh's third edition, published in 1920, was not dramatically different from the second. In fact, in the preface, the incoming editor records Lassa Oppenheim's 'eager' observation that 'not the whole of International Law has gone to pieces, but only parts of the Law of War'.¹²⁷ From that

¹²² Collins, *supra* note 97, at 289.

¹²³ Mazower, *supra* note 37, at 153.

¹²⁴ For comment on some of them, see section III.2.c

¹²⁵ See details in Malgosia Fitzmaurice, 'The History of Article 38 of the Statute of the International Court of Justice: The Journey from the Past to the Present', in Samantha Besson and Jean d'Aspremont, *The Oxford Handbook of the Sources of International Law* (2017), 179; and Ole Spiermann, 'The History of Article 38 of the Statute of the Permanent Court of International Justice. A Purely Platonic Discussion?', *ibid.*, at 165.

¹²⁶ Article 19 provided: 'The Assembly may from time to time advise the reconsideration by Members of the League of treaties which have become inapplicable and the consideration of international conditions whose continuance might endanger the peace of the world.'

¹²⁷ Roxburgh, *Oppenheim's International Law* (3rd ed., 1920), vii.

perspective, the ‘law of the League’ can perhaps be visualised as a further layer, added on top of the existing (already multi-layered) structure of international law. German observers could be forgiven for thinking of Otto Mayer’s quip, offered to capture the limited impact of domestic constitutional upheaval on the substrate of domestic public law: ‘*Verfassungsrecht vergeht, Verwaltungsrecht besteht*’ (roughly translated as ‘while constitutional law lapses, administrative law lives on’).¹²⁸

Yet after dramas and lapses, nothing lives on quite unchanged. While much of the pre-war international law remained unaffected by the League, the new layer mattered, and not just as a separate layer, but cutting across the body of international law, whether old or new. In three respects in particular, new layers added after World War I brought international law closer to its contemporary variation.

1. Towards concerted law-making

First, law-making in the League era became more coordinated - to some extent concerted. The change was gradual, no doubt; the inter-war structures did not (yet) permit centralised (secondary) law-making of the nature now envisaged within sectoral organisations such as the World Health Organisation or the International Civil Aviation Organisation, or under Chapter VII of the UN Charter.¹²⁹ The changes at the time were more subtle, but international law, as Koskenniemi has noted, ‘was definitely steered in an institutional direction.’¹³⁰ The roles played by the institution varied. The League could be a forum and a site where States expressed legal views, which in turn would be fed into the international law-making process. Conferences convened by the League adopted treaties or resolutions that would become reference points.¹³¹ Codification (which of course was not new) began in earnest:¹³² while the major Conference of

¹²⁸ Otto Mayer, *Deutsches Verwaltungsrecht* (3rd ed., 1924), Vorwort (‘Groß Neues ist ja seit 1914 und 1917 nicht nachzutragen. “Verfassungsrecht vergeht, Verwaltungsrecht besteht“; dies hat man anderwärts schon längst beobachtet’).

¹²⁹ See Articles 21, 22 of the World Health Organization Constitution (WHO); Article 37, 38, 54 and 90 of the International Civil Aviation Organization (ICAO) Convention and Article 39-42 of the UN Charter; and the helpful overview by Volker Röben, ‘International Law, Development through International Organizations, Policies and Practice’, Max Planck Encyclopedia of Public International Law, www.mpepil.com.

¹³⁰ Martti Koskenniemi, History of International Law, World War I to World War II, in Max Planck Encyclopedia of Public International Law, www.mpepil.com, para. 3.

¹³¹ Rosenne, Codification Revisited After 50 Years, 2 Max Planck Yearbook of United Nations Law (1998) 1, at 2.

¹³² For comprehensive reports see Shabtai Rosenne, *League of Nations, Conference on the Codification of International Law (1930)*, 4 vols. (1975); Shabtai Rosenne, *League of Nations Committee of Experts for the Progressive Codification of International Law (1925-1928)*, 2 vols. (1972).

1930 ended in disappointment,¹³³ the League established precursors to the contemporary codification bodies - notably a standing expert committee charged to report on questions considered ripe for codification.¹³⁴ Perhaps most significantly, in particular areas of international law, League bodies prepared standard treaties for adoption by States: bilateral aviation treaties and model taxation agreements are examples in point – concluded by States, but with heavy input by international experts.¹³⁵

As a side effect, law-making became a little more transparent. For the most tangible source of rights and obligations, namely treaties, the League imposed a modest but general duty of transparency: Article 18 of the Covenant translated Wilson’s call for ‘open Covenants, openly arrived at’¹³⁶ into a duty to register treaties. Just under 5,000 entries in the League of Nations Treaty Series made visible the growth of international law: an archivists’ dream and (just like its successor, the UN Treaty Series, which is now much more voluminous) ‘an indispensable piece of international apparatus’.¹³⁷

The combined effect of these gradual changes meant that, with the League, the international law-making process reached a transitional phase - which seems to last until the present day. This ‘transitional stage’ remains premised on consent (as States’ cannot be bypassed in their law-making role), but international organisations have begun to assert their influence over it – as agenda-setters and conveners, as providers of expertise, as gentle and not-so-gentle influencers. Law-making in the League era, in other words, adapted to the rise of international organisations: the international law of the League era became a *law with international institutions*.

¹³³ Based on the report of the expert committee, the League Assembly had selected three topics to be addressed during the Codification Conference, viz. nationality, territorial sea and responsibility. The Conference adopted a number of conventions on aspects of nationality (among them Protocols Concerning Statelessness), but it failed to reach agreement on the breadth of the territorial sea; and on State responsibility, in the main agreed to disagree. For full details see Rosenne, *Conference on the Codification*, *supra* note 132; for a condensed account see Sir Arthur Watts, Codification and Progressive Development of International Law, in Max Planck Encyclopedia of Public International Law, www.mpepil.com, at paras. 8-9.

¹³⁴ See the Resolutions of 22 September and 12 December 1924, reproduced in 41 *American Journal of International Law* (1947), Suppl. 103, 104.

¹³⁵ See R. Y. Jennings, ‘The Progressive Development of International Law and Its Codification,’ 24 *BYIL* (1947), 301, at 326 (‘the Economic and Financial Organization of the League of Nations went much farther; it actually prepared model conventions for adoption by states as bilateral treaties. This was a highly successful experiment, especially in relation to the problem of double taxation.’) See further below, III.2.c., for comment on the rise of international labour conventions.

¹³⁶ The first of Wilson’s Fourteen Points, *supra* note 4.

¹³⁷ A.D. McNair, *The Law of Treaties* (2nd ed., 1961), at 179.

2. International law with international courts

A second trend points in the same direction: international law, in the inter-war period, became a *law with international courts*. As noted above,¹³⁸ the PCIJ, foreshadowed in the Covenant and thus part of the ‘League project’, became operational in 1922-1923. As has also been noted, the Court’s brief was rather more modest than legalists of the pre-war era had hoped: in Ole Spiermann’s phrase, ‘[i]n the political history of the League of Nations, the Permanent Court [was] but a footnote’;¹³⁹ Léon Bourgeois’ ‘empire du droit’, set up to replace the reign of force, was not one of international adjudication, guarded by a world court.¹⁴⁰

Still, the presence of the PCIJ shaped international law, which was transformed – to quote Spiermann again – ‘from Buchrecht to practice’.¹⁴¹ While arbitral tribunals had interpreted and applied international law for decades, the arrival on the scene of a permanent international court made a difference. In publicly available decisions, international law became visible, and a focus of debate. From early on, the PCIJ consciously consolidated its jurisprudence, constantly citing back to its earlier decisions and showing great ‘car[e] not to reverse precedents established by itself in previous judgments and opinions’.¹⁴² The result was a body of interconnected judicial holdings, which – while often emanating from disputes of limited relevance – provided guidance on the proper interpretation of broad fields of international law. While some contemporary observers had anticipated this change,¹⁴³ its extent was significant.¹⁴⁴ Central aspects of the international law of treaties came to be spelled out in PCIJ proceedings, including

¹³⁸ *Supra*, II.1.

¹³⁹ Ole Spiermann, *International Legal Argument in the Permanent Court of International Justice. The Rise of the International Judiciary* (2004), at 132.

¹⁴⁰ See Bourgeois, *supra* note 1; and Tams, *Peace through Adjudication*, *supra* note 25.

¹⁴¹ Spiermann, *supra* note 139, at 23. For much more on the following see the contributions in Christian J. Tams/ Malgosia Fitzmaurice (eds.), *Legacies of the Permanent Court of International Justice* (2013); and Christian J. Tams and James Sloan (eds.), *The Development of International Law by the International Court of Justice* (2013).

¹⁴² Third Annual Report [1926-1927], PCIJ, Ser E, No. 3, 218, 226.

¹⁴³ See e.g. Manley O Hudson, ‘The Permanent Court of International Justice and World Peace’ in *The Annals of the American Academy* (1924), 122: ‘It may reasonably be anticipated that the Permanent Court of International Justice will contribute to the maintenance of the world’s peace ... [by] building a cumulating body of international case law.’

¹⁴⁴ *Pars pro toto*, see Hersch Lauterpacht *The Development of International Law by the Permanent Court of International Justice* (1934), a book-length treatment published no more than a decade after the PCIJ’s establishment.

principles of treaty interpretation.¹⁴⁵ The Court's pronouncements consolidated the concept of diplomatic protection as a state right.¹⁴⁶ Putting together the pieces of the PCIJ's puzzle, international lawyers began to discuss responsibility as a general category, organised around general rules on remedies and attribution.¹⁴⁷

Looking back over a century of international legal development, the lasting influence of the PCIJ – on these and on many other fields – seems obvious. The Court was not a judicial legislator, and often anything but activist; but its decisions stood out as ‘the most authoritative pronouncements on questions of international law ... that can be made while the family of nations remains as at present constituted’.¹⁴⁸ In the League era, a new, loud, and strong voice joined the discourse on international law and began to shape it. In the century since the PCIJ's establishment, many more such judicial voices have joined the debate: international courts and tribunals have proliferated, and their contributions to the development of international law have become both more diverse and pervasive. And yet, their contributions follow the template developed in the time of the League - when international courts, operating on the basis of state consent and without any power to make precedential rulings, began gradually to mould and develop international law.

3. Expanding horizons

The final trend is related to the previous two (and the first of these in particular). It concerns the impact of new structures and actors on the body of international law. As the League and ‘its’ court began to work with law, international law expanded. Jean Ray (not yet anticipating the ‘treaty manias’ of later decades) saw the 1920s as the time of ‘*pactomanie*’.¹⁴⁹ And looking

¹⁴⁵ For details see Stephan Wittich, ‘The PCIJ and the Modern International Law of Treaties’ in Tams/Fitzmaurice, *supra* note 141, at 89 and 120 (‘the experience of the Permanent Court ... left clear marks on the modern law of treaties’).

¹⁴⁶ See notably *Mavrommatis*, PCIJ, Ser. A, No. 2, at 12; and further Kate Parlett, ‘Diplomatic Protection and the International Court of Justice’ in Tams/Sloan, *supra* note 141, at 87.

¹⁴⁷ See Christian J. Tams, Law-making in complex processes. The World Court and the Modern Law of State Responsibility, in Christine Chinkin/Freya Baetens (eds.), *Statehood, Sovereignty and State Responsibility. Essays in Honour of James Crawford* (2014), 287, at 292-296.

¹⁴⁸ William E Beckett, ‘Decisions of the Permanent Court of International Justice on Points of Law and Procedure of General Application,’ 11 *BYIL* (1930) 1.

¹⁴⁹ Jean Ray, *Commentaire du pacte de la Société des Nations selon la politique et la jurisprudence des organes de la Société*, vol 1 (1930), at 500.

back, Josef Kunz recalled that ‘[i]n all the dealings of the League, international law was at the heart of the discussion ... Legal arguments were the core of every debate’.¹⁵⁰ Kunz himself did not approve; and the point about the ‘legalistic League’ is easily overstated.¹⁵¹ But certainly international law, offering the promise of shaping international relations, significantly grew in the League era, and the League’s work on codification was bound to leave its mark.

Much of the growth of international law was in the form of densification, as regimes existing were consolidated: communications, transport, the conduct of hostilities, peaceful dispute resolution – in these and other fields, international law in the inter-war era became ‘thicker’ as new treaties supplemented those agreed before the war. However, international law also branched out into fields that had seemed off limits, or marginal, before. The League’s minority and mandates regimes are today viewed with some ambivalence, but their influence on future attempts to establish international legal benchmarks and processes for the protection of individual and group rights is difficult to dispute.¹⁵² International labour law – linked to the League, though dominated by the ILO – emerged as a ‘new entrant’ on the scene, with 67 Conventions agreed in the ILO’s first two decades.¹⁵³ Anti-crime treaties of the inter-war era sought to organise (as was noted at the time) a ‘war upon crime through international cooperation’:¹⁵⁴ a rather civilised war, one might add, waged not with drones but primarily through persuading States to standardise offences and requiring a modest degree of concerted state action. Finally, with the Kellogg-Briand Pact and regional agreements, States laid the foundations for the general and comprehensive ‘outlawry of war’ on which agreement was reached in the UN Charter.¹⁵⁵

With the benefit of hindsight, the legislative projects of the inter-war era, while reflecting particular priorities, fit relatively easily with mainstream accounts of the ‘path of international

¹⁵⁰ Josef L. Kunz, *Swing of the Pendulum: From Overestimation to Underestimation of International Law*, 44 *American Journal of International Law* (1950), 135, at 136 and 137.

¹⁵¹ Wertheim’s seminal article, *supra* note 25, provides a useful antidote.

¹⁵² Tams, *League of Nations*, *supra* note 3, at paras. 32-35.

¹⁵³ See C. Wilfred Jenks, *Social Justice in the Law of Nations: The ILO Impact after Fifty Years* (1970).

¹⁵⁴ See the League’s Report on the ‘Gradual Unification of Criminal Law and Co-operation of States in the Prevention and Suppression of Crime’, as quoted in Neil Boister, *An Introduction to Transnational Criminal Law* (2nd ed., 2018), at 17-18.

¹⁵⁵ For a balanced assessment of developments in the inter-war era see Ian Brownlie, *International Law and the Use of Force* (1963), chapter V; for the ‘new foundations’ built in 1945, on the ‘cornerstone’ of Article 2(4), see *ibid.*, chapter VI; and further *Armed Activities case*, ICJ Reports 2005, 168, at para. 148 (‘The prohibition against the use of force is a cornerstone of the United Nations Charter’).

law' during the 20th century (and into the 21st). Densification in League-sponsored treaties foreshadowed international law's 'rank growth' during the UN era.¹⁵⁶ Mandates, minority regimes, and ILO Conventions appear as important waypoints on international law's trajectory from cooperation via coordination to collective goods. In the League and its international civil service, international law gained a (self-professed) guardian of the collective interest, and in the PCIJ it acquired an ultimate guide to its proper construction. In its projects and *dramatis personae*, the international law of the League era begins to look familiar.

¹⁵⁶ On which see Christian J. Tams, 'The Role of Treaties in pursuing the Objectives of the UN Charter: the Text and the Practice', in: Chesterman, Simon/Malone, David M./Villalpando, Santiago (eds.), *Oxford Handbook on United Nations Treaties* (2019), at 69.

IV. Between ‘Failure’ and ‘Blueprint’: Concluding Thoughts

The five sketches offered in the foregoing discussion highlight different aspects of the League’s life and afterlife. The focus throughout has been fairly traditional, on the League as an inter-State organisation, and on international law and institutional structures as tools for making such organisation happen. While the treatment has been selective, the sketches hopefully convey an idea of the scope and breadth of the League’s attempts to become what the UN Charter would later refer to as ‘a centre for harmonizing the actions of nations’.¹⁵⁷ Some of these attempts were in the nature of great experiments; others were smaller in design and ambition. Some were carried out under the watchful eyes of observers, others by and for niche circles of experts. Some were driven by the League and its staff, others by States or stakeholders to whom the League offered a useful platform. For a quarter-century, the League of Nations – ambitious in its diverse aims, flexible and adaptable in their pursuit – was the framework within which great and small experiments in organised internationalism were carried out. That all this could be summed up in one overarching verdict – ‘nouveau monde’ or ‘utter failure’ – is plainly implausible: The League neither failed nor succeeded across the board; it had different degrees of influence on different fields of international relations.

Above all, the five sketches invite reflection on continuities in a century’s quest for organised forms of international cooperation. At least in general accounts, continuities have often been overshadowed by powerful narratives centred around the fresh start of 1945 (with the UN inaugurating an allegedly new ‘UN era’ eclipsing what had come before), or by the new dawn of 1989. The centenary of the League’s establishment is a good occasion to reaffirm the case for 1919 as a crucial turning point in organised international cooperation. Certainly, for international lawyers and scholars of international organisations, so much of what took shape in the League era has become standard and still feels relevant. The League’s blueprint on projects of international organisation remains strong – reflecting either the continuing appeal of inter-war visions of internationalism, or a century’s lack of imagination in coming up with new models - or both. For better or worse, a century on, the League matters. And perhaps, re-engaging with it from a centenary’s distance, disillusioned 21st century citizens, seeking space for progressive thinking, can take inspiration from the seriousness and pragmatism with which

¹⁵⁷ Cf. Article 1(4) of the UN Charter.

diverse groups of individuals used the League platform to pursue great and small experiments in internationalism.