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The League of Nations and Visions of World Order

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Abstract

The article assesses the significance of the League of Nations as an experiment in world order and explains its relevance to the contemporary world order. It does this by studying three world order institutions introduced by the League namely, intergovernmental organisations, collective security, and international law.

Keywords: League of Nations, world order, governance, experiment, international organisation, collective security, international law, peace, United Nations

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1 Introduction

In political and legal discourse, but also in conventional thinking, the League of Nations (LoN) is usually depicted as a failure because it failed to prevent the Second World War, although it was created on the ruins of the First World War with the main goal of preventing another devastating world war. Commentators offer a litany of reasons to explain that failure; the most well-rehearsed being its defective institutional design, its lack of resources, its lack of enforcement powers, but also the failure of its members to honour their commitments.¹ Against the League's failure, its successor organisation, the United Nations (UN), is presented instead as an organisation that was created to overcome the defects of the LoN.²

As will be discussed, this is, however, a rather harsh and not necessarily an accurate assessment of the LoN, which is the result of a particular set of assumptions about the creation, operation and purpose of the League. In fact, there are diverse and rather contradictory representations of the LoN: the LoN is depicted as a movement from law to politics but also a reverse movement from politics to law; a movement from utopia to reality but also its reverse from reality to utopia; a movement from anarchy to order and back to anarchy or a movement from war to peace as well as its reverse.³ Such contradictory representations that lead to conflicting assessments reveal that the LoN was a more complex phenomenon than the aforementioned binary representations imply and that it was called upon to play many different roles.⁴ Consequently, representations and assessments of the League should be more nuanced and should explain their point of departure. As a matter of fact, the LoN may have been all the above to different degrees and in different times of its existence. This is because, in effect, the LoN was, as major world projects are, a compromise between the forces of sovereignty and

¹ See Lord Cecil's and M. Paul-Boncour's speeches at the final session of the League Assembly, 9 April 1946, in R.B. Henig (ed.), *The League of Nations* (1973) pp. 164-168.

² The UN was however moulded on the LoN's image. As was noted: "[t]he student of international organisation must recognise the United Nations for what it quite properly is, a revised League, no doubt improved in some respects, possibly weaker in others, but nonetheless a League, a voluntary association of nations, carrying on largely in the League tradition and by the League methods." Leland M. Goodrich, "From League of Nations to United Nations", 1 *International Organization* (1947) pp. 3, 23; See also Charles Webster, "The Making of the Charter of the United Nations", 32 *History* (1947) pp. 16; Frank P. Walters, *A History of the League of Nations* (1952) p. 812: "In its purposes and principles, its institutions and its methods, the United Nations bears at every point the mark of the experience of the League".

³ See in general Charles K. Webster and Sydney Herbert, *The League of Nations in Theory and Practice* (1933); Alfred Zimmern, *The League of Nations and the Rule of Law 1918-1935* (1945); Edward H. Carr, *The Twenty Years' Crisis, 1919-1939: Reissued with a New Preface from Michael Cox* (2016).

⁴ "Conceived originally as a political system for keeping the peace, it became from the first the unique and universal centre for every activity in which international cooperation was needed". Frank P. Walters, "The League of Nations", in E. Luard (ed.), *The Evolution of International Organisations* (1966) pp. 25.

nationalism and the forces of internationalism and institutionalism that existed and operated in parallel to each other but often in competition with each other. A cursory reading of its Covenant actually reveals the cohabitation of its universal and aspirational ideals with more traditional ideas of how international relations are to be conducted.

In view of the above, I prefer a different depiction of the LoN; namely, that of a great experiment as characterised by one of its architects, Robert Cecil.⁵ Experiments test new knowledge and are based on a process of trial and error. More specifically, experiments test new ideas which evolve from existing knowledge and their success or failure has further implications; it determines future developments by adopting the ideas that proved to be successful or by adapting and revising existing ideas through a process of reflection and lessons learned or by rejecting the ideas that failed conspicuously. Depicting the LoN as an experiment refers to its particular vision of how world order is to be organised following the devastation of the First World War, the collapse of the 19th century world order based on the balance of power, and the world-scale problems that states and people faced. In my opinion, such depiction is more fitting because it presents the LoN as the realisation of a political project of world order informed by past trajectories with their successes and failures but also one that was mainly oriented towards a novel vision of world order.⁶ As one commentator put it, the creation of the LoN was an “extraordinary event” because there had been nothing like it before but also there was very little to suggest its possibility.⁷

Starting from this premise, in this article I will not deal with the standard question that has dominated scholarship of why the League failed but I will try to uncover the deeper significance of the LoN as an experiment in world order and explain its relevance to the contemporary world order.

The article begins by explaining the concept of world order as well as the LoN’s concept of world order. The article then presents three world order institutions introduced by the LoN

⁵ Robert Cecil, *A Great Experiment: An Autobiography* (1941); M. Patrick Cottrell, *The League of Nations: Enduring Legacies of the First Experiment at World Organization*, (2017) ch. 1.

⁶ According to Zimmern, *supra* note 2, p. 271, the Covenant “... represent[s] a dovetailing of doctrines and the adjustment of widely differing and, in some cases, contending wills. Thus the final work is not, like the usual treaty or constitution, a neat and orderly arrangement of chapters, sections and causes ...”. He then categorises the different articles in the Covenant as representing Concert systems, Monroe doctrine systems, Hague conference systems, system of world services and system of Hue and Cry; *supra* note 2, p. 271-3. Inis Claude Jr., *Swords into Plowshares: the Problems and Progress of International Organization* (4th ed., 1971) p. 41-56; Mark Azower, *Governing the World: The History of an Idea*, (2012).

⁷ David Armstrong, James Armstrong, Lorna Lloyd, and John Redmond, *From Versailles to Maastricht, International Organization in the Twentieth Century* (1996) p. 7. Walters, *supra* note 2, p. 26: “... it was something entirely new in the political development of the world”.

and I use this term in Buzan's sense of "primary institutions" that is, institutions around which world order governance evolves.⁸ These institutions are: intergovernmental organisations, collective security, and international law. The article then goes on to consider their implications for and legacies on the contemporary world order. My main contention is that the LoN should not be viewed as an end in itself but as a stepping stone to building our contemporary world order, constituting its protoplasmic ancestor.

2 World Order and the League of Nations

A world order is a governance arrangement which regulates the relations between and among states and other actors in the world in order to deliver public goods such as peace and justice.⁹ According to Bull, a world order is a fundamental and primordial concept because it is not only about order among states but also about order within states and the wider international political system, whose participants are not only states but also individuals.¹⁰

World orders are political, legal, social, and institutional constructs. As constructs, world orders can either be heuristic by categorising and explaining a set of existing arrangements or perspectival and prescriptive describing what the governance arrangements should be. Being prescriptive, a world order is informed by a certain ideological framework, preference, worldview, or a vision of how such a world order should look like in order to achieve the desired aim. It is for this reason why I use the word vision in the title of this article. Such vision can be set in motion by putting in place corresponding governance arrangements and testing them in practice and time from where the notion of experiment emerges. By governance arrangements I mean institutions, norms, organs, and practices. It transpires from this that a world order has a normative, institutional and teleological dimension.¹¹ The LoN did exactly that: it put in place and codified the governance arrangements corresponding to its particular vision of a post First World War order which was to replace the previous world order based on the balance of power, *ad hoc* conferences and institutions, informal arrangements, secrecy, unrestrained recourse to war, Euro-centrism, and colonialism. The aims of the new

⁸ See Barry Buzan, *From International to World Society?* (2004) p. 161–204.

⁹ A world order is "the system of authoritative rules, norms, institutions, and practices by means of which any collectivity manages its common affairs." John G. Ruggie, 'Forward', in T. Weiss and R. Thakur (eds.), *Global Governance and the UN* (2010) pp. xv.

¹⁰ Hedley Bull, *The Anarchical Society: A Study of Order in World Politics* (2nd ed., 1977) p. 21.

¹¹ Nicholas Tsagourias and Nigel D. White, *Collective Security: Theory, Law and Practice* (2013) p. 27.

world order instituted by the LoN were “to promote international co-operation and to achieve international peace and security” and these aims were to be achieved:

“by the acceptance of obligations not to resort to war;
by the prescription of open, just and honourable relations between nations;
by the firm establishment of the understandings of international law as the actual rule of conduct among Governments; and
by the maintenance of justice and a scrupulous respect for all treaty obligations in the dealings of organised peoples with one another”¹²

The Covenant then laid down the normative and institutional means and methods to attain the peaceful settlement of disputes and the improvement of the global welfare through cooperation in social, economic, labour, or health matters.¹³ The above represent the particular hallmarks of the LoN’s version of world order but, zooming out to look at the contribution of the LoN to the concept of world order in general, the LoN as a whole provided the site and the framework of world order governance by introducing its main governance institutions. These governance institutions were, among others, intergovernmental organisations, multilateralism, sovereign equality, self-determination, collective security, diplomacy, dispute resolution, international law.

In what follows I will present three such institutions – intergovernmental organisations, collective security, and international law - in order to demonstrate their enduring relevance and consequently the enduring legacy of the LoN.

3 The League of Nations and World Governance Institutions

3.1 Intergovernmental organisations

The creation of the LoN marks “a move to institutions” in the sense of international intergovernmental organisations.¹⁴ Intergovernmental organisations are created by states to deal with common problems and to pursue common interests by pooling assets, by working

¹² Preamble to the Covenant.

¹³ See Art. 23 of the Covenant. According to Zimmern, the LoN is “in fact, an instrument of co-operation”, *supra* note 2, p. 289.

¹⁴ David Kennedy, “The Move to Institutions”, 8 *Cardozo Law Review* (1987) pp. 841. See also Glenda Sluga, “Remembering 1919: International Organizations and the Future of International Order”, 95 *International Affairs* (2019) pp. 25, international organisations and intergovernmental organisations will be used interchangeably in the article.

through common organs, by managing activities, and by elaborating norms. It is the efficiency in attaining common goals through common organs and action and through a common reference framework that makes intergovernmental organisations appealing to states. By creating such organisations states can also manage the enforcement of their common commitments and influence the conditions of change. Although international organisations operate within the bounds of their constitutive document and are generally based on state consent, their creation and operation signifies, on the one hand, the cession of portions of state sovereignty and, on the other, the acquisition of relative autonomy by the organisation in order to influence or regulate the behaviour of states in the pursuit of the common good.

In the same vein the LoN was established by states as an inter-state organisation, not a supranational one, in order to pursue their common interests. States constituted the basic unit of its structure and operation, but the League was also endowed with common organs to serve the common good. What, however, makes the LoN exceptional is not only that it ushered the era of intergovernmental organisations as sites of governance but, more importantly, that it marked the establishment of the first global political institution of world order and global governance. In contrast to existing at the time organisations whose membership was limited and their vocation limited mainly to administrative matters, the LoN was or aspired to be global and inclusive as far as membership and aims were concerned. With regard to its aims, it had a comprehensive mandate which as was noted above included peace and justice in the form of self-determination, health, labour, women's rights, minority protection. Moreover, the LoN had permanent organs – political and administrative - in the form of an Assembly, a Council, and a Secretariat. The Secretariat provided administrative leadership and support in order to see the League's mandate implemented.¹⁵ Having a Secretariat and, generally, having an international civil service which was appointed on the basis of expertise, was independent from national loyalties, acted as the guardian of the LoN's interests and was answerable to the League was

¹⁵ Martin David Dubin, "Transgovernmental Processes in the League of Nations", *37 International Organization* (1983) pp. 469; David Macfadyen, Michael D. V. Davies, Marilyn Norah Carr, and John Burley, *Eric Drummond and his Legacies: The League of Nations and the Beginnings of Global Governance*, (2019) p. 105: "The League's work was ground-breaking. Countries around the world began to accept practices by international civil servants that were quite new, such as: the in-country presence of technical staff in Poland and Russia; organizing financial rescue packages for countries in economic and financial meltdown; impartial international scrutiny of large states in the case of the indigenous populations of mandated territories and of smaller states in the case of the protection of minorities; supporting the implementation of norms established by the League's governing bodies, and the practice, championed by Monnet, of tackling international problems by bringing together specialists rather than going through diplomatic intermediaries".

an innovation.¹⁶ If this feature of the LoN is combined with its comprehensive mandate, the LoN were bound to become a “living organism”;¹⁷ able to expand and mature organically.

In addition to the above, the LoN also set up an impressive array of subsidiary bodies Committees, Commissions and Specialised Agencies. These include the Economic and Financial Organisation¹⁸, the League of Nations Health Organisation¹⁹, the Communications and Transit Organisation (CTO), which dealt with pressing needs in the area of “rail transport, inland navigation, ports and maritime navigation, road traffic and power transmission”, the International Committee on Intellectual Cooperation (ICIC) whose members, among others, included Marie Curie and Albert Einstein. These agencies employed “experts” and specialists from the sciences (or other professions), campaigners and worked with voluntary organisations to collect data, conduct research, prepare reports, and formulate policies.²⁰ They contributed to the LoN’s economic, humanitarian, and scientific work and the LoN acted as coordinator and supervisor.²¹ It is worth mentioning that these “specialised” agencies consumed more than 50 per cent of the League’s budget in the late 1930s and were the most expansive, global and successful institutions that also survived the demise of the League. In this respect, it is also important to mention the ILO that was created as affiliated agency with tripartite membership consisting of employers, employees and governments and which became a specialised agency under the UN as well as the Permanent Court of International Justice (which was not formally a LoN organ but was organically linked to the LoN) and continued in the form of the International Court of Justice.

It transpires from the above that the overall aim of the LoN was to establish an integrated system of world order by regulating world-wide interactions by pooling together sovereignty, organising the use of “violence”, dealing on a permanent basis with common problems, setting out the rules of the world order, and by settling disputes peacefully. In this regard, it also promoted change in world society through peaceful means²² and offered the

¹⁶ It was dubbed “a great experiment in international administration”; Egon F. Ranshofen-Wertheimer, *The International Secretariat: A Great Experiment In International Administration* (1945) p. 128–30.

¹⁷ John Fischer Williams, *Chapters on Current International Law and the League of Nations* (1929) p. 479.

¹⁸ Louis W. Pauly, *The League of Nations and the foreshadowing of the International Monetary Fund: Essays in International Finance* (1966) p. 201.

¹⁹ Paul Weindling, *International Health Organisations and Movements, 1918–1939* (2009).

²⁰ Charles K. Nichols, “The Statistical Work of the League of Nations in Economic, Financial and Related Fields”, *37 Journal of the American Statistical Association* (1942) pp. 219.

²¹ Art. 23 of the Covenant.

²² See Art. 19 of the Covenant.

prospect of inward and outward expansion and maturation of the world order it established through its mechanisms.

The legacy and footprints of the LoN are evident in its successor organisation, the UN, whose institutional structure, aims and practices bear remarkable similarities to those of the LoN. But the most critical contribution of the LoN to the world political economy and indeed its novel contribution is, first, that it established a single institution as the site of world order and global governance and, second, that it established a network of institutions under its supervision as complementary sites of global governance. Regarding the former, the LoN is indeed the first instance of global governance²³ attached to and exercised by a single institution. However, it should be noted that global governance is not the same as global government which presupposes centralised legislation and enforcement²⁴ and, moreover, global governance does not supplant state government which in international law and relations is still omnipotent. This immediately raises the question of how, in the absence of global government, a global governance institution can navigate through the counter-forces of state governments, an issue that the LoN was not able to tackle leading to its demise as an institution but it did not lead to the demise of the idea of attaching world governance to a single institution as the creation of the UN which succeeded the LoN testifies.

The second contribution of the LoN to world order governance is, as I said, the network of specialised agencies it created as sites of complementary governance. These agencies crafted norms, policies, practices, processes, and structures that supported but also shaped global governance. They were part of the LoN's project to preserve peace not only through military means but also through non-political means and methods. The aim of these agencies was to satisfy human needs which, if left unattended, could provoke conflicts. Their creation was the result of the realisation that the state is not always able or the right site to deliver such goods and that for this reason states should cooperate. These agencies thus offered a less political site for state cooperation - when political cooperation otherwise seemed difficult - and, more critically, they were able to foster habits of cooperation in general. Furthermore, even if they seem to pose no direct challenge to state sovereignty since they were engaging in 'low politics', state sovereignty was gradually eroded through the extension of their network across sovereignties and by relocating people's allegiance from the national state to such agencies.

²³ James N. Rosenau and Ernst-Otto Czempiel (eds.), *Governance without Government: Order and Change in World Politics* (1992) ch. 1.

²⁴ Claude, *supra* note 6, p. 411-444.

For example, the LoN's policies and practices regarding the protection of minorities, health, labour or territorial administration have reformulated the meaning of state sovereignty. This aspect of the LoN's governance structure is a manifestation of the functionalist approach to peace which informs specialised agencies established under the UN as well as international organisations such as the EU.²⁵

All in all, the LoN stands at the junction of the previous pre-institutional world order which was disorganised and war-festered and the new institutionalised world order which is rules-based and peaceful.²⁶ Recalling once more David Kennedy's study of international institutions, he identified three themes in the discipline of international institutional law: the break with the past, the move to institutions, and the practice of repetition which sustains the move to institutions.²⁷ The LoN fulfils all three themes: it represents a rupture with the past; it introduced a new world order and a global governance structure evolving around a single institution; and that practice was replicated as in the case of the UN.

3.2 *Collective security*

Collective security is an institution for maintaining international peace and security and, at the same time, it is also an idea - a conception - as to how peace can be preserved in a world of sovereign states. In a collective security system there are set rules and methods according to which peace is maintained, with the security of each member guaranteed through common action.²⁸ As an institution for preserving the peace, collective security is a global institution regarding membership, rules and mandate and it is such globality that differentiates it from other ideas and institutions for preserving the peace such as alliances which are subjective and partial.

The LoN was the first instance of international organisation that institutionalised collective security which was hailed as "the one great object of the whole organization".²⁹ The

²⁵ Victor-Yves Ghébal, V.-Y. "The League of Nations and Functionalism", p. 152 in A. Groom, A., and P. Taylor, P. (eds.) (1975), *Functionalism:— Theory and Practice in International Relations* (Crane Russak, New York, 1975) pp. 152; Ernst .B. Haass, *Beyond the Nations State: Functionalism and International Organization*, (Stanford, Stanford University Press, 1964); David Mitrany, *A Wording Peace System: An Argument for the Functional Development of Inter-national Organization* (4th ed.n, London: National Peace Council [by arrangement with the Royal Institute of International Affairs], 1946)

²⁶ Claude, *supra* note 6, p. 41

²⁷ Kennedy, *supra* note 14, pp. 849-903.

²⁸ Claude, *supra* note 6, p. 245-263.

²⁹ The League of Nation Starts: an Outline of its Organisers (London, McMillan & Co., 1920), p. 26, available at: <https://archive.org/details/leagueofnationss00lond/page/n6/mode/2up> (last accessed on 31 March 2020).

novelty of the League's collective security system can be revealed by comparing it to its immediate predecessor: the institution of the balance of power introduced by the Concert of Europe. That system was Euro-centric and based on an equilibrium of power rather than on a common concern to oppose aggression. Furthermore, it lacked institutional support in the form of organs or rules but was based on *ad hoc* meetings and informal understandings. Moreover, it imposed no obligations on its members. In contrast, the LoN's collective security system was global in that it encompassed all members of the LoN, which were not only European, and operated under a legal framework which defined the triggers of the system and the process to be followed when disputes arose. These rules were abstract, general and applied equally to all its members. The system was also endowed with organs such as the Council, the Assembly and the Secretariat which operated and managed it.

The LoN's collective security system was grounded on three main pillars: the regulation of armaments, the peaceful settlement of disputes, and collective action. Before presenting these pillars, it is important to mention certain other provisions of the Covenant which demonstrate the global vocation of the League, the public nature of its activities and the responsibilities of each and every member for maintaining peace which are hallmarks of the institution of collective security.³⁰ First, in the Preamble, states assumed an obligation not to resort to war although, as will be discussed later, that was not an absolute and comprehensive obligation. However, it was an improvement compared to the previous regime which sanctioned war as remedy or as a means of realising the national interest and, above all, legitimised the spoils of war. Second, Article 10 imposed on members an obligation to respect and preserve as against external aggression the territorial integrity and existing political independence of all members of the League and, third, Article 11 made "any war or threat of war, whether immediately affecting any of the Members of the League or not" a matter of concern to the whole League. The implementation of these two articles was left to the Council, which could advise on the measures states should take in this regard. These articles What the above also reveal is that the Covenant removed war from the sphere of private justice and made war an international sanction, albeit privately executed. In other words, war became an international public law sanction. That said, there is a paradox in how the Covenant approached war and its relation with law; the Covenant treated war as either sanction or delict and used war to sanction the law while at the same time it used law to prevent war.

³⁰ However, it does not include domestic war which would have stretched the point. See Art. 15(8) of the Covenant.

Moving now to the first pillar of the LoN's collective security namely, the regulation of armaments, this was viewed as critical in preventing wars through transparency and balancing. League members were obligated to reduce them "to the lowest point consistent with national safety and the enforcement by common action of international obligations", with the Council making the necessary recommendation and revising it every ten years.³¹ That said, there was no mechanism for monitoring states' policies and no sanctions for evading the rules.

Regarding the peaceful settlement of disputes, according to Article 12, if a dispute arose that could lead to rupture of the peace, members were required to submit it to arbitration, to judicial settlement, or to inquiry by the Council. Resort to the Council was compulsory if states failed to use the other mechanisms and meant that states could not avoid their duty to settle disputes peacefully by claiming that the dispute was non-legal. Moreover, any member could bring to the attention of the Council or the Assembly "any circumstance whatever which threatens to disturb international peace or the good understanding between nations upon which peace depends",³² which indicates the global vocation of the LoN and the responsibilities of each member state for the maintenance of peace. States also agreed not to resort to war until three months after the arbitration award, the court judgment or the report by the Council and, in any case, not to go to war against the state that has complied with them.³³ Article 16 established a platform for collective action although it remained decentralised as far as decision-making and execution were concerned. According to Article 16, members of the League could impose sanctions on a state that went to war in disregard of the provisions of the Covenant concerning the peaceful settlement of disputes. The novelty of the system was that sanctions became part of the collective security sanctioning process and were removed from the individual sanctioning process. However, states made their own assessment as to whether a breach took place and imposed sanctions unilaterally even if sanctions involved resort to war. The sanctioning process was thus decentralised with the Council of the League having power to only recommend and not mandate the imposition of sanctions.

What transpires from the above is that there were a number of defects in the LoN's collective security system. The most important was that the Covenant did not actually prohibit war as such whereas subsequent attempts to prohibit war, such as in the Geneva Protocol³⁴ or

³¹ Art. 8 of the Covenant.

³² Art. 11(2) of the Covenant.

³³ Arts 13-15 of the Covenant.

³⁴ Geneva Protocol for the Pacific Settlement of International Disputes (1924).

the Kellogg Briand Pact,³⁵ were either unsuccessful or left many gaps. To that a number of other defect should be mentioned. First, the Covenant's legalism regarding the collective security triggers condemned it to rigidity. As was noted above, it was triggered when there was a breach of its provisions regarding the peaceful settlement of disputes. Second, its grounding on the principle of sovereign equality which translated into unanimity in decision-making and into decentralised action condemned the system to paralysis, inaction or unequal action. Third and related to the above, the Council or the Assembly could only make recommendations which meant that states were not obligated to follow them but even more critically, they could lawfully distance themselves from their obligations under the Covenant. Although the Geneva Protocol tried to address these defects by strengthening the mechanism of dispute settlement, it was not accepted by states.

That said, to make war unlawful if there was no previous recourse to peaceful mechanisms of dispute settlement and to place certain restrictions on the timing and the target of war, was a novelty if viewed against the previous state of unlimited war. As a matter of fact, with the Covenant world order moves to *bellum legale* which places international law at the centre of war assessments.³⁶ To explain, the Covenant provided a sequence of formal steps for the peaceful settlement of disputes that made war lawful or unlawful depending on whether they were followed or not. In doing this, it removed war from the domain of morality and the just war theory where the justness of war was a matter of values and international law had no input.

Another important contribution of the LoN is that it made war a concern of the whole League even if no member was involved in the initiation of war. This was a radical innovation in comparison to the previous state of affairs which were based on narrowly defined national interests and where war was a bilateral affair whereby all other states were supposed to hold a position of absolute neutrality towards the belligerents. It represents a shift from the bilateralism of positivist international law where states had rights and narrowly defined and explicitly contracted obligations to a global community of interest where states have obligations but also responsibilities towards the wider community.³⁷ This all demonstrates the

³⁵ General Treaty for Renunciation of War as an Instrument of National Policy (1928).

³⁶ Arnold D. McNair, "Collective Security", 17 *BYIL* (1936) pp. 150, 154; Josef L., Kunz, "*Bellum Justum* and *Bellum Legale*", 45 *AJIL* (1951) pp. 528ff.

³⁷ Quincy Wright, "Effects of the League of Nations Covenant", 13 *The American Political Science Review* (1919) pp. 556, 557, 565: "it follows that international law can no longer be conceived by text writers as a series of deductions from an assumed "fundamental right of states to exist"; "The responsibility of states to assure the existence of the law will have to be conceived as even more fundamental"; "the covenant recognizes that states

world order and global governance character of the League with states assuming obligations and responsibilities as global citizens.

The importance of the LoN in the area of peace and security also rests on the fact that social, humanitarian and technical issues were linked to the maintenance of peace. As stated in the preceding section, they were part of the LoN's global project to preserve the peace, not only through political and military means as in the case of its collective security, but also through social, economic, human rights or cultural means. In doing so, the LoN gave another dimension to these issues and to the institutions it created by linking them to the peace project. At the same time, it gave another facet to peace by viewing it not just as negative peace based on the absence of war but also as positive peace by laying down the conditions for maintaining the peace.³⁸ It is interesting to mention in this regard the ILO constitution which says in its Preamble that "universal and lasting peace can be established only if it is based upon social justice", and then continues by saying, "whereas conditions of labour exist involving such injustice, hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperilled; and an improvement of those conditions is urgently require", and finally justifies the creation of the ILO by saying that "The High Contracting Parties, moved by sentiments of justice and humanity as well as by the desire to secure the permanent peace of the world".

The LoN's footprint can be seen in the UN collective security which also tried to address some of the defects of the LoN's system. Firstly, the UN system is not attached to any peace settlement which marks its political, legal and moral detachment from the *status quo* created by the war, whereas the Covenant was attached to the 1919 Peace Treaty; something that denied it flexibility and also marred it with accusations that it was more or less another instrument of victors' justice. Secondly, the UN collective security prohibits the unilateral use of force except in self-defence or when authorised by the Security Council. In this way it totally excommunicates war and, even more critically, it prohibits any use of force which is more inclusive than 'war' whose definition has always been debated. Thirdly, the criteria for activating the collective security system are framed in political terms as a threat to or breach of the peace, or an act of aggression which provides the system with more flexibility and allows it to adapt and evolve in light of changing circumstance. This is in contrast to the LoN's triggers

cannot survive where sovereignty can override the law. As the price of existence, states must accept definite responsibilities for the maintenance of law".

³⁸ Johan Galtung, "Peace, Negative and Positive" in N.J. Young (ed.), *Oxford International Encyclopaedia of Peace*, vol. 3 (2010) pp. 352ff.

which, as discussed, were legal in the sense of violations of the Covenant obligations concerning the peaceful settlement of disputes. Fourthly, decision-making and action was centralised in the Security Council which has primary responsibility in peace and security and whose decisions are binding in contrast to the devolved operation of the LoN's system. Fifthly, whereas the LoN's Council operated by unanimity,³⁹ in the SC it is only the five permanent members that have the veto power in recognition of their responsibilities

To conclude this section, the LoN's collective security and the LoN's approach to peace as was shown focused on war prevention and war suppression by dealing with military and non-military causes of war but it was less about peace enforcement which is one of the main tasks of the UN. To do so would have required a radical approach to state sovereignty which at the time states were not ready to accept.

3.3 *International law*

The LoN introduced international law as a core institution of world order. Yet, the Covenant was still criticised by those who preferred a more legalistic LoN, such as Elihu Root who wrote: “[w]e are left with a program which rests the hope of the whole world for future peace in a government of men, and not of laws, following the dictates of expediency, and not of right”.⁴⁰ However, such criticism is not fair. The LoN provided the legal framework according to which international relations should be conducted, facilitated the development of international law, but also transformed its conceptual substructure.⁴¹

First, the Covenant was a legal document and, indeed, an international law treaty which clothed in legal authority the LoN's vision of world order. In this regard, international law was the source of the existence, organisation and operation of the LoN's scheme of world order.

Secondly, the Covenant exhibited constitutional traits and, according to Hersch Lauterpacht, it was in the mould of a constitutional charter.⁴² For example, according to Article

³⁹ Art. 15 of the Covenant exempted from voting the state involved in a dispute even if that state was one of the Great Powers which allowed the Council to impose for example sanctions on Italy following its attack on Abyssinia in 1935.

⁴⁰ Quoted in Stephen Wertheim, ‘The League of Nations: A Retreat From International Law?’ 7 *Journal of Global History* (2012) pp. 210, 228.

⁴¹ Nicolas Politis, *The New Aspects of International Law: A Series of Lectures Delivered at Columbia University in July 1926* (1928). As Quincy Wright wrote: “...the covenant when put in operation will modify international law, though less in its specific rules than in certain assumptions upon which they have heretofore been supposed to rest”. Wright, “Effects of the League of Nations Covenant”. *supra* note 37, pp. 556.

⁴² Hersch Lauterpacht, “Japan and the Covenant”, 3 *Political Quarterly* (1932), pp. 174. For Zimmern, the Covenant was neither a constitution nor a treaty. Zimmern, *supra* note 2, p. 283-291.

20 of the Covenant, all inconsistent obligations were abrogated.⁴³ This provision established the normative hierarchy of the Covenant and is of a different mould than Article 103 of the UN Charter which, by declaring the primacy of UN obligations in cases of conflict with other obligations, is equivalent to a conflict of norms provision.⁴⁴

Third, the LoN introduced a “rules-based” world order in contrast to the previous system of world order where law played no role in its formulation or operation. According to its preamble, the League was based on the firm understanding that international law is the actual rule of conduct among states.

Fourth, the League’s collective security, as was said, was law-oriented and in that sense it was more legalistic than the UN’s collective security.⁴⁵ As explained previously, what triggered the League’s collective security was a breach of the legal provisions contained in the Covenant regarding the peaceful settlement of disputes and not the notion of a threat to the peace or breach of the peace as it is the case in the UN Charter which are not legal concepts. Moreover, the Covenant excluded from the peaceful settlement matters that fell within a state’s domestic jurisdiction as defined by international law. In contrast, the UN Charter permits collective action within a state’s domestic jurisdiction.⁴⁶

Fifth, the LoN contributed to law-making by fostering the adoption of international agreements such as the Kellogg-Briand Pact and expanded the fields of international regulation

⁴³ Hersch Lauterpacht, “The Covenant as the ‘Higher Law’”, 17 *BYIL* (1936) pp. 54.

⁴⁴ That notwithstanding, the UN Charter is being viewed as the constitution of the international society.

⁴⁵ Carl Schmitt criticised the juridification of international affairs by the League based on his own approach to law and politics. As he wrote “... if one were to organize the settlement of all international conflicts in such a way as to subject all states to a judicial or at least a formal procedure, one would, assuming that all are indeed willing to subject themselves, impose on international law the burden of deciding the most terrible conflicts without any clear principles or stable rules but in the name of the law. ... Who could dare to attempt this worst endangerment of the law in the name of the law?” Carl Schmitt, “Die Kernfrage des Völkerbundes” in C Schmitt, *Frieden oder Pazifismus? Arbeiten zum Völkerrecht und zur internationalen Politik 1924–1973* (G Maschke ed., 2005) pp. 127-8. Hans Kelsen instead criticised the League and attributed its failure to the fact that it did not put the court but the Council at the centre of its organisation. Hans Kelsen, *Peace through Law* (1944) p. 49-57.

⁴⁶ Art. 2(7) UN Charter.

for example to minority rights,⁴⁷ slavery,⁴⁸ equality between men and women,⁴⁹ trafficking in women,⁵⁰ the rights of children,⁵¹ refugees,⁵² health,⁵³ trade and the international economy.⁵⁴

Sixth, the LoN challenged older notions about the subjects of international law. It recognised the role of individuals in international law even if their legal position was limited and qualified.⁵⁵ This was later confirmed by the PCIJ in the *Danzig Advisory Opinion*.⁵⁶ It also dealt with the question of whether entities, such as international organisations in the mould of the LoN,⁵⁷ have legal personality. In doing so, a host of other legal questions surfaced such as the scope of the powers of its organs, issues of responsibility, or the relations between League organs and member-states. These are questions that concern global governance since then.

Seventh, the LoN contributed to the codification of international law. In 1924, the Assembly established the Committee of Experts on the Progressive Codification of International Law which “was the first attempt on a worldwide basis to codify and develop whole fields of international law rather than simply regulating individual and specific legal problems”.⁵⁸ It convened a Codification Conference in 1930 to address topics such as nationality; territorial waters and the responsibility of States for damage done in their territory to the person or property of foreigners. It led to the adoption of the Convention on Certain

⁴⁷ Lucy P. Mair, *The Protection of Minorities: The Working and Scope of the Minorities Treaties under the League of Nations* (1928); Peter Hilpold, “The League of Nations and the Protection of Minorities – Rediscovering a Great Experiment”, 17 *Max Planck Yearbook of United Nations Law* (2013) pp. 87; Péter Kovács, “The Protection of Minorities under the Auspices of the League of Nations”, in D. Shelton (ed.), *The Oxford Handbook of International Human Rights Law* (2013) pp. 325.

⁴⁸ See 1926 Slavery Convention, available at: https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/ilo_1926_slavery_convention_en_1.pdf (last accessed on 27 March 2020).

⁴⁹ Art. 7 of the Covenant.

⁵⁰ Art. 23 of the Covenant; 1933 International Convention for the Suppression of the Traffic in Women of Full Age; Deborah Stienstra, *Women’s Movements and International Organizations* (1994).

⁵¹ 1924 Geneva Declaration of the Rights of the Child.

⁵² See 1933 League of Nations Convention Related to the International Status of Refugee, which codified the principle of non-refoulement.

⁵³ Paul Weindling, *International Health Organisations and Movements, 1918–1939* (2009).

⁵⁴ Wallace McClure, *World Prosperity as Sought through the Economic Work of the League of Nations* (1933); Patricia Clavin, *Securing the World Economy: the Reinvention of the League of Nations, 1920–1946* (2013).

⁵⁵ Hersch Lauterpacht, *Private Law Sources and Analogies of International Law: With Special Reference to International Arbitration* (1927) p. 74-79; Frederick S. Dunn, “The International Rights of Individuals,” 35 *Proceedings of the American Society of International Law at Its Annual Meeting* (1941) pp. 14; Philip Jessup, “The Subjects of a Modern Law of Nations,” 45 *Michigan Law Review* (1947) pp. 384.

⁵⁶ Pecuniary Claims of Danzig Railway Officials Who Have Passed into the Polish Service, Against the Polish Railways Administration, (Advisory Opinion), [1928] PCIJ Ser B No 15; Hersch Lauterpacht, “The Subjects of the Law of Nations [Part II]” 64 *LQR* (1948) pp. 97, 98; Kate Parlett, “The PCIJ’s Opinion in *Jurisdiction of the Courts of Danzig*. Individual Rights under Treaties” 10 *J of the History of Intl L* (2008) pp. 119.

⁵⁷ Lassa Oppenheim, “Le caractère essentiel de la société des nations”, 26 *RGDIP* (1919) pp. 234; Percy Corbett, ‘What is the League of Nations?’, 5 *British YIL* (1924) pp. 119; John Fischer Williams, *Chapters on Current International Law and the League of Nations* (1929) ch. xv.

⁵⁸ Available at: <https://legal.un.org/ilc/league.shtml> (last accessed on 27 March 2020).

Questions Relating to the Conflict of Nationality Laws.⁵⁹ Furthermore, the LoN contributed to the development and codification of international law through its specialised agencies or through the registration of treaties⁶⁰ but also in more indirect ways. The League provided a forum where international law was discussed in its organs, Commissions, Committees and specialised agencies, offering thus a centralised platform for the development of international law. In this respect, it also moulded the process of law production by shaping state consent which still remains the basis of international law.

Eighth, the LoN contributed to the development of international law and to the legal settlement of disputes through the PCIJ. Although the Court was not formally an organ of the League, the two were closely connected not only because the Court was established on the basis of Article 14 of the Covenant but also because of administrative and financial links. More critically though, the Court formed an organic community with the League by contributing to the League's aim of peaceful settlement of disputes. As was seen, the judicial settlement of disputes was part of the LoN's collective security system. Even if the Court did not address disputes of critical importance, it systematised in the most authoritative way the development and interpretation of international law by its jurisprudence. As Ole Spiermann wrote: "Obscure cases decided by the Permanent Court are household names, familiar to present generations of international lawyers, because they were, by chance, the first place for authoritative expression of various principles of general international law. Such statements of principle have found wide use far beyond their original context".⁶¹

Finally, on a more general level of legal theory, the League revamped natural law doctrines which were in decline due to the ascendance of positivism.⁶² Although it operated within a positivist framework of international law based on state consent, its global vocation and its engagement with issues such as minorities, nationality, or mandates led to the resurrection of natural law in order to curb the excesses of positivism and nationalism. For

⁵⁹ Convention on certain questions relating to the conflict of nationality laws (League of Nations, *Treaty Series*, vol. 179, p. 89). It also adopted Protocol relating to military obligations in certain cases of double nationality (*ibid.*, vol. 178, p. 227) and Protocol relating to a certain case of statelessness (*ibid.*, vol. 179, p. 115).

⁶⁰ Art. 18 of the Covenant.

⁶¹ Ole Spiermann, *International Legal Argument in the Permanent Court of International Justice: The Rise of the International Judiciary* (2005) p. 399.

⁶² Henri Rolin in the discussion following Vladimir R. Idelson, "The Law of Nations and the Individual," 30 *Transactions of the Grotius Society* (1944) pp. 75.

example, the LoN set the normative and institutional scene for the development of human rights law⁶³ or for the development of constitutional approaches to international law.

The above demonstrates that the LoN was the midwife to an contemporary international law which is of a different mould and scope than that of the previous period.

4 Conclusion

To conclude, the LoN was the first experiment of world order governance by embracing the notion of ‘one world’, by placing an international organisation at the centre of such world order governance and by laying down its institutions. Consequently, the LoN has left a lasting imprint on world order that transcends its caricature as a failure; it has shaped the way we view world orders, standardised the machinery of world orders and formulated the vocabulary we use to describe them. It has also shaped the architecture of the current world order either through lessons drawn from its failures or by lending it its institutional and ideological pillars. The UN is the fulcrum of the contemporary world order whose aims, structure, collective security system, specialised agencies, principles and values, its treatment of colonies, its universalism, all refer back to the League, of course with the necessary adaptations generated by the knowledge of the League’s failures and successes. It can thus be said with reason that the current world order is rooted in the LoN.

This does not mean that the contemporary world order, its institutions and its underpinning ideology are always able to respond to current social, environmental, political, economic, cultural, or technological challenges, to shifts in the distribution of power or the resurgence of a competitive streak of intolerant nationalism; it is indeed under strain, its institutions are called into question and there are concerns about its sustainability. Often parallels are drawn between our current predicament and the turbulent circumstances that led to the creation of the LoN but, whereas the LoN represented a vision and a scheme to address challenges and to establish a peaceful world order, what is lacking now is a vision of a different, alternative, world order to address current challenges. While those statesmen who gathered in

⁶³ It has been said that human rights replaced the League’s focus on protecting minorities. Mark Mazower, “The Strange Triumph of Human Rights 1933–1950” 47 *The Historical Journal* (2004) pp. 379–398.

Paris proffered a vision of a new world order,⁶⁴ contemporary statesmen have not done so. Such lack of vision also shows how entrenched in political and legal thinking is the LoN's order and its institutions. Is it possible, for instance, to answer the question of how a new world order would look like without the ideas and institutions inherited by the League? Even if the existing world order moulded by the League is to be replaced by another order, in my opinion, it will still replicate - with the necessary adaptations - the foundational ideas and governance institutions introduced by the LoN which gained their authority through trial and error.

⁶⁴ See for example President Woodrow Wilson's Fourteen Points 8 January, 1918, available at: https://avalon.law.yale.edu/20th_century/wilson14.asp (last accessed on 27 March 2020); Jan C. Smuts, *The League of Nations: A Practical Suggestion* (1918).