The European Journal of International Law Vol. 23 no. 1 © EJIL 2012; all rights reserved

Nicolas Politis' Initiatives to Outlaw War and Define Aggression, and the Narrative of Progress in International Law

Nicholas Tsagourias*

Abstract

This article focuses on Nicholas Politis' efforts to outlaw war and define aggression, and places them within the progress narrative of the interwar international law discourse. This narrative is defined by its rejection of sovereignty; its belief in codification; and the recognition of the individual as a subject of international law. Politis' projects envisage international law as a means towards an ecumenical world order built around individuals.

1 Introduction

The question of war and peace has preoccupied international lawyers for centuries. During this time, numerous attempts have been made – some of which were more successful than others – to control or even to outlaw war. It is not surprising then that Nicolas Politis, an international law scholar, a diplomat, and a statesman, devoted his intellectual energies and legal and political skills to this issue. A review of his initiatives and proposals to outlaw war, to define aggression, and to prosecute those responsible for initiating wars of aggression reveals his lasting legacy: partly because Politis was a visionary, but, above all, because he was a pragmatist. This article will present Politis' initiatives to outlaw war and define aggression and assess their modern relevance. It will then explain how these projects can be placed within the narrative of progress in international law prevalent in the interwar period.

*Professor of International Law and Security, University of Glasgow. Email: nicholas.tsagourias@glasgow.ac.uk.

EJIL (2012), Vol. 23 No. 1, 255–266 doi: 10.1093/ejil/chr109

2 Politis and the Outlawry of War

One of the most important institutional projects to outlaw war in modern times was the League of Nations, whose Covenant introduced political and legal mechanisms to settle disputes peacefully and provided for sanctions when states resorted to war in violation of their Covenant obligations. However, the League of Nations' system did not preclude war in all circumstances, whereas its sanctioning mechanism was essentially decentralized. These were the so-called 'gaps' in the Covenant which the 1924 Geneva Protocol for the Pacific Settlement of International Disputes (Geneva Protocol) tried to address. The Protocol was drafted by Politis and Beneš (Czechoslovakia) who also authored a General Report to accompany it.[1]

The Protocol was divided into three sections: (i) compulsory arbitration; (ii) enforcement by sanctions; (iii) the prohibition of aggressive war. As far as aggressive war was concerned, it was a war in violation of the provisions of the Covenant and of the Protocol relating to the pacific settlement of disputes.[2] According to the Protocol, the state that resorted to war in such circumstances was labelled an 'aggressor'.[3] That being the case, the most critical issue was how to ascertain aggression and how to sanction it.[4] In the Covenant of the League of Nations both processes were decentralized, and this was one of the most serious 'fissures' of the system. What the Geneva Protocol did was to centralize the process for ascertaining the existence of aggression by conferring such competence to the Council of the League of Nations. The authors of the Geneva Protocol were, however, conscious of the fact that the existence of such an institution could not by itself guarantee that the necessary decisions would be made. For this reason and in order to assist in the process, a three-pronged method to ascertain aggression was proposed.[5] In the first place, aggression was to be ascertained by the Council acting unanimously. Although a unanimous decision would carry the authority of the whole Council, it was understood that it would not always be easy to attain unanimity, nor would it be fair on states to make their existence dependent on the whimsical decisions of other states.[6] Conversely, it was recognized that substituting unanimity with majority decisions was equally dangerous, because disgruntled states might refuse to furnish assistance.[7] For this reason, a second method was introduced: that of the presumptive determination of aggression. Such presumption would arise on three occasions: (i) when a state refused to use the Covenant's procedures for the peaceful settlement of disputes or failed to comply with the relevant

1 League of Nations, Arbitration, Security and Reduction of Armaments, General Report submitted to the Fifth Assembly on behalf of the First and Third Committees by M. Politis and M. Bénès, A.135 (I) (1924), IX, 5 (hereinafter referred to as GR).

2 Art. 2, Geneva Protocol for the Pacific Settlement of International Disputes (Geneva Protocol), 19 *AJIL* (1925), Supp. 1, at 9.

3 *Ibid.*, Art. 10.

4 GR, *supra* note 1, at 12.

5 Art. 10, Geneva Protocol, *supra* note 2.

6 GR, *supra* note 1, at 12–13.

7 *Ibid.*, at 13.

decisions;[8] (ii) when a state violated the provisional measures indicated according to Article 7 of the Protocol;[9] and (iii) when a state disregarded a decision recognizing that the dispute arose out of a matter falling within the domestic jurisdiction of a state, and failed to submit it to the Council or the Assembly.[10] That notwithstanding, the Council could unanimously rebut such presumption.[11] The third method concerned situations where hostilities had broken out but there was no unanimous decision by the Council as to the existence of aggression and no presumption of aggression was established. In such a case, the Council was duty bound to indicate an armistice, which would make the party that rejected it an aggressor.

The other area which the Geneva Protocol addressed is the mechanism for sanctioning aggression. Whereas, according to the Covenant, the Council could only recommend sanctions, the Geneva Protocol empowered the Council to call upon states to apply sanctions as soon as it determined that aggression had been committed.[12] According to the Protocol, states were obliged to cooperate loyally and effectively with the Council in this regard,[13] although there was no sanction if a state failed to do so, other than that of incurring international responsibility.[14] Moreover, the Council had competence to terminate sanctions.[15] Even if the actual application of sanctions, including the use of force, remained devolved, sanctions served the general interest because the decision to impose sanctions was taken by a central organ of the League and war became a matter of international concern. Enforcing states were thus acting not in their individual capacity but as agents of an organ of the international community.[16]

The above practice resonates with the United Nations system of collective security, whereby the Security Council (SC), its central institution, authorizes member states to implement its decisions imposing sanctions or authorizes states to use force as a collective security measure.[17] The UN authorization transforms the action from individual sanction into community sanction.[18] The SC also has exclusive powers to determine whether a threat to the peace, a breach of the peace, or an act of aggression exists, which is the prerequisite for applying such measures.[19] One important

[8] Art. 10(1), Geneva Protocol, *supra* note 2.

[9] *Ibid.*, Art. 10(2).

[10] *Ibid.*, Art. 10(1).

[11] *Ibid.*, Art. 10. For criticisms see F. Kellor and A. Harvany, *Protocol for the Pacific Settlement of International Disputes in Relation to the Sanction of War* (1925), at 70–84; H. Wehberg, *The Outlawry of War* (1931), at 30–32; J. Diamandesco, *Le Problème de l'agression dans le droit international public actuel* (1935), at 127.

[12] Arts 10 and 11, Geneva Protocol, *supra* note 2.

[13] *Ibid.*, Art. 11.

[14] GR, *supra* note 1, at 17.

[15] Art. 14, Geneva Protocol, *supra* note 2.

[16] GR, *supra* note 1, at 6: 'each State remains the judge of what it will do but no longer remains the judge of what it should do'. See also GR 17.

[17] See, e.g., SC Res 678 (1990).

[18] Tsagourias, 'Cosmopolitan Legitimacy and UN Collective Security', in R. Pierik and W. Werner, *Cosmopolitanism in Context:Pperspectives from International Law and Political Theory* (2010), at 129, 138–143.

[19] Art. 39, UN Charter.

difference, though, is that the events that trigger the UN collective security are not necessarily confined to breaches of legal obligations, which was indeed the case with the Covenant and the Geneva Protocol.

Another feature of the Geneva Protocol which needs to be noted is the recognition of a state's right to resist aggression.[20] The scope of such a right to self-defence was very broad considering the Protocol's narrow definition of aggression as violation of a contractual obligation. That said, as the General Report notes, a state's interest in defence is 'identified with the general interest' and the defending state 'is not acting on its private initiative but is in a sense the agent of the community'.[21]

From the above it transpires that the Protocol introduced a two-tier system of controlling aggression: one concerned aggression as a breach of the Covenant's and the Protocol's obligations, which fell within the Council's competence, giving rise to sanctions under the authority of the Council; whereas the other concerned aggression in its broader sense, which gave rise to self-defence as an individual and subjective sanction, where the Council would play a marginal role, if any at all.[22] However, the inclusion within the same system of individual as well as institutional uses of force had the potential of destabilizing the whole system, particularly when the institutional mechanisms failed to function properly. This is what in fact happened in the pre- as well as post-Charter period, with self-defence becoming the tool *par excellence* in the hands of states for enforcing their rights or for redressing injuries.

The Geneva Protocol was not adopted in the end because states, and in particular Great Britain, were reluctant to commit the necessary resources, but in the words of Judge Schücking, it represented '*plutôt une œuvre d'une haute signification juridique qui honore ses auteurs*'.[23]

3 The 'Politis Definition' of Aggression

As Rapporteur of the Committee for Security Questions, Politis submitted to the League of Nations' General Commission a definition of aggression.[24] The 'Politis Definition' is an adaptation of a Soviet proposal and provided that the aggressor was the state that first committed one of the five enumerated acts: namely, a declaration of war; invasion of the territory of another state; attack on the territory, vessels, or aircraft of another state; naval blockades or the provision of support to armed bands which invaded the territory of another state; or refusal, notwithstanding the request of the invaded state, to take all the measures in its power to deprive those armed bands of all assistance or protection.[25] Article 2 of the Definition also provided that '[n]o political,

[20] Art. 2 Geneva Protocol, *supra* note 2; GR, *supra* note 1, at 6.

[21] *Ibid.*

[22] Art. 10, Geneva Protocol, *supra* note 2. *Contra* Kellor and Harvany, *supra* note 11, at 61–62.

[23] Schücking, 'Le development du pacte de la Societé des Nations', 20 *Recueil des Cours* (1927) 349, at 433.

[24] Draft Act relating to the definition of the aggressor *Series of League of Nations Publications,* IX, Disarmament, 1935 IX.4, at 583 ff (document Conf. D/C.G.108) (hereinafter referred to as the 'Politis Definition')

[25] *Ibid.*, Art. 1.

military, economic, or other considerations may serve as an excuse or justification for the aggression referred to in Article 1'.

Although the definition was not adopted, it acted as 'the starting point for all writings on the definition of the aggressor'[26] and inspired many subsequent treaties, for example, the Convention for the Definition of Aggression (CDA) (1933).[27] During the San Francisco Conference, Bolivia, the Philippines, and certain other states proposed that the 'Politis definition' be included in the Charter,[28] and in his opening speech to the Nuremberg Trials, Mr Justice Jackson, the US Chief Prosecutor, suggested that Article I CDA, which contained the 'Politis definition', be used for the purpose of Article 6 of the Statute of the Tribunal concerning 'crimes against the peace'.[29] The 'Politis definition' also provided the basis for more recent definitions of aggression, such as the 1974 General Assembly Definition of Aggression.[30] A cursory comparison between the two reveals many common threads. In the first place, the fact that there is currently a definition of aggression should not hide the fact that the debate as to whether aggression can be defined, and whether it is desirable to define it, has been long and heated. One of the strongest proponents of the 'no definition' camp was Politis' fellow-countryman Jean Spiropoulos, who as ILC Special Rapporteur contended that 'the natural notion of aggression is a concept *per se*, which is inherent to any human mind and which, as a *primary notion,* is not *susceptible of definition*'.[31] For him, aggression, like 'good faith, love and hate . . . did not lend itself to definition but was instinctively perceived'.[32] For Politis, on the other hand, defining aggression would 'end doubts and controversies on the point, whether States which resort to force have committed aggression or not. States would thus be definitely informed in advance of what they could not do without being regarded as aggressors';[33] and he seems to have won the argument. Secondly, any proposals for a definition have given rise to questions as to whether the definition should be enumerative or abstract. The 'Politis definition' is strictly enumerative, because Politis believed that a specific definition provides better guidance to states, and thus prevents the commission of acts that are prohibited. It also makes the appreciation of facts easier. The 1974 Definition of Aggression in contrast contains a generic definition, and a list of prohibited acts, and also grants the

[26] A/CN.4/SR.93, YBILC (1951), i, at 90, para. 8.

[27] Arts II and III of the Treaty, 27 *AJIL* (1933), Supp, 192. The Treaty was concluded by the USSR, Afghanistan, Estonia, Latvia, Persia, Poland, Romania, and Turkey. For other treaties see Art. 4 of the 1937 Treaty of Non-Aggression between Iran, Afghanistan, Turkey, and Iraq (Saadabad Pact), [1938] LNTSer 163; 190 LNTS 21; Art. 9 of the 1947 Inter-American Treaty of Reciprocal Assistance (Rio Treaty), 21 UNTS 77.

[28] R.B. Russell, *A History of the United Nations Charter* (1958), at 670–672.

[29] *Nuremberg Trial Proceedings,* ii, at 147–148, available at: http://avalon.law.yale.edu/imt/11-21-45.asp.

[30] Definition of Aggression, GA Res 3314 (XXIX), 14 Dec. 1974. See also the definition of the crime of aggression adopted at the Kampala Review Conference of the International Criminal Court, Res RC/Res.6 (11 June 2010).

[31] Second Report on a Draft Code of Offences Against the Peace and Security of Mankind by Mr. J. Spiropoulos, Special Rapporteur, A/CN.4/44 YBILC (1951), ii, at 68, para. 153 (italics in the original)

[32] A/CN.4/SR.93, YBILC (1951), i, at 89, para. 121.

[33] *Series of League of Nations Publications,* IX, Disarmament, 1935 IX.4, at 679 (document Conf. D/C.G.108).

SC powers to qualify facts at its discretion. This was made possible, however, because post-1945 definitions are constructed in the light of the UN system, which laid down a global and comprehensive legal framework on the use of force and introduced centralized decision-making organs and processes. Thirdly, the 'Politis definition' adopts the priority principle, according to which the aggressor is the state that first commits one of the prohibited acts. The priority principle is also included in the 1974 Definition, where it gives rise to a *prima facie* determination that aggression has been committed; but the SC can qualify the events differently in light of all circumstances.[34] However, the inclusion of an objective criterion of 'acting first', the suppression of any subjective criterion of *animus aggressionis,* the listing of specific acts and the rejection of justifications[35] left issues such as self-defence, pre-emptive self-defence, or humanitarian intervention in limbo, just as modern definitions do. Fourthly, all the acts contained in the 'Politis definition' are included in modern definitions. What is important to note, however, at this juncture is that the 'Politis definition' introduced for the first time the notion of indirect aggression, which has become an important component of modern definitions[36] and of international jurisprudence, albeit one that has given rise to many controversies. One contested issue is the degree of state involvement required for indirect aggression. The International Court of Justice (ICJ) in its jurisprudence introduced a high threshold of state involvement, amounting to agency,[37] in contrast to the provision of weapons, logistical or other support which fails to reach such a threshold.[38] Conversely, the ICJ downplayed in its jurisprudence the 'substantial involvement' criterion contained in the General Assembly Definition,[39] for which it has been criticized by dissenting judges.[40] Yet, it is not always clear what 'substantial involvement' would require, and whether it would need 'open and active participation' or just harbouring, aiding, and abetting groups. In contrast, the 'Politis definition' requires a lower degree of involvement by a state in order to make that state an aggressor.[41] The other contested issue concerns the scope of the duty of 'due vigilance'. In the 'Politis definition', failure of a state to take measures to deny assistance or protection following a demand by another state makes the former state

[34] Art. 2 Politis Definition, *supra* note 24. Art. 2 GA Definition of Aggression, *supra* note 30.

[35] Art. 5 GA Definition of Aggression, *supra* note 30 .

[36] *Ibid.*, Art. 3(g); Art. 8*bis* (2) (g) Resolution RC/Res.6 (2010), *supra* note 30.

[37] *Case Concerning Military and Paramilitary Activities in and against Nicaragua* [1986] ICJ Rep 14, at para. 195; *Case Concerning Armed Activities on the Territory of the Congo (Democratic Republic of Congo v. Uganda)* [2005] ICJ Rep 165, at paras 146, 135. This is further compounded by the Court's criterion of effective control. See *Nicaragua Case*, at para. 115; *Palestinian Wall Advisory Opinion* [2004] ICJ Rep 200, para. 139; *Congo v. Uganda*, at para. 146, 160; *Case concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia)* [2007] ICJ Rep 41, at paras 384, 391, 400, 401.

[38] *Nicaragua Case*, *supra* note 37, at para. 195.

[39] *Congo v. Uganda*, *supra* note 37, at paras 135, 146.

[40] Dis. Op. Schwebel in *Nicaragua Case*, *supra* note 37, at paras 162–170; Dis. Op. Jennings, in *ibid.*, at 543. Dis. Op. Koroma and Judge *ad hoc* Kateka in *Congo v. Uganda, supra* note 37, at paras 9 and 15 respectively.

[41] In a similar vein see African Union Non-aggression and Common Defence Pact (2005), Arts 1(c)(xi), 5(b) and (c).

an aggressor. At its face, this does not require any form of complicity by the host state, which is what current interpretations require in the sense of 'acquiescence or toleration'[42] by that state.

4 Politis' Projects and the Narrative of Progress in International Law

In the preceding lines I have presented Politis' initiatives to outlaw war and to define aggression, and highlighted their contemporary relevance. Such initiatives are not just experiments in international law-making but express something more profound: a vision of progress in the processes, institutions, norms, or indeed the spirit of international law. The narrative of progress presents itself in the form of many *tropes*.[43] One such *tropos* refers to the codification and systematization of international law. Indeed, the League of Nations era was pregnant with projects for the codification of different areas of international law, and this is equally true for the post-Charter era, where codification flourished with the proliferation of *traités-lois*, and with the creation of the International Law Commission, mandated with the gradual codification of international law. Codification signifies progress because, by introducing precise and universal rules and by filling in gaps, international law becomes a complete system which leads to clarity, predictability, and, above all, enhanced confidence in the law. Politis' projects to outlaw war and define aggression are prime examples of this aspect of the vocabulary of progress in the interwar period.[44] By the same token, these projects reveal another *tropos* of the narrative of progress, which is the reconstruction and renewal of the international system after certain devastating events, such as world wars, which, for progressive lawyers, were caused by the flaws and failings of the 'old' lego-political regime.[45] Politis was however opposed to grand reconstructive projects, so he advises progressive lawyers in a rather conspiratorial tone to rein in their ambitions and be content with limited reforms that are realizable.[46] That being so, one should not lose sight of the fact that Politis believed in the capacity of international lawyers to identify, engineer, and perhaps preempt such progress. As he wrote, 'the international mind must be to law . . . the keystone, the inspiration and the goal. This must be the foundation on which will arise its [international law's] scientific reconstruction.'[47]

Another aspect of the narrative of progress which Politis' projects reveal is the rejection of naturalism and positivism, the 'old' grand theories of international law. Natural law and positivism were criticized for weakening international law's function

[42] *Congo v. Uganda, supra* note 37, at para. 301.

[43] T. Skouteris, *The Notion of Progress in International Law Discourse* (2010), at 103–120. For the vocabulary of progress see *ibid*, at 1–38.

[44] N. Politis, *The New Aspects of International Law* (1928), at 69–85.

[45] *Ibid.*, at 1.

[46] *Ibid.*, at 40.

[47] *Ibid.*, at 85.

as a real social instrument, the former through its belief in law's transcendental normativity and the latter through its belief in law's internal normativity. Progressive lawyers of the sociological disposition to which Politis belonged[48] instead tried to identify the law from within the social experience. Law for them is a proposition distilled from social reality, and in this way it does not need to refer back for its validity to the eternal morality of natural law, or to remain inward-looking and sterilized from the real world, as in Kelsen's pure theory of law. For Politis 'law is the outcome of the solidarity created by social needs: in every group the vicissitudes of human relations create economic and moral customs which become compulsory rules of law as soon as the persons concerned acquire the feeling that they must conform to them, and that if they do not, a reaction will come about in the collective mind, pressing for the proper enforcement of these rules. International law has but a single origin: the juridical consciousness of nations, which gives a binding character to the economic and moral rules borne of their solidarity. Customs and treaties are no longer, as was hitherto believed, the origins of the law, but ways of confirming it, and it may be added that they are not the only ways'.[49] Positive law is thus the posited statement of intersocial norms created by human interdependence and solidarity, which themselves constitute the objective law. This is the case, for example, with the Geneva Protocol and the Definition of Aggression, both of which were presented by Politis as reflecting the demands of individuals observed in their mutual interactions. Placing these projects in the positive/objective law template of sociological jurisprudence, natural law's morality and positivism's consent acquire a different meaning considering the fact that these projects aspired to secure, on the one hand, an important human value, the value of peace, and, on the other, they needed to attract state consent in order to become operational. More specifically, consent as far as these projects are concerned is not synonymous with positivism's will of the state but is the expression of intersocial 'juridical consciousness'. By the same token, their moral value is not synonymous with natural law's transcendental morality but is an objective one as revealed from observable patterns of expressions of human solidarity. Of course behind the 'objective' observation of social facts to be translated into law lurks the ideology of the observer; and the failure of these projects demonstrates that either Politis misinterpreted those 'objective' trends or that his ideological predisposition pre-empted his conclusions, or that, perhaps, Politis 'erred on the side of optimism'.[50]

Another aspect of the progressive project has been the demystification of sovereignty[51] and the projection of the individual as a subject of international law. Progressive international lawyers of the interwar period rejected the absolutist notion of sovereignty, quite fashionable at the time, and espoused a social one, with the individual as the basis of social, political, and legal organization. As Politis noted,

[48] M. Koskenniemi, *The Gentle Civilizer of Nations: the Rise and Fall of International Law 1870–1960* (2002), at 266–352.

[49] Politis, *supra* note 44, at 15.

[50] A. Zimmern, *The League of Nations and the Rule of Law 1918–1935* (London, Macmillan, 1936), vii–viii

[51] N. Politis, *Le problème des limitations de la souveraineté* (1926), at 5–23.

'formerly the sovereign state was an iron cage for its citizens from which they were obliged to communicate with the outside world, in a legal sense, through very close-set bars',[52] but certain developments where international law applied directly to individuals, such as in the case of '*heimatlose* persons'[53] made him exult that the iron case began to open. For Politis, the eventual emergence of the individual as a subject of international law is inevitable because it is part of the evolution of social groups; it is in conformity with the modern conception of the state as well as with the aims of international law.[54]

The upshot of Politis' recognition of the individual as subject of international law is his belief in individual criminal responsibility. He believed that in an organized community individuals should be held criminally accountable because they are the real addressees of the law, not states which are fictions. Politis is critical of the institution of state responsibility for international crimes. Collective responsibility is a 'misleading and disappointing illusion; it amounts in fact to impunity', because in his view law exists for real beings, not for fictions.[55] Furthermore, 'by forcing those who govern to be . . . more respectful of international legality [individual criminal responsibility] will constitute a serious guaranty for peace'.[56] In a similar vein Kelsen views the lack of individual criminal responsibility in international law and its substitution by collective (state) responsibility as one of its primitive traits and, consequently, advocates for the criminal punishment of individuals as subjects of international law.[57] The criminal responsibility of individuals became the rallying cry behind the Tribunals established after World War II. In a now famous statement it was said that 'the idea that a state, any more than a corporation, commits crimes, is a fiction. Crimes always are committed only by persons.'[58] The institution of individual criminal responsibility is closely related to the emergence of a corpus of international penal law and of an international criminal jurisdiction. For Politis there exist three categories of international crimes: (a) 'a first category of acts for which the question appears simple enough, viz., the international crimes and offenses peculiar to peace, of which the typical instance is piracy'; (b) 'the international crimes and offenses peculiar to war'; (c) 'the crime of war and correlated crimes', which include the crime of aggression.[59] Politis envisaged the drawing up of a convention to define the crimes[60] as well as the creation of a criminal tribunal with its own public prosecutor in order to put into effect international penal law. Such a court would however have to be an appendix to the Permanent Court of International Justice because Politis recognized that at that time the scope

[52] Politis, *supra* note 44, at 30–31.
[53] People with no nationality.
[54] Politis, *supra* note 44, at 23.
[55] *Ibid.*, at 44.
[56] *Ibid.*, at 45.
[57] Kelsen, 'Collective and Individual Responsibility in International Law with Particular Regard to the Punishment of War Criminals', 31 *California L Rev* (1942–1943) 530.
[58] US Chief Prosecutor Mr Jackson, *supra* note 29, at 149–150.
[59] Politis, *supra* note 44, at 40–43.
[60] *Ibid.*, at 47.

of international criminal jurisdiction was limited.[61] The project of international penal law finally materialized almost 70 years later when the International Criminal Court was established and when the legal or political obstacles to international criminal jurisdiction, which Politis so accurately spelled out, were to some extent settled. [62]

The recognition of the individual as a subject of international law is a common theme in Politis', Scelle's, and Kelsen's writings, although they seem to disagree on the legal methodology supporting such a claim. According to Scelle, the individual becomes a subject of international law when the latter confers rights directly on the individual, as well as when it confers on him competences to defend those rights; and also when it imposes on states an obligation to confer such competences to individuals. For Kelsen, the logical puritan, the individual is not a subject of international law in the latter instance.[63] Here Politis interjects and reconciles the two approaches. According to him, international law lays down 'objective and constructive rules' for the individual. The aim of the objective rules is to 'ensure respect and protection of the life, liberty, health, work, family, and intellectual and moral development of the individual, irrespective of nationality', whereas the purpose of constructive rules is to 'afford him the possibility of defending his own legitimate interests by means of direct recourse to the international organization, without having to resort to the intermediary of his State'.[64] Objective rules are directed to states, not to individuals, so it appears that the individual is not a subject but an object of international law. This, however, 'confuse[s] the intrinsic value of these rules with their application'. If they apply to states, Politis notes, it is only due to the present condition of international organization, but in fact they directly govern the individual.[65]

Even if Politis believed in the individual as the ultimate subject of international law, he took a pragmatic view as to the state of international law in his time. He identified some progress, which he tried to maximize through his projects, but he conceded that 'international law will not really become the law of individuals until relations between peoples have lost their international character and have become properly speaking universal'. This was left for some future day though.[66]

Politis is equally realistic about the place of state sovereignty in international law. Although he was critical of the notion of state sovereignty, which for him is the culprit for the lack of a peaceful international organization, and of the rule of law in international affairs, and predicts its eventual demise as the conceptual and legal foundation of international law, in the meantime he accepted state sovereignty as an institution of international law. In fact he tried to redefine the concept of sovereignty

[61] *Ibid.*, at 46.

[62] *The Prosecutor v. Dusko Tadić a/k/a 'Dule'*, Decision on the Defence Motion of Interlocutory Appeal on Jurisdiction, Case No. IT-94-1-AR72, 1995, at para. 97; Preamble to the Rome Statute of the International Criminal Court.

[63] Kelsen, 'Remarques critiques sur la théorie du droit international de George Scelle', in H. Kelsen, *Controverses sur la Théorie pure du droit: remarques critiques sur Georges Scelle et Michel Virally* (2005), at 63 ff.

[64] Politis, *supra* note 44, at 21.

[65] *Ibid.*, at 21–22.

[66] *Ibid.*, at 31.

by creating an international organization emulating the institution of the state. For Politis, the state, with its division of functions, its institutions, and the monopolization of violence, represents progress in human organization, and therefore a model upon which the international society can be built. The League of Nations was hailed by progressive lawyers as a big step towards the institutionalization of international society. For Politis the League of Nations was a new form of international organization 'totally incompatible with the idea of sovereignty'.[67] Sovereignty in the context of the League means 'juridical and legal' equality, in that states 'can all appeal to the protection of the law and must all submit to the law'.[68] However, Politis did not try to gloss over the shortcomings and the glaring inequalities built into the League's system. One such inequality concerned the permanent seats on the Council, which for him was an affront to the 'rising tide of democracy' in international affairs.[69] Yet, 'until the international organization has shifted to the shoulders of the community the burdens which at present are borne almost exclusively by certain of its members, it cannot aspire to real democracy'.[70] This is a remarkable statement the modern relevance of which, particularly in view of current debates on UN reform, cannot be ignored. It reveals Politis' realistic view of world affairs but at the same time it reveals his vision of how they should be if equality were to apply properly.

Politis also believed that in an organized community there should be mechanisms for the peaceful settlement of disputes, and that war should only be a sanction for vindicating violations of rights. That is why Politis devoted his energies to strengthening the procedures for the pacific settlement of disputes, not only because of their inherent value for a society organized under the rule of law but also because it is through such mechanisms and rather indirectly that resort to war can be prevented. The dispute settlement mechanisms and the restrictions on initiating wars contained in the League of Nations' Covenant and the Geneva Protocol were evidence of such progress. Perhaps the most significant change that the League of Nations and the Geneva Protocol introduced in international organization and thinking was to make war a community sanction against breaches of international obligations. For Politis, this signifies the revival of the *bellum justum* doctrine, which the notion of sovereignty had destroyed. In this respect, Politis keeps company with Kelsen, who argued that in an organized society war and reprisals can only be reactions to international delicts.[71] A consequence of the treatment of war as societal sanction is the erosion of the institution of neutrality, which for Politis does not have a place in an organized community.[72] Indeed, the concept of collective security, and in particular the UN

[67] *Ibid.*, at 6.

[68] *Ibid.*, at 8–9.

[69] *Ibid.*, at 10.

[70] *Ibid.*

[71] H. Kelsen, *Principles of International Law* (1952), at 33–64; H. Kelsen, *General Theory of Law and State* (1946), at 329–340.

[72] N. Politis, *La neutralité et la paix* (1937). In the same vein, Lauterpacht noted that collective security and neutrality are mutually exclusive and inherently antagonistic and antinomous: H. Lauterpacht, 'Neutrality and Collective Security', 2 *Publica* (1935) 133, at 149.

system of collective security, is based on the notion that security is indivisible and that membership of the collective security system is incompatible with neutrality against an aggressor as defined by the system.

5 Conclusion

Nicolas Politis is undoubtedly a towering figure of the interwar academic and diplomatic circuit. In the words of the President of the League of Nations Assembly, M. Mota, 'he has a clear and penetrating intellect, the mind of a logician, and the measured eloquence of the Greek masters'.[73] His contribution to international law is important not only in its theoretical but also in its practical aspects because he promoted, often through specific projects and initiatives, the conception of international order as law. His writings and projects also exemplify the situational and intellectual torment of the progressive international lawyers in the interwar period, caught as they were between the old regressive paradigm of state sovereignty and the new progressive project of an ecumenical world order built around the individual. Although Politis was a visionary, he was at the same time thoroughly pragmatic; he understood his 'trade' very well, enough to know that 'sweeping and bold plans' not only have 'no prospect of success but are likely to bring into disrepute the idea which they serve, and impede the progress at which they aim'.[74] That is why he advocated small but secure steps in the path to progress. Perhaps the international law experience then and now proves him right.

[73] Holsti, 'Nicolas Politis', 36 *AJIL* (1942) 475, at 476.
[74] Politis, *supra* note 44, at 40.