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January, 1928.

AN INTRODUCTION TO

THE STUDY OF

INTERNATIONAL ORGANIZATION

BY

PITMAN B. POTTER, PH.D.

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UNIVERSITY OF WISCONSIN

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1929

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To

MY MOTHER

LOUISA A. POTTER

GRATITUDE AND RESPECT

PREFACE TO ORIGINAL EDITION

In the pages which follow I have attempted to do three distinct things. First, I have tried to show that international organization is not a new thing in world history,—nor a reform proposed for the future,—but a political system of long standing which deserves to be studied as such. Second, I have tried to show how this standing system of international organization has expanded and developed, particularly in the past century, and to set forth the causes which will probably lead to a continuation and intensification of that process in the future. Finally, I have expressed the conviction that such a process is salutary, in that it meets a real need of the world today, and have attempted to make some suggestions regarding steps which might profitably be taken in the improvement and development of the existing institutions of international government.

The task of recording and explaining existing international institutions and practices becomes daily more difficult, because of the rapidity with which activities in this field are being expanded. In every branch of international organization dealt with in this volume, particularly in Parts V, VI, and VII, new steps are constantly being taken, and it is almost impossible for the student to keep himself informed of these advances, to say nothing of digesting and recording all the information relating to these matters which comes pouring in through official documents, current newspapers and periodicals, and private writings.

For this reason I hope that where the account given appears to be inaccurate or out of date the reader will remember that my object is not to describe exhaustively

and finally the international organization of the world, but to provide an introduction to the study of that subject, by describing basic institutions and analysing the principles underlying them. For this reason also I have not tried to bring the record in Part VIII down to the last minute, but have left it at a juncture where one movement —that of the League—reached a definite point in its development, and a new one—the Washington Conference—began.

The League of Nations has been taken as the culmination of international constitutional growth in the past, and the treatment of certain subjects in various chapters has been arranged with this in mind. Thus, the development of international organization has been carried down only to 1918 in Parts I-VI, with the exception of certain materials in the later portions of Chapters IV, XVI, and XXI; the League is presented as the last stage in the process of creating world government; and the events of 1920-21 have been treated mainly in their relations to the League. For this there seems to be ample justification. In its essential character, and in the magnitude of the effort which it represents, the institution of the League of Nations is comparable in world history only with the adoption of the Constitution of the United States in the history of the American nation. Defective it is, and final in its present form it most certainly is not; but whatever is done in the future in the direction of general international organization will be done by way of modification of, or additions to, the present League. If the importance of the League is to be minimized at all, it is not because of anything directly connected with its own organization and methods, but only by recalling the great amount of international organization of the simpler types, such as diplomacy, treaties, and conferences, which exists apart from the League.

My object being to provide a volume useful to college students and to general readers, I have, with a view to

making reference work simpler for the student, confined my references to general and secondary materials; references to relatively inaccessible materials and to works in languages other than English have been reduced to a minimum. I am particularly indebted to certain writers—for example, Hershey, Phillipson, and Satow,—because of the serviceableness of their works as reference books. Ample introduction to the more highly specialized materials will be found in the books cited in the special sections in Appendix B.

The frequent references to works on international law, as well as the professional feeling of some persons who are interested in that subject, may raise a question concerning the propriety of such a work as this, distinct from a treatise on international law. To such a question my reply would be as follows: Two distinct types of material are included in the ordinary treatises on international law, namely, material descriptive of the institutions for regulating and conducting international relations, and of their methods of operation in practice, and material stating the recognized rights and duties of states. The latter, and only the latter, is international law proper. The former is political science, descriptive and analytical. International law proper should be handled by lawyers as law; it should be purified of non-legal materials. When that is done it will not be so likely to appear to the legal profession as near-law, or imitation law. International organization will also profit in its turn by receiving due attention in its own name. The vast stretches of material in the works of international law descriptive of the machinery of world government are no more in place in such works than would be a description of the courts in a treatise on private law. These materials should, however, be brought together in a work such as I have here tried to produce.

I am happy to have this opportunity to express to Pro-

fessor James Wilford Garner, of the University of Illinois, my appreciation of the opportunity to work into this particular field of study, as distinct from international law, which he was the first to give me, and to Professor Frederic Austin Ogg, the editor of the series in which this volume appears, for a laborious and exceedingly helpful revision of the text. I am glad, also, to have the chance to record my thanks to my wife, Jessie Dalton Potter, for the patience with which she has served as audience for a perpetual lecture on this subject, and for her many sympathetic suggestions as I have worked out the subject in my own mind, during the past few years.

PITMAN B. POTTER.

University of Wisconsin,
Christmas, 1921.

PREFACE TO THE SECOND EDITION

It is now possible to treat the League of Nations as a fixed institution, apart from any particular steps in its creation and operation. Hence, Part VIII has been revised with this in view. All that has happened in the past three years has confirmed the belief that the League is bound to become the permanent expression of that movement toward general international organization which is the outstanding development in governmental organization and practice in our day.

On the other hand, while the bibliography and index have been revised somewhat, in connection with the revision mentioned above, it has appeared best to leave Chapter XVI, with its treatment of the League court, in its original form.

P. B. P.

Christmas, 1924.

PREFACE TO THE THIRD EDITION

It has been encouraging to follow the development of interest in the study of international organization in colleges and universities in the United States during the past five years. It is gratifying to be called upon to prepare a third edition of the present work for use in that connection.

The changes made in the first part of the book are based upon the intention to separate the more purely historical materials in order to incorporate them in a volume on the History of International Organization, and in order to make room for more complete treatment of contemporary international organization in this volume. In addition, the arrangement of the material has been simplified and references to much secondary literature reduced or eliminated. The latter action will not be taken to indicate any loss of appreciation on the part of the author of his indebtedness to the writers whose works have been drawn upon, and which are listed in the bibliographical appendix.

The expansion of the second part of the work is caused by the growing indications of permanence of the League of Nations and the expansion of League structure and League activity since 1920 and since the second edition of the book was prepared. The League is not yet the whole of contemporary international organization, but it is a very large part of it, and it becomes a larger and larger part yearly. At the same time it has been thought best to condense descriptive treatment of the League into three chapters and reserve the remaining seven chapters for discussion in general terms.

The opportunity has been taken to correct certain errors of statement or typography still present in the second

edition and to revise certain judgments and interpretations which time and more extended reflection have revealed as being open to criticism. In this connection I have to thank Miss Katherine D. Klueter and Mr. Howard B. Calderwood, Jr., who, as graduate students at the University of Wisconsin, offered many helpful suggestions. Miss Gladys Rose, of the University of Texas, assisted in the preparation of the chapters on the League in this edition. My thanks are also due to many students and colleagues in various institutions in this country and elsewhere for helpful discussions and suggestions on all phases of this extensive and complicated field of study.

P. B. P.

Christmas, 1927.

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AN INTRODUCTION TO THE STUDY OF INTERNATIONAL ORGANIZATION

AN INTRODUCTION TO THE STUDY OF INTERNATIONAL ORGANIZATION

CHAPTER I

INTRODUCTORY: TERMS AND PRINCIPLES

DURING the past twenty-five years a new phrase has come into common speech and into the formal literature of political science: international organization. The rise of the idea which this term expresses is no less significant than was the emergence of the idea of "international law," or a "law of nations," at an earlier time. A new field of study has been opened up which is quite as definite as municipal government, State government (in the United States), or national government, and which is no less important for both layman and professional political scientist. All of these subjects of study are readily designated by reference to the community whose institutions are to be considered. It is high time that we devoted more attention to the aggregate of institutions and forms of procedure employed in the world at large for the conduct of governmental business above the level of the individual nations. It seems better, however, for various reasons, not to employ the obvious phrase "world government" in this connection, but to use a title which indicates, to some extent, the nature of the chief process by which the world of nations has come to enjoy some measure of unified government, namely, "international organization." Where the

phrase "world government" or its counterpart "international government" is used hereafter these phrases will be used to mean international governmental coöperation.

The materials for this study must be drawn from widely scattered sources. Moreover, because of the newness of the subject, there is certain to be a good deal of confusion as to the materials which do and those which do not properly relate to the subject in hand. Nevertheless, for the very reason that we are mapping out a field for study which is new, but which will demand increasing attention as time goes on, it is necessary to establish a few principal definitions and concepts with some care at the beginning.

A distinction ought to be made at once between international intercourse and international organization. The former term denotes the whole body of non-political and non-legal activity among the nations. Such activity is commercial and financial and cultural, in a very general sense, and includes the many activities and practices in the development and maintenance of trade and travel and communication, and in the exchange of information and of artistic and scientific knowledge, which lie outside of the field of official legal and political practice. This body of international intercourse forms the foundation upon which legal and political international organization is built, and the two systems react one upon another in many ways. But they are not identical, and they must be kept distinct in one's thought.

The most obvious way in which this body of international intercourse may be affected by legal and political action is by the formulation of rules governing it by the persons or group of persons engaged in it. This has been done, to a certain extent, during the past three centuries, and we have a set of principles and rules adopted by common consent and covering more or less directly and more or less in detail the whole field of international life. This set of principles and rules is called international law, and

must itself be distinguished from international organization. The rules of international law are abstract formulæ. They describe and prescribe the relations and behavior of nations, and of their national and official representatives, in contact one with another, rather than the actions of private individuals considered merely as such, and they bear upon actual international intercourse in the economic and cultural sphere only indirectly, through state action upon the individuals participating in that intercourse. These rules are to be sought in unofficial treatises by private scholars, in public documents of various sorts (especially treaties), and in judicial and arbitral decisions in which they are embodied.

Rules of law, however, are of scant effect if unsupported by organs of government. It is here that international organization proper comes into view. The system of institutions and practices for the creation and administration of these rules of international law which govern the body of international intercourse constitutes the existing international organization. Various institutions have grown up among the nations, having certain forms and following certain regular modes of operation, for the execution, administration, and revision of the rules of international law and the regulation of international life by reference to these rules and to the principles of equity. The structure of these institutions, their functions, and their modes of procedure deserve examination and careful understanding.

It has long been customary, in the study of national government, to speak of legislative, executive, and judicial organs and functions, and these designations and the concepts back of them are so familiar that they can well be employed in dealing with the development of international governmental institutions. The analysis, however, will not come out as sharply in this field as in that of domestic government, for various reasons. International institutions, moreover, frequently combine in one organ two or

more of these functions more often than is the case with national governmental institutions.

It may be said, in the first place, that the international system contains organs of the judicial function. These appear very early in the history of international government. Their task is to apply rather clearly recognized and firmly accepted legal rules and principles of equity to specific conflicts of national interests. The rules so applied are the rules of international law and justice already worked out more or less incidentally in the course of international life. The court is interested, first, in finding and setting out the law applicable to the case in hand, turning more or less upon the formal rules of law and more or less upon equitable considerations arising out of the particular facts of the case itself. In doing this, the court adds to the existing law by interpreting its provisions and describing their application in a novel set of circumstances. Finally, the tribunal sometimes acts in an administrative capacity and issues orders for the execution of the judgment or the working out of the solution suggested in the premises.

There are also to be found certain international executive and administrative organs which act upon the basis of existing international law and assist in the conduct of international intercourse on behalf of the members of the community of nations. These bodies make judicial decisions of a minor character, but only as incidents of their administrative work; and at times they also lay down rules of law in a legislative capacity, though only within the discretion granted them in their executive duties. They serve in a humbler capacity than the judicial tribunals, but they provide a mechanism for doing much useful, if prosaic, day-by-day work among the nations.

Just as these administrative organs seem to develop at a stage in international evolution later than that at which the judicial organs appear, so at a still more advanced

stage certain international legislative organs come into prominence. These legislative organs have as their task the codification, revision, and amendment of existing international law and the creation of new law. This is done by a process of contract in the earlier stages, and by a process closely approaching legislation proper at a later stage. The law of nations, applied as found by tribunals dealing with international cases in the first instance, applied largely as found by international administrative bodies in the second instance, is here revised and renewed by agreements among the nations, either in the form of bargains one with another or in the form of general rules adopted as statements of legal right.

Thus in the international field we find the same sort of political organization and operation that we find in local and national life.

For the appearance and growth of international organization, however, favorable conditions are necessary. Certain circumstances will powerfully stimulate, others will equally retard, development in this direction. In the absence of some very simple conditions, indeed, it is quite impossible for international intercourse itself to spring up, for a legal system to be developed, or, finally, for an institutional system to be devised for the accommodation of that intercourse. Under differing conditions, international life develops a richness and intensity calling for an extensive legal system and a complicated set of governmental organs to take care of it. The principal prerequisites for the appearance and growth of international organization must, therefore, be noted at the outset.[1]

First, there must exist certain states or nations or national states That is, there must be available certain potential members of a community of nations. There could

[1] For a discussion of this problem in relation to the United States see Potter, P. B., "Nature of American Foreign Policy," in *American Journal of International Law*, Vol. XXI, No. 1 (January, 1927), 53.

be no international intercourse, law, or organization if and whenever there should cease to exist in the world a number of free states. The existence of independent nations is absolutely indispensable to the existence of international organization.

Two nations might conceivably develop such relations. But a multiplicity of units is desirable, rather than a bare plurality, for, just as a multiplicity of specimens gives better opportunity for the development of general principles of law in the field of natural science, so the multiplication of independent states is conducive to a rapid growth of the law of nations. The body of the law is enriched with new and rapidly increasing materials, while a more urgent demand is created for some international organization to supervise and foster, on governmental lines, the increasing bulk of international intercourse.

One of the most beneficial results which could be expected from an increase in the number of the nations would be the reduction of the existing nations to something like a condition of equality and in consequence the removal of many present difficulties in the way of international coöperation. The greatest obstacles to such coöperation now are, on one side, the feeling of the larger states that they have more to gain by "going it alone" and preserving a free hand than by joining in a world federation and that, if any organization is to be created, they are entitled to control it, and, on the other side, the fear of the smaller states that any international organization will prove merely a device for their enslavement, seeing that they cannot control it. In addition the larger states feel that they are called upon to bear a too heavy share of the burdens of international government. A multiplication, and consequent equalization, of the states would tend to remedy these difficulties.

This conclusion, it is true, runs counter to ideas held in some quarters. Unquestionably, the multiplication of states makes the task of international coöperation more compli-

cated, and to that extent more difficult; and the creation of artificial states by the powers that be, for ulterior purposes, is to be condemned on all grounds. But the protest arises chiefly from those who believe that great states make for peace by their powers of domination, and who cling to the old diplomacy as a means of regulating international questions and hardly wish to see it replaced by judicial and legalistic methods, hoping rather to profit by skilful diplomatic manœuvering, by fishing in troubled waters. This is more difficult if the number of states is multiplied, while the legalistic method would be encouraged thereby. The protest springs also from a realization of the inadequacy of existing international governmental machinery as a means of holding the many new states in order. The remedy here, obviously, is not to destroy the new states, but to provide a sufficient world government.

At the same time, a certain degree of homogeneity among the states of the world is equally necessary. It is a familiar observation of political science that a moderate amount of homogeneity is indispensable as a basis for law among units of any order. Some common denominators among the nations must be found in the intercourse among them. If there are no common interests and standards there can be no legal community. General recognition of this principle is evidenced by the idea of restricting the application of international law to the European nations, to the "civilized" nations, to Christian nations—a thought which persisted as long as it seemed that the differences between the members of these groups and states outside were so profound as to render impossible a common life between them. The idea that there is a peculiar "American" international law, exaggerated though it may be, testifies to the operation of the same influence.

The foregoing conditions are fundamental.[2] There could

[2] Compare these historical conditions with the so-called fundamental rights of states at international law as set forth in the treatises on international

be very little international law or practice in a world of one great state, of a restricted number of states, or of states immeasurably at variance in character. Retardation in the growth of international law and organization in the past can often be traced directly to the suppression of independent states, to the limited number of precedents available on a given point, or, more often, to the fact that national practices and views have differed so widely that agreement was impossible.

Beyond these fundamental requirements lie certain others of less importance, which nevertheless have a considerable bearing on the growth of international law and government. Such are the conditions of stability, equality, territorial possessions, and political character in the states of the world.

Thus, if the rise and fall of states in the world is too rapid, it is clear that intercourse and the elaboration of legal and institutional connections among the states will be rendered increasingly difficult. New states must now appear only by the modification of older ones. If this process of modification is too swift it becomes difficult to determine at any one time the degree of independence, of separable existence, enjoyed by a given, so-called, state. Too much flux and flow, too rapid change in the political map of the world, is not conducive to the development of an orderly international system. As in all periods of great revolutionary disturbances, international chaos is the disastrous result.

Furthermore, it is exceedingly desirable that every state shall be able to manage its own affairs in its own way. If the peculiar individuality of each nation is to find due expression, independent action is, indeed, essential. For this reason such an equality among states is needed as will

law, as in Wilson, *Handbook*, § 23. For all full titles see Appendix B, below. All these conditions or rights are logically involved in the simple proposition that to have international law and organization we must have states or nations to start with.

eliminate domination on the part of some over the free actions of others. When powerful empires control the discretion of weaker neighbors, the latter contribute little to the growth of the law of nations. Recognition of the unwholesomeness of such a situation has led to the adoption of the doctrine of state equality. It is maintained that, irrespective of relative areas, populations, resources, and power, the nations are, as concerns the law of nations, equal among themselves. The smaller nations must have freedom to live their own lives and to receive satisfaction for their national rights in the face of the more powerful members of the international community.

Commendable as this fiction may be as a means of obtaining by an artificial ruling something which is felt to be desirable but not actual fact, it is still far from effective in any final sense. Equality in any mere physical characteristics is, of course, unimportant. As a comparison between the positions occupied by Czechoslovakia and by China in recent international relations will show, area, population, natural resources, and wealth, as such, count little in determining the degree and quality of importance and power of a nation in international affairs. But equality of aggregate power—economic, cultural, and political—is certainly to be desired. In so far as preponderant empires give place to independent national states theretofore held in subjection we shall have a better balanced community of nations.

That a nation must possess a certain territorial domain in order to be a state at all seems to be generally admitted. Conceivably, a system of nomadic or non-territorial states might give rise to a body of international law and a set of international governmental organs. Throughout all history, however, states or other organizations of people lacking a territorial basis have failed to contribute greatly to international life, or, indeed, have totally failed to hold a place in that life. To deprive a state of its territorial basis

means to deprive it of existence.[3] Modern international law and diplomacy are the products of a system of territorial states, in contrast to an earlier system of personal jurisdictions.

Finally, if the law and practice of the nations is to reach its fullest fruition, the states must be political in character. That is, they must be general, or comprehensive, in their activities and aims, and not exclusively religious, industrial, scientific, or esthetic. It is doubtful whether such groups of people could properly be regarded as states at all. In so far as states have only special interests, relations with other states are more difficult, being dependent on the chance that there will be other states with like special interests. The path is not long to a condition of direct opposition between such states. What could a proletarian state find in common with a capitalist state? Members of the community of nations with only special interests would contribute little to the law of nations outside of their own interests; Switzerland has not contributed to the development of maritime law nor Bolivia to that of the law of cable control.

Given these characteristics on the part of the potential members of the community of nations considered within themselves, certain external historical conditions are also requisite to the growth of any considerable system of international relations and government. First, there must be a sufficient degree of contact among the existing states, and, second, a science of international relations must be developed to explain existing conditions and suggest the elaboration of new legal and political institutions.

Of these, the first is more fundamental. Unless two states make contact, they can have no economic, political, or legal relations one with another. National isolation re-

[3] Compare the disappearance of the Papacy as an international entity after the disappearance of the Papal territorial holdings in 1871.

sults in paralysis of international growth. In proportion as means of communication—commercial, personal, scientific —increase among the nations, the intercourse upon which the whole system is founded grows in quantity and complexity. More needs arise for, and more facilities are provided for creating, an international legal and governmental system.

However, the importance of the second condition ought not to be underrated. For want of a mature science of international relations the Greek state-system went down before Macedon and Rome. For want of an adequate science and art of international government seven million men died on the plains of Europe in the years 1914-18. With all the materials for international organization present,—a numerous group of fully developed states, and states bound closely together by a rich international intercourse on the non-political side,—the world still lacked a statesmanship equal to the tasks of insuring justice and keeping peace.

International organization, it should be understood, is not the only possible type of world polity, nor the only process by which some degree of unified world polity has been attained in the past. Two other forms of world polity are always to be reckoned with, namely, empire and cosmopolitanism. The relations among these several types of polity and their bearing upon the concept of the state and international relations may be briefly stated.

The national state is the basic unit upon which all discussion must proceed. That state was originally the product of the fifteenth and sixteenth centuries, although the list of such political entities has been steadily growing down to the present time. Its salient characteristic is the binding together in a single political organization of a group of people who, because they are kindred in race, ideals, manners, religion, language, or customs, and live in a definite

territory, regard themselves as members of one nation and carry on their national life under a formal constitution and government.

On one side of the national state we have empire, which is the forcible union and subjection in one state of the people of otherwise independent nations. The imperial unit may be more or less extensive, more or less world-wide. The need of an autocratic government to dominate the structure usually brings into being a monarch, an emperor; and at the heart of the empire stands the master nation which has subjugated the remainder. The logical maximum of empire is a world state resting on conquest and domination.

On the other side we find cosmopolitanism, which is the merging of the individuals of otherwise distinct nations in one society on the basis of interests common to them apart from nationality. The logical outcome of this process would be a world community created by voluntary action; and in its form of government it would tend toward anarchy, because of its emphasis upon the individual. Such a community might be organized into a world state of any form, but presumably it would tend toward some shade of popular government. We thus have here, within the field of world politics, the contrast between authority and liberty which is so familiar within the national state.

Standing between empire and cosmopolitanism we have international organization, which takes the national state as a permanent unit and expects neither its subjugation nor its disappearance by the sublimation of the principle of nationality. International organization proceeds by the voluntary coöperation of separately organized nations. The result is a unity similar to that obtained by empire, but based on free consent and the preservation of national identity; or it is the unity attained under cosmopolitanism, but based on the conscious action of national groups. Autocracy and anarchy lie on either side; but national liberty

—positive and negative, the liberty to exist and to resist,—may be secured only under the legal order here described.

Examples of empire, or attempted empire, can be cited from Alexander to William II. Examples of cosmopolitanism, or of tendencies toward it, extend from the days of Greek religion to modern science. Both programs are more or less discredited today as plans for world organization. But, historically, these modes of world order have ruled the scene with fully as much power and prestige and over periods fully as extensive as has international organization. It might seem more accurate, therefore, to regard these types as coördinate with international organization, as permanent forms of world government, available for use here and there along with the latter. It will be found, however, that they both come in conflict with a certain modern social force, and that this conflict dooms them to defeat so long as that force operates, while international organization may be freely adopted without any conflict of the same sort.

The rock upon which both empire and cosmopolitanism tend to come to grief is nationality. So long as there was no feeling of nationality, conquest and empire, on the one side, were considered perfectly legitimate; and, on the other side, a somewhat amorphous cosmopolitanism,—a cosmopolitanism by default,—was widespread. But so long as the newer nationality holds sway, neither empire nor a cosmopolitan world will be easily feasible. If, or when, nationality loses its grip on man, both cosmopolitanism and empire will be possibilities to be reckoned with, although by that time empire, at least, will probably have become impracticable for other reasons. As things now stand people will not, if they have the power to prevent it, consent to an alien domination; and they cannot, so long as human psychology and culture is what it is today, forget their national kinships and national traditions in a universal brotherhood. Whether this is cause for rejoicing or regret is irrelevant;

the point at present is simply that it is true. Resistance to international organization itself springs chiefly from these same motives, from fear of foreign domination and reluctance to mingle with the world's people indiscriminately. It also arises from the apprehension of plotters of empire that such a system is calculated to check their schemes, and from the fear of cosmopolitan enthusiasts that it will be accepted as a substitute for their creed. Both are right. The only feasible form of world government today and the one which is at once feasible and safe, is international federation.

The possible modes of world organization just described are not, of course, entirely incompatible at any one time. Cosmopolitan society may develop within an imperial unit and still not develop so far as to threaten the stability of the empire as against outside influences. Indeed, the development of cosmopolitanism within an imperial state tends to remove internal sources of disruption. Austria-Hungary broke up because this process had not taken place within her territories. Similarly, cosmopolitanism may develop under an international system without going so far as to threaten to obliterate national lines. In fact, the cause or sanction of internationalism is the previous development of a certain degree of cosmopolitan unity, calling for some measure of political and legal accommodation.

In like manner, the methods of imperialism and of cosmopolitanism—force on one side and natural growth on the other—are not wholly absent from the field where an international federation is developing. Even in the case of empire there may be voluntary coöperation of distinct national units, as in the British Empire today; although it is doubtful whether under these circumstances the concept of "empire" is truly applicable. Such development is most likely to take place not in compact continental empires but in transmaritime colonial empires whose geographical structure lends itself to political decentralization.

A more perplexing problem is encountered on the historical, or evolutionary, side of the subject. On one hand, it is certain that a condition of relatively extensive social homogeneity immediately preceded the present condition of national differentiations. Medieval Europe knew a greater degree of social solidarity, at least in the legal and religious aspects of life, than does contemporary Europe. On the other hand, there seems to be evidence today that cosmopolitanism—with or without imperialism—is developing, by a natural evolutionary process, as a condition to follow the nationalistic era; and, of course, Medieval cosmopolitanism was itself preceded by a period of nationalistic rivalries and conflicts which, in turn, followed the cosmopolitanism of the Roman Empire, even as the latter followed a previous condition of national independence and competition in Italy and throughout the Mediterranean basin. There has heretofore been no permanent transition from one of these forms to the other. Neither can be classed, on the record alone, as primitive, and neither as ultimate. They would appear to be two modes of human life and might be expected to persist indefinitely. We do not have here a case of alternate progress and reaction—which, then, would be the progress and which the reaction? We have, rather, a case of more or less conflicting impulses toward variety and uniformity which are permanent conditions of life. And for their reconciliation, for preventing the constant oscillation from one to the other, from a too great unity, perhaps a forced unity, of the nations, to a too great degree of conflict, even to destructive war, international organization seems to provide the best mechanical device.

An effective international federation would also neutralize the more active tendencies toward either empire or cosmopolitan unity. The case of empire is specially clear. In spite of the easy assumption that "there have always been empires and there will always be empires," there is reason for hoping, and tentatively believing, that we have

seen the end of the age of empire. Since 1789 nationality has become an unconquerable force. The memories of St. Helena and Amerongen are not reassuring to aspiring imperialists. The burdens—political and administrative—of far-flung empire are unsupportable. There is, indeed, today, no great, powerful, and close-knit empire. The future —the near future, at least—belongs to the national state of medium size; it is the unit in the present problem of world order.

This still leaves the future of cosmopolitanism uncertain. Is it to be a permanent aspect of human life on this planet, existing side by side with internationalism, as already suggested; is it to supplant internationalism; or is it, like empire, to pass? Despite a certain suggested parallelism with the case of empire, and notwithstanding things already said which tend to suggest the conclusion that cosmopolitanism will persist but that nationalism will persist also, it seems that the outcome will be still different. Cosmopolitanism seems likely to increase and finally supplant internationalism. Both empire and international federation are forms in the process of unifying the human race in one state. One form is defective in being positively repulsive to nationality. The other is adequate to the final result when, but only when, it is gradually transformed, by the constant modification of its internal structure, so as to leave fewer and fewer matters to national jurisdiction and to expand the world jurisdiction more and more.

In the past the process of cosmopolitanization, if it may be so called, has been retarded by inadequate means of communication, by the political and social effects of sudden shifts of great masses of people from one section of the earth to another, and by the survival of primitive instincts of combativeness derived from tribal experience. Attempts to create a world state by voluntary federation or imperial compulsion have failed either because of the coercion employed or because the cosmopolitan basis was

still inadequate. Within the past hundred years, however, the factors making for cosmopolitanization have multiplied and have been developed intensively to a degree never before known. Means of communication have increased enormously; population has become more mobile and at the same time—and largely for this very reason—less likely to shift suddenly and violently; theories and ideals of cooperation have tended to supplant those of rivalry and dissension. One might almost say that the cosmopolitanizing process has become conscious and deliberate. The modes and conditions of international life and relations have received so much attention that one may dare hope that the collapses of earlier days—the disruption of the Roman empire, the anarchy of the fourteenth century, the catastrophe of 1914—due largely to sins of neglect and unconsciousness—will be avoided in the future.

Whatever may be the ultimate form of the world state, however, and whatever be the variations in the history of the past, international federation is for all present purposes the one form of world order demanding study. To this we may now turn. Attention must be given, first, to the economic and social basis of international relations in modern times and to the nature of the national state-system, and afterwards to the institutions and methods of international organization, directly considered. Under the last heading are to be studied the institutions of modern diplomacy, treaties and international law, arbitration and judicial settlement, international administrative bureaus and unions, international congresses and conferences, and, finally, attempts to bring together all of these partial forms of international government under one federal league.

PART I

MODERN INTERNATIONAL ORGANIZATION

CHAPTER II

THE NATION STATES OF THE WORLD

THE basic unit of all international intercourse, international law, and organized international coöperation is the national state.[1] As has been pointed out, the essential element in this entity is the element of organized legal and political authority which is exercised by the state over its members and the persons and things within its domain, and which is exercised externally, subject to the limitations of international law, which will be explained later, toward or against other national states. It is not strictly necessary that a state should be a national state in the fullest sense of that term before it may participate in international organization, but the tendency toward identification of state organization with national unity is today so strong that the terms nation and state may be used interchangeably without great error; in certain connections it will be necessary to distinguish between the two.

There are about seventy nations in the world.[2] That number was larger a century or two ago; it may be larger again in the future; it may, however, be taken as sufficiently accurate for all practicable purposes today. It includes all states which act independently in dealing with other states in international affairs, whether they belong to the League of Nations or not, and whether or not they have received formal diplomatic recognition by all other states; it thus includes both Russia and the United States. It includes

[1] On the subject matter of this chapter in general see Potter and West, Chaps. I and II. See also literature cited, below, Appendix B, § 2.

[2] The best manual for use in a study of the world state-system is the *Statesman's Year Book.* See also atlases such as the *Commercial Atlas* of Rand, McNally & Co. The works by Bowman and Mill are very useful also.

certain units which are formally parts of the British imperial system but which belong to the League of Nations and deal independently with other nations to some degree, such as Canada and Australia.

Much might be said concerning the origins of the nations. Political philosophers have speculated upon this subject for centuries, and have ascribed the origin of the state to divine authorization, to compact or contract among its members, and to other rather mystical sources. Sociologists have traced the origin of the state to the primitive tribe or clan or even to the elementary human family. Cynical realists have emphasized the cases where strong leaders have built up the state by their military domination. It is probably possible to discover a degree of truth in all of these analyses—if we interpret divine authorization to mean that which was believed or alleged to be such! But it is not very important to decide among these various explanations inasmuch as the modern state savors little of the primitive state or its creative forces.

The states of the world today, however, do reflect in rather sharp colors the concrete historical processes by which they have come into being, and a knowledge of the more recent antecedents of those states contributes much to an accurate appreciation of their respective positions in international affairs today.[3] Certain states, such as Great Britain and France, have behind them a long experience of constitutional evolution, from feudal times to the present. Many more have a background of revolution against imperial domination, as have Poland and even the United States, not to mention all the Latin-American nations. And a few trace their origins far back to primitive times in Europe, Asia, or Africa, as do Hungary, Japan, and Abyssinia. A review of the constitutional origins of any state will reveal much regarding its present position in the world of nations.

[3] See here especially Bowman, already cited.

The seventy nations which we regard as constituting the state-system of the world today, however, differ almost as much in their present qualities as in their past experiences. And their present qualities are much more important to us.

The most obvious differences to be noted among the nations is the difference in size. Yet this difference is both ambiguous and deceptive. Some nations are large in area, as are Russia and Canada, but Russia is also large in population while Canada is relatively small. Some nations are large in population, as are Italy and Japan, but relatively restricted in area. Some, such as India and China, are large in both area and population, but are far less important in international affairs than are states of much smaller area and population such as Germany and even Belgium. Area and population in themselves mean little, although they may be related to the real foundations of national importance, as will appear shortly.

Mention of Belgium raises a further consideration in connection with the area and population of the nations, however, and a consideration by reference to which a new classification of the nations may be made. Certain nations —some ten out of the seventy, to be exact—are nations which possess more or less extensive colonial domains in addition to their metropolitan territories, and colonial domains which are inhabited by many millions of people.[4] This phenomenon has important bearings not only upon the question of the size of the nations but also upon their whole position in international affairs.

There is no great need to review here the historical processes by which the great colonial empires of the world have been developed. Discovery and exploration and settlement of earlier days have been followed by military conquest and cession and retrocession among the colonial powers. The missionary and the trader have played their parts. Suffice it to say that half of the earth's surface and

[4] See Moon, *Imperialism*, pp. 514-525.

one third of its population are held by ten or a dozen nations in the status of colonial possessions of one form or another.

The colonies held by European, American, and Asiatic powers—for the United States and Japan are to be numbered among the colonial powers—are located chiefly in Africa and Asia. But colonial holdings are to be found also in all parts of the American continents, in Australasia and in all the seven seas. They are very largely tropical and semi-tropical in latitude and in climate and general geographic and economic character. They are held today mainly for the sake of the products in raw materials and foodstuffs which they can provide to the metropolitan markets. Their administration is a heavy burden upon the metropolitan Governments and the benefits obtained are enjoyed largely by private individuals and corporations. Nevertheless, in spite of much disillusionment regarding the benefits of colonial imperialism, the colonial powers still insist upon retaining and even, if possible, expanding their holdings.

The dependencies described vary greatly in their political or legal form and relation to the metropolitan Government and in their international status.[5] They vary from the leased territory which resembles a piece of real estate leased by one party to another, and which has no international status of its own, or from the crown colony, administered directly by the metropolitan Government, and forming, to all intents and purposes, an integral part of the metropolitan state, to the autonomous colony or the international protectorate, which have at least the power of internal self-government and may possess a certain degree of independence in international affairs. To such a list might be added spheres of influence and vassal states and one or two other varieties of dependencies. There is presented here a whole field of material which no student of international affairs can safely neglect.

[5] See Willoughby and Fenwick, entire.

By far the most interesting problem in the field of colonial or dependency government is provided by the system of Mandates under the League of Nations, touching, as it does, upon the questions of international control and the future of dependencies.[6] Further notice will be taken of this system later.[7] Under it certain former German and Turkish colonial territories are governed by Great Britain, France, and other powers under League supervision. A restricted group of these territories is expected to become independent in the not too distant future. There are thus suggested certain developments—international control and eventual independence—in the future of colonial status which would radically alter the present situation.

Quite apart, indeed, from the system of Mandates and its implications, there is no reason to doubt that the processes which are observable in the history of the world state system during the past century will come to an end. Everywhere colonial peoples and colonies tend to become more mature and to secure their independence from the metropolitan state by revolution or peaceful constitutional development. The process will necessarily be slow—accelerating in pace, probably, as time goes on—but in the end the surface of the earth must come to be covered entirely by independent states, and, needless to say, by independent states in much greater numbers and of much greater variety than we know today. Before that time arrives both international law and organized international coöperation must attain a far more mature form than they now boast.

The sixty non-colonial powers of the world consist mostly of second and third class powers, and include all of the twenty Latin-American states and twenty of the thirty European states. Germany alone of the great powers is to be numbered among them unless we regard all of the Asiatic Russian territories as integral parts of Russia itself. They

[6] See, in general, White, entire.
[7] Below, Chaps. XVII and XVIII, pp. 309, 311, 312, 330, 332.

are in general very critical of colonial imperialism, having themselves, for the most part, escaped from imperial domination only in modern times. At the same time it must be admitted that they do not exercise great influence in this connection.

Mention has been made of certain "great powers" and of other states of inferior rank. This leads us back to a discussion of the states with respect to their size and importance in the world.

An impressionistic view of the situation would probably reveal the presence of some seven "great powers," namely, the United States, Great Britain, France, Italy, Japan, Germany, and Russia. About the first three there could be no reasonable doubt as to their inclusion in such a list. Germany and Russia labor under certain political difficulties in their international relations at present, but both are potentially great powers. Italy and Japan may be included without much doubt, in spite of inherent weaknesses in the Italian position and the remoteness of Japan from the center of general international affairs.

An analysis of the positions of the members of this group will reveal the fact that they vary considerably in area and population and that the list does not contain either China or India. Further analysis will show that the great powers vary greatly in military and naval strength. In short, national power is based upon a number of factors and takes many forms. Area is important only if the land is rich in resources. Resources are effective only if effectively exploited. This can be done only by a numerous population and then only if that population is industrious and well trained. The wealth of the nation, even if thus produced, will be effective in international affairs in general only if the state is well organized and the people willing to support its policies in international action. In this case, on the other hand, armies and navies may be created as needed. National power is thus a culminating product

of many factors and must vary as nations rise and fall in their spiritual life as well as in accord with sheer area and numbers.

It is ordinarily deemed difficult to judge of the relative advancement or backwardness of nations, a matter closely connected with what has just been discussed. Yet to ignore this difference among the nations would be to fail seriously in any effort to understand what goes on in the world. Conditions vary greatly among the nations in respect to literacy, health, and all other indicia of social and individual well-being. Outstanding qualities in the spiritual life of certain peoples, such as the peoples of China and India, may challenge our admiration, and cast doubts upon the validity of the tests of advancement just suggested. The thought that the black man of Africa has a soul just as surely as does his white brother in London may be a generous thought. Yet the fact remains that China and India do not play decisive parts in international affairs, and that most of Africa is under the domination of European powers. In any significant sense of the word the peoples of Africa and Asia, with the exception of Japan, and, to a less degree, of course, but just as surely, the peoples and states of Latin-America, are backward in comparison with the peoples and nations of North America and Europe. This may or may not be discreditable; it is one of the most important facts of international relations.

It might be possible, perhaps, in a review of the factors which make for national power, as just stated, to accept the economic factors as decisive above all others, if we include under that label both natural resources and industrial capacity. The effective organization and conduct of the state is necessary to render national economic power effective in international affairs, and a willingness to support their Government on the part of the people is indispensable. But where those qualities also exist it is the economic power of the nation which makes it influential in the society of its

fellows. More and more even the fighting power of a nation in time of war depends upon this factor. Industry, commerce, and finance are the bases of national might.

Now the nations vary greatly in their economic status. Certain nations are predominantly industrial, as is Belgium. Certain nations are predominantly agricultural, as is Argentina. A few nations rank high in commerce and shipping, as does The Netherlands. And a limited few, of which the United States is the best but not the only example, are important from the industrial, the agricultural, and the commercial viewpoint. It is such a nation, of course, which is in a position to lead a fully independent life of its own and to dominate the international scene in many ways.

The financial strength of a nation ordinarily corresponds to its general economic status. Some nations—the newer nations, the less mature nations, from an economic viewpoint—are debtor nations because their Governments and their people labor under the necessity of borrowing money from persons and corporations in other countries in order to finance the development of their country and its resources. The older nations are the creditor nations whose surplus of capital accumulations constitutes a reservoir from which loans may be made to backward countries, and which serves also as a powerful basis of the international influence of those nations. This particular factor in international relations can be exaggerated as to its importance, as is often done by economists who turn to a study of international affairs, but it is certainly one of the most important phases of the situation, and a phase of the international situation which is becoming more, rather than less, important, as time goes on. It is already affecting formal international organization.

It is obvious that the geographical location of a nation determines to a considerable extent its economic and social character. Colonial territories and the more backward nations are what they are partly at least because they are

located in the tropical areas of the world, where human activity and development is difficult, and where, on the other hand, certain raw materials such as rubber and dyestuffs and certain food stuffs such as coffee and sugar are naturally produced. The status of such territories may thus be attributed in the last analysis to their geographical location, together with certain biological facts or influences, including the effect of climate on the human stock.

Conversely, it will be found that all of the important nations are to be found in the temperate zones of the world. In modern times no great nation has arisen except in the cooler and drier parts of the globe. Certain phases of the geographical distribution of the nations seem more arbitrary. Of the seventy independent nations of the world, nearly one-half are located in the small continent of Europe. In North America only two are located above the Rio Grande River, and only three above about 15° North latitude. Only nine, at the outside, are located in Asia; only four in Africa. Only eleven are located south of the equator, most of these being found in South America. Other peculiar phases of this situation may be discovered by a study of the world map. The distribution of the nations among the continents and zones of the world is one of the most important and interesting, yet one of the most seriously neglected, phases of world politics.

The causes of this situation are many. Some of them have just been noted, in the factors of climate and social geography. Historical influence is of great importance also. The development of Mexico and the United States and Canada as huge federations of otherwise independent states is one such influence. The rivalries and dissensions among the European powers constitute another. And yet even in these cases it is probably necessary to trace the forces which have produced a paucity of states in one continent and a multiplicity of states in another to the early movements of people over the face of the earth, in Europe, and

to the way in which the primitive peoples of North America were supplanted by not many, but by one or two, groups of European peoples. If Frenchmen and Germans and Italians had come to North America in as large numbers as the Spaniards and the English in the sixteenth and seventeenth centuries, the present simple state-system of the North American continent might not exist.

More important today than the causes of the distribution of the nations are the results. Europe is the center and the home of international relations, international law, and international organization. It is the headquarters, so to speak, of the colony-holding powers. Even the independent nations of North and South America are tied to Europe by historical and cultural bonds which exercise great influence upon international relations. It is only in Africa and Asia that native states or peoples are naturally in position to resist European domination as something entirely foreign. This is very noticeable in practical international relations, although the fact that the American nations also have for the most part secured independence only by revolution against European imperialism results in a situation where Europe seems to be faced on all sides by a hostile world. The United States and Japan, in America and Asia respectively, are alone in position to march with the leading powers of Europe in the general practice of international affairs.

Much has been made at one time or another of the racial and religious differences among the nations. There are some twenty-five Latin nations, some ten Slavic nations, six or seven Anglo-Saxon nations so-called, and small groups of Germanic, Scandinavian, Mongolian, and Negro nations. From time to time this factor seems to play some slight part in international relations. But the part which it plays is a constantly decreasing one. In spite of sociologists and biologists of extreme views, and in spite of racial prejudices which are often very sharp and powerful, th

fact seems to be that racial differences are fading or becoming confused, and are being increasingly ignored. Racial intermixture is going on as it always has gone on, and is going on more rapidly today than ever before, as it very probably will go on more rapidly still in the future, and this whether we like it or not, and as a result not of any deliberate adoption of the idea of one unified human race but of the entirely spontaneous and unavoidable movement and intermixture of individuals of all races all over the globe. More important still for the time being is the progress of the spread of a world culture and world-wide modes of thought and feeling, a matter to be discussed more fully later. Already today the differences among the nations in race and racial psychology are far less important than the differences of interest and policy which arise out of different geographic and economic conditions, as already cited.

All this is doubly true of religious differences. Theology and ritual are not as powerful in their hold on men's minds as they were even fifty years ago. The modern study of anthropology and comparative religion has revealed too much regarding the bases of theological beliefs and religious practices to permit the nations to clash seriously over such matters. Ecclesiastical organization and rivalry still provide dangerous grounds for international friction. But in fifty years more it will probably be possible, if, indeed, it is not already possible, to forget this alleged fundamental difference among the nations entirely.

The differences among the nations in juristic and political philosophy are more important. Governmental systems are tending to become everywhere the same in substance if not in form; democratic government, whatever its merits or defects, is occupying the ground, either in the form of republics or parliamentary monarchies, everywhere. But the differences among the theories held or the principles followed in various countries regarding the nature of society and the state, and the place of the individual in the

state, are striking and important because they bear directly upon practical international relations.

Thus the states of continental Europe, particularly the Latin states, tend to emphasize, on one hand, the authority of the state and the subordination of the individual, in view, largely, of their heritage of the law of ancient Rome, while Anglo-Saxon nations, and to a certain extent Scandinavian and Germanic nations, emphasize the liberty of the individual. Again the Latin nations tend to emphasize the concept of justice or equity in government and law, the Anglo-Germanic nations positive legislation. Cutting across this alignment is the difference between the older, more crowded nations, and the newer, more sparsely populated nations, as to the degree of state control of the individual which is necessary. Finally, in several nations—not alone in Russia—socialistic principles are making such headway as to produce a sharp difference between them and the nations still devoted to individualistic capitalism. The next generation may see sharp and deep conflicts between the nations on these points.

All of these differences among the nations emerge in their policies or programs of action one toward another. These policies must be reviewed in a later chapter.[8] Meanwhile they must be borne in mind in thinking of the state system of the world. It is necessary to avoid two errors in this connection. It is necessary to avoid thinking of the seventy nations of the world as entirely similar in character, as so many entirely homogeneous units in a general system. It is also necessary to avoid the conclusion that they are so dissimilar that no unified system of law and organization can be developed among them. History shows this to be an exaggeration; the remaining chapters in this work should do likewise.

If space permitted we might well review here the various types of boundaries or frontiers which separate the na-

[8] Below, Chap. IV.

tions, boundaries based on political events, geographic factors, economic considerations, linguistic differences, or military calculations. We shall have to include this problem in our study of the state-system merely by reference.[9] There is noticeable today a tendency to fix the location of boundaries by the choice of the people concerned, rather than by reference to supposed historic or arbitrary facts. But this practice has not gone very far as yet, and it runs counter to the tendency toward objective scientific treatment of governmental problems which is everywhere noticeable also. It is still too early to discern the outcome in this direction.

[9] See Holdich, entire.

CHAPTER III

INTERNATIONAL INTERCOURSE, PRIVATE INTERNATIONAL ORGANIZATION, COSMOPOLITANISM

AMONG the nations of the world the first and basic type of relationship and activity to develop is that interchange of commodities and cultural contributions in general which we call international intercourse. This activity leads into a form of international organization which is private or unofficial in character, and also into that form of world-wide culture and activity which we call cosmopolitanism.

It is impossible to indulge in any extensive description of modern international intercourse here. Such intercourse takes the form of railway and steamship trade and travel; the exchange of postal matter, including parcel post matter; telegraphic and telephonic communication, by wire and by radio, including the trans-oceanic cable; financial transactions; news service; and the exchange of the products of art, literature, music, and science in an ever increasing volume. An examination of any compilation of statistics concerning the activities of the nations and their peoples will reveal how widely and how deeply this development has already gone and how rapidly it is expanding year by year. Individuals in all nations are enabled to exchange ideas and commodities and even services by the many facilities provided by the modern world. International intercourse now constitutes a broad and firm foundation for all the more mature forms of international relations.

One result of the development of private international intercourse is the appearance of private international asso-

ciations of all sorts. To this we now turn.[1] Decades, and even centuries, before the national states were willing to join together in common governmental action, private persons were ready and eager to associate their activities and their interests across national frontiers. Private international financial, scientific, and commercial organizations date back to the early days of modern Europe, not to mention, for the moment, the great religious orders and trading companies of a still earlier period.

In a narrower sense, however, private associations such as are here under discussion have made their appearance in the world more recently and more slowly than the public unions. Not until after 1830 did these private associations begin to multiply in the form in which we now find them. Prior to that time there had been private associations extending over territorial regions occupied by various nations, but these earlier associations were not organized on the international principle. The later associations, while private and unofficial in composition, have taken the national state system as their foundation and structural standard. In this form private international associations are still very new and very tentative things.

Statistical information regarding the exact dates of organization of these associations is lacking. The reason is obvious: in their beginnings these bodies are relatively inconspicuous, unrecognized, and unrecorded. Only at a later stage, when the association has attained a position of power and influence, is it given a place in the annals of international life.

Some figures are available, however, relating to the number of meetings held by these associations during recent years, and these figures reveal the state of affairs in this field with a fair degree of accuracy and completeness. Thus, during the decade 1850-59 there were held some

[1] On private international associations see literature cited, below, Appendix B, § 3.

eighteen meetings of private international bodies. During the decade 1880-89 there were over two hundred and seventy such meetings. During the first decade of the present century the number rose almost to the thousand mark, and when war broke out in 1914 meetings were being held at a rate which promised to exceed that of the preceding decade. Such was the volume and force of the tide of private internationalism when the defects of official international organization permitted the breakdown of 1914 to occur and to interrupt the normal course of events.[2]

In a very literal sense it is possible to say that these private associations cover every field, every nook and corner, of human endeavor. To inspect a list of the private international organizations now covering the globe is a revelation.[3] Science is represented by the International Association of Medicine and the Institute of International Law; art by the International Institute of Public Art; religion by the Y. M. C. A., the World Church Alliance, and other bodies. In different fields we have the Olympic Games Committee, the International Congress for the Protection of Animals, the Interparliamentary Conference, and, in the world of industry and commerce, the International Congress of Chambers of Commerce, the International Association for the Legal Protection of Laborers, various international labor and socialist bodies, and many private capitalist organizations. If we explore farther we encounter

[2] Table of meetings of private international organizations since 1840:

1840-1849	10
1850-1859	18
1860-1869	64
1870-1879	139
1880-1889	272
1890-1899	475
1900-1909	985
1910-1914	458

"Historical Light on the League to Enforce Peace" in W. P. F., *Pamph. Ser.*, Vol. VI, No. 6, 22-23 (December, 1916), and Krehbiel, 136, citing *La Vie Internationale*, 1908-1909, I, 175.

[3] *Handbook of International Organizations, passim.*

such oddities as the International Petrol Commission, the General Association of Hotel Keepers, the International Congress of the Deaf and Dumb, the International Association of Copper Chemists, and the International Cynological Federation. No important aspect of human life is unrepresented.

There is much variety in form among these private international associations, but two types may be singled out with a fair degree of distinctness, namely, the federalistic association and the unified business concern.

The federalistic association is made up of national units, joined in a federal system, under a constitution defining the membership and structure of the association. The association holds conferences at intervals of a year or more—sometimes less—attended by delegates representing the national units; papers are read and there is general discussion of various subjects of interest to the members. The results are summed up in a set of printed proceedings, including, perhaps, a set of resolutions, copies of which may be forwarded to various national governments if any purpose is to be served thereby. In addition, the association usually maintains a central office or bureau to look after its administrative and clerical work.

These wide-spreading associations built on the federalistic plan are, as has been said, of recent growth. More elementary in form are the great business houses with partners and share-holders in different nations, with branches all over the world, and with activities extending to all the continents and all the seven seas. Certain of our great industrial concerns, such as the Standard Oil Company, certain trading companies and export and import houses, and certain of our banking and insurance firms, belong to this class. Here belong likewise the world news agencies, those of the Associated Press, Reuter, Havas, Wolff, and others. The national state system is respected by such organizations in their activities just as far as it is necessary

to do so, but it is commonly merely utilized as a convenient tool.

The organization of capitalists and employers into world-wide trusts and syndicates has had its response in the development of the international trade union. Such are the International Metal Workers Federation and the International Trades Union Congress. It is not for any philosophical or idealistic reason that such bodies are created. No attachment to the abstract or humanitarian idea of international organization caused the employers and the bankers and the manufacturers to combine in one international association or another. International combination was perceived to be good business. So with the international labor bodies; a prosaic calculation of the advantage and benefits to be derived dictated their formation. The testimony here borne to the advantages of international coöperation is especially sincere.

As between the two, the employers and the financial and commercial interests have developed their organizations further and with more conviction than the workers. Nationalism is an affair of the middle classes largely, a bourgeois idea. The great capitalist has little of it to bother him, the common laborer likewise. But the latter may be aroused by appeals to his passions, and the skilled worker is petty bourgeois in his own way. Hence the international labor bodies are not as cohesive and do not run as smoothly as the international banking firms. Furthermore, it is the employers and financial and commercial chieftains who are able to prevail upon the official states to recognize them and to give them support. Where international government is asked for in the name of labor it is not always regarded as reasonable and practical, but rather utopian. Economic considerations prompt the creation and development of international organization in the first place, and the relative economic power of different interests in society deter-

mines the share which each shall enjoy in the development of official international government.

There are no questions of power or authority to be raised in connection with the private international organizations. Questions of internal jurisdiction do exist—as between the component national bodies and the international associations—but no questions which project themselves into the realm of public law or affect the national states. For these organizations are not official, and they rest, not upon a foundation of public authority, but upon voluntary private coöperation.

There are significant differences of interest among the different classes of private international organizations.

The commercial concerns,—exporters and importers and shipping syndicates,—the international news agencies, and similar bodies, desire to see a rapid and extensive development of free international communication and trade. They thrive in proportion as international trade, travel, and communication are freed from nationalistic restrictions, vexatious discriminations, dangers of interference, and national monopolistic controls in the form of tariffs, exclusive patent and copyright laws, and similar devices.

The international bankers, so-called, are in a similar position. Dealing as they do in international exchange and foreign credit, they desire to see the world credit structure developed and strengthened, and to that end they desire, above all, peace and order among the nations. An attempt has been made to show that certain world banking interests, by stimulating international jealousies, have managed to sell credit to many nations at once to finance war preparations one against another, thus creating an invisible empire of debt over them all.[4] This may or may not be true in general and it may have been true in the past. Certainly it can apply to few concerns today; certainly it is not

[4] Jordan, *Unseen Empire*, entire.

applicable to the great majority of banking concerns dealing in world credit. And even where it is applicable the outbreak of war is not the thing desired, but the preparation for it, and the outbreak might still be dreaded for its effect upon existing national credit. Public financing for war and for military preparations is so gigantic today that private concerns do not, and could not, handle it except in a minor and auxiliary fashion. The states prefer to sell bonds in public at lower rates of interest than they would be compelled to pay to private concerns, thus also enlisting popular support and enthusiasm. At all events, everything goes to show that, in actual fact, the international banking houses are now internationalistic in their outlook.

Great manufacturing concerns, drawing upon world-wide sources of supply and selling in world-wide markets, take the same position. Freedom of trade and peace on the seas is their desire.

So for the labor organizations, especially in Europe. To mention but a single consideration, their members may have to depend on temporary migrations from country to country in search of work and they naturally want international protection in their wanderings.

On the other hand, manufacturing concerns enjoying a national monopoly of one sort or another, labor groups enjoying a similar fixed advantage over other groups, and banking houses confining their activities to national financial activities—in other words, industrial, financial and labor organizations which are not international in their foundations and outlook—are usually active in opposition to the development of internationalism and cosmopolitanism. They oppose free trade, free immigration, and the establishment of international bureaus to control and adjust national competitive activities. International coöperation appears to them to be either positively dangerous or, at least, foolish and unnecessary, depending upon whether their advantage is natural or depends upon national legis-

lation. All they demand in the international field is freedom to sell their goods abroad.

As a matter of fact, this small measure of freedom can hardly be obtained except by international reciprocity and agreement. And, finally, even industries enjoying nationalistic protection find it expensive to pay for such legislative protection and are led to a new manœuver which eventually lands them in the other camp. By the premises of the problem, there are competitive supplies of material and labor in foreign lands. The simplest remedy is, therefore, to set up a branch in that place and rise superior to the national state system. Indeed, such concerns not infrequently expand in this way and end by becoming powerful enough to dictate to the national governments. Private international organization becomes so complete and adequate as to be able to dispense with official help. Indeed, as will presently appear, it may turn out to be profitable for the concern, because of its peculiar interests, to oppose official internationalism, itself indulging in private internationalism all the while. This is due to the fact that the states have neglected to keep up with the development of world civilization and have forced private interests to launch into the international field independently.

One other form of private international activity deserves passing notice. From time to time since 1850 there have been held at one important city or another a number of international expositions or world fairs, beginning with the exhibition at the Crystal Palace in London in 1851 and continuing at the present time. Paris, Vienna, Philadelphia, Brussels, Melbourne, Chicago, and numerous other cities have been the scenes of these huge international symposiums.[5] In addition, hundreds and thousands of

[5] A partial table of such expositions follows:

1851 London	1878 Paris	1893 Chicago	1905 Liége
1855 Paris	1880 Melbourne	1900 Paris	1910 Brussels
1867 Paris	1888 Melbourne	1901 Buffalo	1915 San Francisco
1873 Vienna	1889 Paris	1904 St. Louis	1915 Seattle
1876 Philadelphia			

smaller fairs have been held, especially in the cities of Europe, where exhibits from abroad are invited, although the fair is organized as a national event. Such are the fairs frequently held at Leipzig and Birmingham. The international expositions proper enjoy a semi-official standing and the national governments send official exhibits and encourage private exhibitors to participate on behalf of the nation. The result is a composite picture of world civilization at the time.

As has been pointed out, the motives underlying the formation of these private international bodies are motives of business advantage and pecuniary benefit. The result is that, once established, such associations make every effort to secure advantages for themselves and to secure satisfaction for the interests which they embody. This means, in most cases, bringing pressure to bear on the official national governments with this in view. The resolutions of the International Congress of Chambers of Commerce are not communicated to the President of the United States purely as a compliment, but in the hope that they may commend themselves to him for support. The international business house does not hesitate to carry its case to the government of the state in which it is located or to the governments of all the states in which it has active interests.

This sort of activity is of great present importance. The foreign policies of national governments are profoundly influenced by the representations and pleadings of special international interests. The policy of the United States toward Turkey and Mexico since 1917 has been influenced to some degree by the international missionary movement, and by the international oil interests. The American attitude toward Russia since the same year has been influenced by international commercial concerns. Labor organizations have not been without their power in the international relations of the past few years.

The most spectacular case of this kind is that of the international armament firms. For a concern to maintain and operate factories for the manufacture of war materials in five or six nations at the same time and to continue to supply these materials to the different national governments while they are at war one with another, distributing the profits among its share-holders of one nationality or another, seems somewhat anomalous. For Englishmen to derive financial profit from shells sold to Germany in 1916 seems dubious. The accusation is raised that war is encouraged by such concerns because of the sales it brings. Englishmen and Germans so interested are accused of bringing on war between their countries for the excess profits obtainable thereby. War scares are, it is said, worked up because of the extra contracts which result therefrom.[6]

A great deal of this criticism is apparently sound, and the private manufacture of arms has been officially recognized as "open to grave objections" on this score.[7] The most sensational charges have repeatedly been made, seldom denied, and proved to the hilt as far as anything can be proved by circumstantial evidence. And during the World War the French Government practically admitted that it had determined its military policy partly by reference to the representations of certain German-French iron interests holding mineral properties in Lorraine.[8] There is no room for doubt that private international concerns manufacturing arms have impeded the development of international peace, order, and government, in the past. To say that international peace societies have exerted an opposite influence is not to say very much, for the people

[6] "Syndicates for War," in W.P.F., *Pamph. Ser.*, Vol. I, No. 2 (July, 1911), and Snowden, P., "Dreadnoughts and Dividends" in same, Vol. IV, No. 5 (August, 1914); Hudson, M. O., "Private Enterprise and War," in *New Republic*, XXVIII, No. 363 (16 November, 1921), Supp., 26.

[7] *Covenant of the League of Nations*, Art. VIII, Par. 5.

[8] Streit, *Where Iron is There is the Fatherland*, especially 43-45.

engaged in the former sort of activity possess ten times the power and influence possessed by the peace people. Only in a rare case, such as that where the International Federation of Trade Unions compelled the Hungarian Government to change its policy toward labor and the Hungarian Socialists in 1920, do we find labor and the reformers enjoying an influence comparable with that of their opponents.[9]

The activity of private international interests is going on continually. In all directions private international organizations were revived after the war, were carried forward, or were organized to meet some new need.

In several cases the private international activities here described have developed into something quite unlike that from which they started. In all such movements there is present an element which easily constitutes a distinct and in some ways a novel departure. Private international bodies do not have a great deal of patience with the national state system. They tolerate it or utilize it as best they may. They are more concerned with association on the basis of the interest to be served—science, art, religion, business, or what not—and they are inclined to ignore national lines. They are inclined, that is, to develop a distinctly cosmopolitan outlook, which is a decisive turn in events.

This development serves to bring out very clearly the essential relations between internationalism and cosmopolitanism to which we must now turn. On one hand private interests demand satisfaction irrespective of national lines, yet they are not averse to obtaining satisfaction through the mechanism of the national governments if this is possible, and they often call upon the latter for recognition, approval, and support, thereby manifesting a willingness to become part of the national and international system. But if satisfaction is denied, the former position is likely

[9] *Nation* (New York), 3 July, 1920, Supp., p. 28; *New Republic*, XXIII, 136 (30 June, 1920).

to be resumed and the existing national states and governments will probably be ignored and even defied. Cosmopolitanism as a condition is, in point of fact, at once a support and an encouragement to internationalism on one side and a threat and a menace on the other side. So long as the national governments strive by international coöperation to satisfy the legitimate interests involved, the development of world trade, world science—world civilization, in short—can only stimulate and strengthen the system of national states and the fabric of international relations among them. Let the national governments manifest an obstinate attachment to extreme nationalism, however, and attempt to ignore the facts, arrest the march of social and political evolution, and shut their eyes to the realities of world life today, and the world's life will simply pass by on its own course.

Most of the activity of the private international organizations just described touches, as has been seen, only remotely the official life of the states; the greater part of private internationalism exists and functions with scant reference to the system of national states. National lines are at times recognized for the sake of mechanical convenience, at times they are simply ignored as irrelevant to the business in hand, and at times they are deliberately set aside as antiquated obstacles to the proper and natural growth of world civilization. In other words, there has developed since the early part of the last century, a cosmopolitanism which bids fair to exert a profound influence upon the international relations of the future.[10]

Cosmopolitanism has been defined as the grouping together of people in the world by reference to common interests apart from nationality. It is spiritual unity based on one or more of the elements which, taken together, make up nationality; it is a supernationality. The individuals join together for coöperative action in associations which

[10] On modern cosmopolitanism see literature cited, below, Appendix B, § 19.

do not greatly take into account the otherwise distinct nations. Such cosmopolitanism is, of course, quite distinct from internationalism. If completely developed, it would supersede internationalism entirely.

Cosmopolitanism may develop within one nation as well as among or above several nations. Ordinarily cosmopolitanism appears as a unification of individuals legally belonging to several distinct states but having interests in common irrespective of their diverse citizenship. In certain cases, however, as where a state diverges from the standard type of national state and embraces within its confines several nationalities, cosmopolitanism may be infra-national, or infra-state. This is notably true in all imperial states. Ancient Rome and the Holy Roman Empire of the Middle Ages, to mention only two illustrations, produced a cosmopolitanism within their bosoms more pronounced and self-conscious than anything of the kind which the world was to know for centuries afterwards. In that cosmopolitanism was found a measure of justification for the imperial domination. Under the sway of the Emperor unity of culture and feeling was achieved and the conflicts of national spirit were quieted. Unfortunately for the picture, however, this imperial cosmopolitanism was not entirely natural and spontaneous, but was imposed by authority from above; and such is commonly the sanction of imperial cosmopolitanism. To be genuine, cosmopolitanism must come by a natural disappearance of nationalism, not by its destruction at the hands of imperial masters.

The cosmopolitanism of our day differs somewhat, as has been said, in its bases and foundations, from that of earlier periods, and the prospects of its continuation and development are affected by that difference. Modern cosmopolitanism is built upon more solid foundations. Some of the older elements remain, but, in general, the world civilization of today is unlike that of Antiquity or the Middle Ages, and equally unlike that of eighteenth-century Europe.

To be sure, the "unity of Christendom" still means something, at least in continental Europe and Latin America. In Great Britain and North America it is felt to a less degree, as the religious temper becomes milder and secular ideals replace the old feelings of piety and devotion. A similar phenomenon—a religious cosmopolitanism—exists in the Mohammedan world and in Buddhist Asia. But the distinct existence of these three great groups, and of the great subdivisions in the Christian world—Orthodox, Roman, and Protestant—lowers the importance of this effect. Religion is hardly strong enough, and certainly not sufficiently unified, in this day and age to produce a world society. Indeed, such cosmopolitanism as exists is somewhat cynical and skeptical of the religion which is too often tribal and nationalistic in its origin and employment.

Of legal unity Europe still knows something, at all events continental Europe west of Budapest. The Civil Law,—the law of Rome in modern guise,—obtains in Madrid and Paris alike, in Berlin and in Bern, in Brussels and in Rome. Similarly, the Civil Law governs private rights and obligations in all of Latin America, in Louisiana, in Quebec. This, however, is only part of the story. As in the field of religion, so here it is necessary to note that Great Britain and North America are under the English Common Law, that Eastern Europe lives under Slavic law, and that many parts of Asia and Africa possess many indigenous legal systems of their own. Added to this is the fact that even where supposedly common legal systems exist the practice of constituent and statutory law-making has so worked upon and made over the historically received private law as to produce endless variations among the nations. And it is curious to notice that it is in connection with this particular legislative activity, which has largely destroyed the inherited cosmopolitanism based on the Civil Law, that a new legal cosmopolitanism may be expected as a result of deliberate imitation and concurrent legislative

action. This leads us forward to the true bases of modern cosmopolitanism.

The principal element in modern cosmopolitanism, as it has developed since 1850, is a common economic and scientific culture.

The facts are familiar to every observer. With the introduction of steam and electricity, travel and the transportation of goods have become enormously easier, cheaper, and more rapid. The communication of information by post, telegraph, and telephone and the shipping of printed matter has been expanded and speeded up to a point unimagined a half-century ago. The commercial market of even the small manufacturer has become a world-market. Raw materials and labor come from places where they are plentiful to lands where exists the capital to put them to use; or capital, increasingly mobile in the hands of the international banking organizations, is transmitted in vast amounts to places where the materials and labor already exist. The manufactured product is carried by a world transportation system to all corners of the globe, so standardized and labeled that a merchant in Calcutta whose credit is attested by the credit agencies, and who probably maintains relations with an American house in New York, may buy automobiles in Detroit by post or telegraph and rely on the results of his action with some confidence. This means a new world, as compared with the world of the twelfth century, or even the world of the seventeenth.

The basic causes for this commercial revolution, comparable only with the commercial revolution of the thirteenth, fourteenth, and fifteenth centuries, are scientific inventions, such as steam locomotion on sea and land, and the electric telegraph. The railroad, the steamship, and the telegraph have reorganized the world.

With these must be grouped several other devices, of less importance by themselves, but influential as subsidi-

aries of the major inventions of Watt and Edison. Such are the decimal metric system, the standardization of time on the basis of Greenwich, England,—a result accomplished by formal international treaty, it may be noted,—the perfection of a system of maritime signals, and so on. The Gregorian calendar, long used generally in Europe and America, has finally been adopted in Russia and is establishing itself in Asia. The English, German, Spanish, and French languages, especially English and Spanish, are making great headway in all parts of the world as the commonly accepted languages of commerce. These scientific devices, and numerous others, all contribute to the support of a world economy possible only with free and complete communication and intercourse.

The results are manifest in many quarters, and are recognized by the most careful and competent authorities. The private scientific and economic associations just reviewed are based upon this foundation. As a result of these forces many private organizations and corporations are being recognized in public international law and treaty agreements and become units in the official international system. These acts of recognition in their turn help to intensify modern cosmopolitanism; the recognition of such world unity as exists leads to steps which increase that unity, and thus the whole process is accelerated.

The cosmopolitanism of our day is always making its appearance at unexpected places. In all directions this new cosmopolitanism of travel, communication, industry, commerce, and finance is developing and establishing a control over the international relations of the world. It is bound to go on increasing, as the means of communication become further perfected and the interchange of ideas and the generalization of world culture are intensified. It provides a firm basis for international coöperation. It also constitutes a threat that, failing international coöperation, the

nations will be overrun against their will by a unified world civilization. Eventually, the cosmopolitanist is heard to say, there will no longer be any "nations," even as there were none in Medieval Europe. If this is chimerical or undesirable, the alternative is international coöperation,—which itself, however, helps to develop cosmopolitanism!

CHAPTER IV

INTERNATIONAL POLITICS

AFTER the activities of international intercourse, which have already been cited, and the activities flowing therefrom,[1] the simplest form of relationship which arises among the nations is that which may be designated by the term international politics.[2] Indeed, seeing that international intercourse is carried on chiefly by private individuals and groups of individuals, and gives rise merely to private international association and a cosmopolitan culture among individuals, it may be said that international politics constitutes the very simplest form of official international relationship. At the same time it should be remembered that international political relations do originate very largely from the international intercourse among the peoples of the various countries.

International politics is a form of relationship and activity which consists of the interactions, the clashes and coincidence, among the foreign policies of the nations, and the activities among the nations to which these interactions lead. Every nation of important rank is naturally led to formulate a program of action toward other nations; this program may be called the national program of foreign policy; and international politics consists of interacting foreign policies. It is somewhat amorphous and intangible and very complicated in content, but of utmost importance for the student of international organization, besides being of great interest in itself.

[1] Above, Chap. III, beginning.

[2] For references see, below, Appendix B, § 4.

Two other concepts or phrases may usefully be distinguished here from our concept of international politics.

Thus we may profitably notice the more general idea of "international relations" in order to set it aside as too broad to be of service in a study of international organization. The "relations" among the nations are of all types, economic, political, and formally governmental. The economic and cultural relations of the nations we have noted under the title of international intercourse; their formal inter-governmental relations we shall study under the specific title of international organization or organized international coöperation. The political relations among the nations, visualized as conflicts and coincidence in their national foreign policies, are what we study in this chapter.

Similarly we will set aside the concept of "world politics." There is in fact little or no unity in the world of nations in matters of policy. The phrase might be employed to refer in the broadest possible way to all sorts of political matters in the world at large, such as questions of policy, comparative government and law, and inter-governmental coöperation, but as such it is entirely too indefinite to be of service. And although there are a few policies or principles of action, such as the principles of the balance of power and the open door in colonial territories, which may seem to be of general world significance, the fact is that most principles of political action in the world are items in the foreign policy programs of individual nations, including the two just mentioned. The community of nations does not yet possess many principles of political action except such as have been incorporated into formal international law, which will be noted in due season. There are few accepted concepts of international ethics. The policies of the world of nations are national policies, and the politics of the world international politics.

In order to obtain an adequate understanding of international politics we should begin by a study of the founda-

tions of the foreign policy programs of the individual nations and pass thence to a survey of those programs themselves.[3] In the circumstances of the life of each nation—circumstances such as were cited in a preceding chapter [4]—are to be found the sources and foundations of the programs of action toward other nations which each nation works out for itself. The physical and spiritual conditions of national life—land and resources, climate, people, culture and traditions—determine its foreign policies, with individual leaders and parties playing only a ministerial rôle in bringing these forces to articulate expression. And those policies may be studied as embodiments of those factors.

It is obviously impossible to attempt to give here any such survey. The student who desires to understand American foreign policy [5] or Italian foreign policy, or the policy program of any country, must undertake an examination of the circumstances of national life in and for each country, and an examination of the policy program of each country by itself. We shall devote the remainder of this chapter to a study of the way in which the policies of various nations may come into conflict or coincide, and of certain questions and geographical areas on the earth with respect to which such clashes and coincidences are most likely to occur.

Thus the policies of maritime nations are likely to clash with those of continental powers.[6] A nation which possesses an extensive coast line and a large mercantile marine, such as Great Britain, will desire to maintain a large navy. It will desire to see the rules of international law developed in such a way as to make defense of its coasts and utilization of the waters off its coasts sure for its own people.

[3] See the elementary survey in Potter and West, Chap. IV.

[4] Above, Chap. II.

[5] See article referred to in note 1 to Chap. I, above, and Potter and West, Chaps. IV and XV.

[6] See Potter, *Freedom of the Seas*, Chaps. X-XI.

It will desire to see the rules governing maritime navigation developed so as to facilitate that activity. It will desire to see the rules of maritime warfare developed in such a way as to give full scope to its naval power in time of war.

The continental state, such as France, with its extensive land frontiers and large army, will desire to see the powers of the great naval state curtailed, the right of belligerents on land extended, and the rules regarding international relations on land formulated in such a way as to protect its interests in that direction. No more fundamental cleavage in policy can be found among the nations than this cleavage between maritime and continental powers.

It is obvious that certain nations, such as the United States, being both great maritime states and great continental powers as well, must often be placed in an ambiguous position both as to their sympathies and antipathies toward other nations and as to the contents of their own policy programs. Continental states tend to be isolationist in policy, maritime states internationalist; from 1774 to the present time the United States has vacillated between these two points of view. In the presence of national weakness such a position is very dangerous; combined with national strength it is a source of maximum advantage.

Other such fundamental clashes of policy might be cited in great numbers. The overpopulated state, such as Italy, will have one policy regarding emigration and immigration; the underpopulated state, such as Brazil, another; at times two thickly populated states, such as Italy and France, will find that their policies of encouraging emigration from their own territories and immigration into the territories of other nations will clash because of their very similarity. Likewise two underpopulated states, such as Canada and Argentina, will be found rivaling one another to secure immigrants from other nations, who may, in turn, be opposed to permitting emigration to either. The situation

among the nations on this particular point is just now exceedingly acute.

Space does not permit us to pass in review other such conflicts of policy. On the privileges of aliens, the powers of diplomatic and consular agents, freedom of navigation and trade, customs tariffs, citizenship or nationality, and a hundred other topics, the nations clash so sharply and deeply in their policies that it often seems doubtful whether any unified system of international law and organization in the world is possible.

We must notice, however, the fact that certain nations are naturally thrown together in matters of policy, and this not merely because they are both or all placed in the same circumstances of national life. All immigrant receiving nations tend to have similar policies, it is obvious; even so, as has just been seen, such policies may clash; similarly, nations placed in most diverse circumstances may find themselves thrown into one another's arms for special reasons. Thus the agricultural nation and the industrial nation stand in a complementary relationship, one toward another, as do the United States and Cuba. Close relations of give and take may readily develop between such countries. The result may be a certain degree of hostility toward other nations which seek privileges in the ports or the markets of one or the other. When, in addition, as is frequently the case, the partners in such an alignment are unequal in power, and the dominant partner seeks to perpetuate the arrangement for its own profit, the resultant effect on general international harmony may be serious.

It is not to be imagined, of course, that national policies remain forever fixed. Nothing is more familiar to the persistent observer of international politics than to discover a nation demanding today what it repudiated yesterday, and vice versa. Nor is this to be attributed always to vacillations of purpose within the nation. The rise and fall of parties

may, indeed, produce such results, and, quite apart from any artificial dogmas anent the desirability of continuity in foreign policy, nothing is much more disastrous for the smooth running of international political relations than arbitrary alterations in national foreign policy which are made as incidents in domestic party warfare. But the changes which take place in national foreign policies may be traced for the most part to changes in the circumstances in the national life or in the international situation, the fundamental principle of national foreign policy remaining unchanged. Indeed, it may be discovered with little effort that in most of the problems which arise in its foreign affairs a nation is so bound by the fundamental principle of protecting and promoting the interests of its people in accordance with circumstances as they exist in the world, that not only are its principles predetermined for it in the beginning, but also the changes which must be made in these principles are determined for it as well.

A second basis of reference by which international politics might be studied is to be found in the individual great topics of international relations, such as raw material distribution, or disarmament.

The raw materials of industry and the supplies of food stuffs available for human consumption are distributed very unevenly among the nations. Some have supplies of one sort of raw materials or food stuffs, but not of another; some have materials but no food; others, food but no materials. The result is great variation among national policies on different phases of the problem of the distribution of raw materials and food.

Thus a nation with large mineral resources but no food will desire to control closely the exploitation and exportation of its minerals, and will attempt to secure full and free importation of food supplies. The nation with few raw materials will attempt to secure supplies of such materials, and perhaps, especially if lacking in food stuffs also, be

disposed to move for international regulation of the distribution of such supplies, a step to which the nation which has plentiful supplies will be indifferent and even hostile if it desires to use its supplies in order to bargain for compensating benefits. The next half century is sure to witness many struggles on this matter, and many sharply conflicting points of view among the nations have already been revealed.

On no subject, probably, are clashes of national policy so sharp and bitter as on the problem of armaments. Formerly each nation was left to decide upon this question without international discussion, but in the past fifty years the topic has become a fruitful theme of international debate and negotiation.

The conflicting views of the maritime and the continental nations have already been mentioned. The armament policies of nations located among many other nations in the heart of Europe, such as France, differ from those of nations located at some distance from that center of international conflicts, such as the Latin American countries. The policy of a nation with extensive trade connections and colonial holdings, such as Great Britain, differs from that of a nation whose whole life is or may be lived within its own boundaries, such as Russia. The nation which is still struggling to build up its economic life will economize on armaments; the older, wealthier nation need not do so. Finally, the very fact that other, greater, neighboring nations, which may be called on for aid in time of need, or whose larger armaments make any attempt to rival them impossible, exist, may lead smaller nations, such as Denmark, to abandon any serious attempt at heavy armament in just those circumstances wherein it would seem most natural and right.

The results are seen when any attempt is made to secure agreement among the nations for disarmament, however slight. Special interests are alleged in justification of exist-

ing armaments or as grounds for still greater armaments than those held at the time. Aspects of the international political situation are revealed, the existence of which would never have been suspected unless brought to light in this way. It is probably safe to say that on this subject even more than on migration or raw materials are the clashes of national policy most acute.

It should be added that at certain points clashes of policy occur which seem almost wholly historical and adventitious in origin. Certain nations come to support certain policies and come to regard those policies as having a traditional sanctity just because they have been supported by that nation for a long stretch of time, as is the case with the French policy of friendship for Turkey. The fundamental material bases of those policies may usually be discovered by a thorough study of the situation. But the circumstances may have altered while the policy is retained, unreasonable as that may be. Or the policy may come to be regarded as having a certain moral value in itself, irrespective of the considerations which produced it. It is when we encounter clashes among policies of this sort that we seem to be in contact with international politics in its most characteristic form. Realistic views of the situation are replaced by considerations of tradition, of national dignity and prestige, of international rivalry pure and simple. We then find the conflict among the nations most unreasoning and uncompromising.

Finally, we should notice, as might be expected, the influence of geography upon national policy being what it is, that certain areas on the earth's surface are particularly important from the point of view of international rivalry. A study of certain such regions will serve to complete our introduction to the field of international politics.

The whole continent of Africa constituted such a theater of international politics from 1870 to the outbreak of war in 1914, and does still to a certain extent. Spain was push-

ing into the continent from the Northwest. France was pushing down from the North into the whole Sahara region. She made contact with the British in Egypt and at the Suez. Britain and France and Belgium and Portugal were all struggling for power in Central Africa. Later Italy began to assert herself in the North, between France and Britain, and in the Northeast, while Germany interjected herself into the scene in the Southwest and East Central region. The whole continent was the battle-ground of European national policies of the simplest type, namely, policies of territorial aggrandizement. While the situation has been stabilized to a certain extent today, there are still scores of points on the map of Africa at which policies and activities conceived in London, Paris, Rome, and elsewhere, come into conflict.

A similar situation exists and had long existed in the Far East, from Sakhalin Island to Hongkong. Russia had thrust an arm across Siberia to Vladivostok, Japan was laying hands upon Sakhalin, Corea, Manchuria, and Mongolia. China was struggling to preserve her territorial and political integrity, and Western European powers—Great Britain, France, and others—were establishing scattered but extensive holdings along the coast of that unhappy country from Port Arthur to Hongkong. Again the situation was produced not so much by the clash of policies differing in aim and character as by the rivalry among the nations for opportunity to apply the same policy, namely the policy of economic exploitation, political domination, and territorial aggrandizement. Perhaps for that very reason the conflict was, as it still is to a large degree, all the more serious; policies of different character may conceivably be reconciled and adjusted, one to another, but the same policy, when it is a policy which is exclusive and monopolistic in character, can hardly be applied by two nations at the same time and place.

It is quite true that in both Africa and the Far East a

certain amelioration of the situation of conflict among the nations has been achieved. Upon the more general aspects of this development more will be said shortly. At present it will suffice to note that by such a process certain areas, once highly contentious in character, may be given a more normal tone. Just as certain items in the national foreign policy program may wax and wane in importance, and certain topics in international relations constitute matters of bitter contention at one time but not at another, so areas of conflict on the earth's surface may become more or less important in this respect as decades and centuries pass. The valleys of the Mississippi and the St. Lawrence provide illustrations of areas once of the utmost importance in international politics, now of little or no importance at all.

We have so far dealt with areas very wide in extent, and areas in which several nations come into conflict because of their various avenues of approach. Such areas resemble in nature the general world theater of international conflict, through the whole length and breadth of which this sort of thing is going on.

Of another character are the relatively isolated spots where two nations maintain some bitter conflict over a highly specific point. Alsace and Lorraine provided one such case until very recently, although here, as is true in not a few of the cases such as we are now discussing, the highly specific conflict made part of a larger area of conflict as a whole. The Suez Canal, the Tyrolean passes, Gibraltar, the Rio Grande boundary, and the mouth of the La Plata River provide better illustrations of this type of sore spot in political geography. Great Britain holds the Suez in order to secure her route to India, and she holds Gibraltar for similar reasons, in spite of opposition which has been offered at one time or another by Turkey, France, Germany, and Spain. Italy and Austria have clashed for decades at the Brenner pass; indeed for centuries this passage-way from Germanic Europe into the Italian penin-

sula has been a bone of contention in the international politics of Central Europe. And if the Rio Grande and the La Plata have not provided the world with scenes and events quite as dramatic as have the danger spots of the old world they have been none the less crucial in American international politics. It seems that it is such points as these, rather than the fields on which military engagements have been fought, that deserve the title of the international battlegrounds of the world.

More important still are certain areas of land or sea which are not as broad and general as those first discussed in this connection, but which are nevertheless broad enough to include more points of international friction than a single pass or waterway. We may notice two such areas on land and two water areas, namely, the Danube valley and the Rhineland, and the Western Mediterranean and the Caribbean. Of each something may be said briefly.

The Danube is a great artery of communication leading out from Central Europe to the Black Sea and giving access thence to the Mediterranean. Its fertile plains provide homelands for several distinct peoples: Czecks and Slovaks, Austrian Germans, Hungarians, Roumanians, Bulgarians, and Southern Slavs. Its mountain gateways and defensive boundary stretches are points of strategic advantage of great importance. For centuries Romans and barbarians, Hapsburg Germans and Hungarians and Slavs, have fought over possession of different sections of its valley floor. Today, with the disappearance of the Austro-Hungarian Empire, it is the scene of a complex web of international political relationships which may lead to all sorts of unforeseen and important results. It is one of the great theaters of international politics in the modern world.

The Rhineland is an even more crucial area. Germany and France have faced one another across this historic stream since 843 A.D. when the empire of Charlemagne was divided. Switzerland relies upon the river to a certain

extent for an outlet for her products to the sea. And Belgium and The Netherlands lie on the lower reaches of the main stream and the Meuse, its tributary. In one sense the Rhineland is a great unified valley, and the peoples on its banks constitute a natural human group in this part of the world. In history, however, especially in the history of international political relations, the valley has a tragic significance as the scene of much warfare, constant rivalry, and permanent international tension. A thorough understanding of the various phases of German, French, and even British contacts along this line from Basel to the sea would constitute a liberal education in European international politics.

Of the Western Mediterranean too much could hardly be said with a view to explaining its significance in international politics. From the days of Rome and Carthage to the present it has constituted without a doubt the one greatest maritime theater of international rivalry in the world of nations.

It is bordered by territories held by three great powers, if we include Gibraltar and Malta, held by Great Britain, and one second class power. The British line of communications cuts through from Gibraltar to Malta and thence to Suez. It is crossed by the French line of communications from Marseilles to Algiers, not to mention the French holding of Corsica and her communications through Gibraltar to the Atlantic and to the Far East (French Indo-China) through Suez. Italy holds Sardinia and Sicily and sails forth from Genoa and Naples to the Atlantic and to her holdings in Northern Africa. It has not been the scene of a great deal of naval warfare in modern times, but it is the scene of a nexus of international interests and policies of primary importance, great strength, and manifold ramifications.

With the significance of the Caribbean area all American students are somewhat familiar. That body of water touches

the shores of fifteen independent nations or their dependencies, including colonies of Great Britain, France, and The Netherlands (Curaçoa and other islands). It constitutes the approach to the Atlantic end of the Panama Canal. It provides the relatively narrow outlet from the Gulf of Mexico on the South. It is easily the most important theater of international political relations in the Western hemisphere, maritime or territorial. And it is bound to become more, rather than less, important as time goes on and the eleven Latin American states on its shores become more mature and powerful.

It would be possible to make similar introductory studies of various other areas on the earth's surface—the Baltic, the Australasian region, Tacna-Arica—but enough has probably been said to emphasize the importance of this basis of reference in international politics.

In conclusion we may inquire concerning the bearing which such forces have not only upon international law but also upon international organization, and the probable future of international politics in general.

It must be clear that every nation which boasts a foreign policy program at all—and it must be equally clear that only the more secure and powerful nations can support such programs—will attempt to carry out its policies in its diplomatic activities and its treaty agreements. It will attempt to influence the content of international law so that the rules of the law facilitate the satisfaction of its policies, as has already been indicated. And if this is not the easiest or simplest method of giving effect to foreign policy, as it is not, it is certainly, where successful, the most decisive or permanent in results. Foreign policies of the United States, many of them, have a solidity today, as a result of having been written into general international law, which they could have obtained in no other way.

Similarly, a nation's foreign policy will express itself in that nation's attitude toward proposals for organized

international coöperation. That policy may involve opposition to the expansion of such coöperation, as did the policy of Germany prior to 1914 and as has the policy of the United States since 1920. Or it may mean support for such efforts, as has German policy since 1920 and as American policy did before 1920. It may involve support for one type of such coöperation and hostility toward another—the United States has always preferred judicial to political forms of international organization. In any case international organization, like international law, feels the pressures of various sorts and degrees of intensity which emanate from the foreign policy programs of the nations.

In proportion as such policies become embodied in international law and organization they cease to be merely national foreign policies, or national foreign policies at all. They are displaced by forms of international relationships at once broader than the individual nation, more general in their significance, and more stable. The clash of international politics is ameliorated. International law and international administration replace the give and take of the diplomacy of policy.

This is happening all over the world today. More and more matters of international rivalry are being given treatment in some more mature and formal manner. Institutions and forms of procedure in international coöperation are engulfing one after another of the great topics of international politics and reducing the importance of one after another area of international conflict. One item after another in the foreign policy programs of various nations is being transferred to the agenda of an international conference or the list of functions of an international commission. International politics tend to become obsolete, as international law and organized international coöperation become broader, deeper, and more effective.

CHAPTER V

INTERNATIONAL LAW

SLIGHTLY higher in the scale of official international relations, and ultimately attaining a position among the various forms of organized international coöperation itself, is international law. International law may be defined as a system of general principles and detailed rules which regulates the rights and obligations of the nations one toward another. We shall examine its essential nature, its historical origin, and its development as a science, in the pages following.

The idea of law in the abstract is an idea of a fixed relationship between or among certain entities, such as one relationship between sunshine and water, which is that sunshine causes water to evaporate, or one relationship between a government and its subjects, which is that a government controls its subjects. If the relationship is known the law is known, if the relationship is stated or written out in human language the law is stated or written.

Obviously law may be merely a description of causes and phenomena, or scientific law, as in the two examples given above. In this case the law may relate to human entities—persons or groups of persons—or it may relate to non-human entities such as sun and water. In both cases the law may be merely natural law, that is, the law of the behavior of natural causes and phenomena, human or non-human. There is much interest today in, and much need for, a study of human behavior, including international behavior, from this viewpoint.

Law relating to human behavior may, however, take on another form. It may consist of statements of relationships

among persons or groups of persons which those persons admit to be in some way binding upon themselves, in the sense that if they do not conform to the law, in so far as they have the power to choose their line of action, other persons are admitted to possess a "right" to object. Such law, which we may call juristic law in order to distinguish it from scientific law, must correspond with scientific law in order to be effective. No attempt to compel people to do what they would not naturally do can be very effective, although this involves problems too complex to be treated here. But even so the distinction between scientific law and juristic law is of paramount importance.[1]

International law deals with the relationships of states one toward another, and that not merely in a scientific or descriptive sense, but in the sense of law regarded as binding by the nations. It is related to the scientific law of international relations as all juristic law is based upon scientific law, but it is not merely scientific law any more than it is merely a statement of what is desirable as a matter of courtesy among the nations or what is ethically proper; of all this we shall take further notice later.

International law arises out of international politics and the actions of nations one toward another which result from the interaction of their policies. It is produced indirectly by those activities of international intercourse noticed earlier, and the essential nature of international intercourse has much to do with the content of international law. But it is from the expressions of the influences of international intercourse in international political activities that international law directly takes its rise. It comes into existence automatically, or without deliberate planning, although later it is revised and remolded by artistic effort.

[1] Scientific international law, or international law as a scientific statement of international relations, must not be confused with the science of juristic international law (knowledge and statement of juristic international law) for which see below, p. 76.

The influence operating automatically or unconsciously to deduce international law from international practice flows from the instinctive desire of every nation for reciprocity and uniformity and equality in treatment by other nations, at least as minimum requirements. Each nation desires treatment by other nations in accordance with its needs, primarily; but this by itself would not necessarily produce law, because the needs of a nation might fluctuate from time to time, thereby preventing the development of any constant or fixed relationships. Moreover, it may not always be possible to secure treatment according to one's needs. But what will be demanded as a minimum will be treatment as advantageous as that which is conceded to the nation with which one is dealing, either in specific transactions or in general international relations, and treatment as beneficial as that secured in the last similar instance, or treatment at least as beneficial as that accorded to others in similar circumstances. Thus the nations impose the principles of reciprocity, of uniformity, and equality of treatment, and succeed in building international law on the basis of practice. It is often said that custom and usage—or uniform practice—constitute the basis of common law; what produces uniform practice is the insistent demand for reciprocity, uniformity and equality. So far as the concept of and demand for justice denotes anything definite it is believed to be treatment of this threefold quality.

These processes, described thus in the abstract, may seem somewhat unreal. In actual life they have operated for centuries, in all fields of international contact. They have produced an extensive body of international law which is still constantly being expanded by the same processes.

As is quite natural, the law is soon reduced to writing, or given formal statement. This occurs as part of the process of seeking equality and uniformity, as part of the process of the creation of the law. It occurs as part of the

process of revising the law by deliberate arrangement. And it occurs as a result of the curiosity of students of international relations and international law who desire to discover what the law is and to give it statement, for their own intellectual satisfaction, and in order to impart a knowledge of it to other students in the process of teaching international law, as well as in order to provide the nations themselves with statements of their rights and duties for use in practical international relations. To the origin and development of international law as stated, or to written international law, we now turn.

The process by which modern written international law and the science of juristic international law has been formed is somewhat curious. It reminds one of the man who was made a physician in spite of himself. International law as now practised by the states of the world is largely the product of private scholarship, taken over later by the states more or less in spite of their natural instincts. Unlike the man in the story, however, the states have come to see to some extent the real value of what they have been persuaded to accept.

When the modern state-system made its appearance in Europe there was great interest among scholars in the legal problems it presented. There was on foot at the time a notable revival in the study of law, particularly the law of Rome, as a result of the rediscovery of certain texts of that law and of the increased interest in classical antiquity characteristic of the period of the Renaissance. There was current, moreover, a spirit of inquiry and a taste for philosophizing and theorizing which, in combination with some of the better elements of the thought of the Medieval period, served well for the new task. Private jurists and philosophers proceeded to construct a legal system to regulate the new independent states in their relations one with another.

In doing this the early writers drew upon two sources

of supply, namely, what was then known as the law of nature, or their own ideas of human or national and international needs and justice on one side, and, on the other, certain more concrete materials, old or new, of a legal and governmental character.

Among the older bodies of law now called on for new service was the law of Rome, reviewed and revised for use in the field of international relations—where it could be applied in some cases directly and in some cases only by a very liberal re-interpretation. Along with the law of classic Rome went the more recent civil and canon law developed in Medieval Europe on a basis of the classical law. Secular lawyers and ecclesiastical jurists alike contributed their work in the new field.

In the same group are to be placed the law regulating commercial activities in the period of the Renaissance; feudal law; and English law and equity. From the commercial codes of the period of revival came much law relating to the rights of merchants and persons dealing with them on land, and many matters now covered in the field of admiralty or maritime law. From English law and equity came little at first; in later decades the spirit of legalism on one side and the spirit of practical justice on the other, as they have developed in English jurisprudence in contrast to either unstable philosophizing or to rigid doctrinalism, have influenced international law perceptibly. Most important of all, as far as materials from older legal systems are concerned, the concept of territorial sovereignty and territorial jurisdiction was drawn from Medieval feudal law. Under the distinct state-system of Greek and early Roman antiquity territorial sovereignty was not an unfamiliar concept. But with the confusion of the centuries from the establishment of cosmopolitan Rome to the end of the era of the invasions and the wanderings of the peoples the concept had been lost. Now it was resurrected as a prime element in the legal theory of the modern

state. It had been developed anew, all over again, as it were, by the feudal states, and was ready to be taken up where Rome had weakened it and the invasions destroyed it. Political society in Europe had dissolved and then reformed again about new politico-territorial units; the feudal system, curiously enough, thus contributed to modern public law one of its two or three principal ideas.

The materials employed by the earlier writers on international law were not entirely of a legal character. There was a growing body of state practice which could be utilized to illustrate and support the principles derived from the philosophy of nature and the law of Rome and, more clearly still, the Medieval law of maritime commerce and war. The system of international politics was expanding rapidly and was serviceable not only in illustration and elaboration of rules and principles derived from other sources but as a source of new principles devised upon international practice as a basis. So for the rapidly developing practice of international diplomacy to which we shall soon turn. This was true also for the frequent interstate wars being waged with a new spirit of formalism and regularity of procedure by the new professional standing armies in place of the old informal levies. In addition to the more abstract theoretical and legal materials, the scholars of the period of the origins of international law were thus in a position to draw upon current interstate practice for additional data. Modern international law, therefore, runs back to the law of nature or the sense of international justice, on one side, and to various legal and governmental foundations, on the other, such as civil and canon law, feudal law, the history of international relations, and the conduct of war.

To review these elements in a series is of less importance, however, than to examine their relationship one to another within the field where they operate. These being the historical sources from which the materials embodied in international law have been drawn, what are the philo-

sophical foundations of that law which make possible the employment of these materials?

The ultimate foundation of international law is the sense of justice. However imperfect the vision which men have gained of what constitutes justice in general or justice among the nations in particular, and however imperfect the statements given to that principle as it is visualized, and the applications made of the rules as stated, no other conclusion is possible than that the nations intend the law to give every state its due. To intend otherwise were to undertake what in the long run would be impossible, and to undertake the unnatural. Over no considerable period of time is it possible for a state to secure a greater share of this world's benefits than that to which it is entitled on a basis of its natural capacities as exercised in a reciprocal exchange of values with its fellows, in specific bargains or general treatment, and on the basis of uniformity and equality of treatment in similar circumstances.

On the other side of the problem we have the facts of state practice, constituting the imperfect applications, the imperfect statements, and the imperfect visions of justice already mentioned. In actual life and in the actual operations of states it is state practice which seems to be decisive. What rights are accorded to a state depend definitely upon the rights recognized by fellow states in actual dealings one with another.

The divergence which seems to be possible between justice and practice as sources of the authority of international law is to be bridged only by means of the doctrine of interstate consent. Justice being an ideal of right treatment and state practice being simply the operations of actual life, the basis of the law of nations would be a straddle, a hypothetical bridge, if no connection could be observed between the principles of justice and the rules of practice. In point of fact, students of international relations may be perfectly clear on this point: if justice is to

be the source of international law it must be formulated by the members of the international community, and where these members do not formulate it expressly they do give expression to it in practice and there it may be discovered. The express provisions of international agreements declaring the law of nations and the incidents of international practice embody what the states of the world agree constitutes justice in their relations one with another. Not that there are three sources of authority—justice, consent, and practice—but that these three are one. As a typical preamble to an international agreement runs: "considering that justice demands a change in the boundary between the two states, the High Contracting Parties have agreed to the following articles."

This synthesis of justice and practice in the doctrine of consent makes the historical dissension between the philosophical school and the positivist school of international jurists unreal and uninteresting. There have been those who have considered that the law of nations ought to rest entirely upon justice and reason and have thereupon set forth their ideas as to what justice and reason demanded in international relations. There have been those who have held that the law of nations could only be found in positive state practice and that considerations of abstract justice and reason were irrelevant. The former have forgotten that it is not their law on international relations which is sought, but the law of the nations upon their own relations one with another. The latter have forgotten that the nations believe that they are acting upon the dictates of justice in that very state practice which seems to be so purely pragmatic and cynical in the result. Where practice on a given point appears uniform for some time among many states—the only situation which would, in sheer logic, permit generalization as to the rule of law involved —we may, moreover, be sure that the states have been accurate in their judgment.

The desirable synthesis of the views of the positivists and those of the philosophers has been made only in recent times, and as yet very imperfectly. In earlier days individual writers, such as Pufendorf, went to extremes in the direction of philosophical speculation, while others, such as Moser, repudiated too completely all considerations of justice. Certain writers, not necessarily later in time than either or both of these, who have been called "the eclectics," tried to espouse both views without repudiating either. The attempt was not successful, for two views which are regarded as antagonistic cannot be retained simultaneously. The two views must be reconciled and harmonized, not tolerated or propounded side by side. Where there is an express declaration of law by the nations the difficulty vanishes: the rule embodies justice as agreed upon in law by the signatories. Where there is an established general practice the same thing is true; positivists and philosophers must agree that such is the law, as the states evidently think that it should be. Where there is neither express declaration nor established practice the individual jurist is free to use his own judgment, but his conclusion must be based on the same elements, so far as they are present in the premises, and the only valid conclusions which he may draw are that the law is unsettled, that there is no (settled) law, that it is tending to become this or that, or that it ethically ought to be this or that.

Such a position was that of Grotius, the great Dutch jurist who is commonly regarded as the father of modern international law. Grotius was not the earliest writer on the modern law of nations, nor yet the last; nor are his writings the source of all subsequent international law, nor are they above criticism in point of form or substance. Grotius was pedantic at times, academic at times, uncertain and not entirely clear at other times. But he possessed the true approach to the field he chose to cultivate. International law was needed to reduce to order the chaos of

current international practice and to provide a standard to be used in measuring and restraining certain of the more unbridled practices of the day. In discovering that standard, he said, therefore, that what the student could not deduce by the application of ethical principle and yet was found everywhere observed in practice must be understood as arising from the free consent of the nations. Thus Grotius imperfectly set forth the proper foundations for the science of international law. He did not emphasize the application of the concept of justice in practice by the nations themselves, but he gave to both elements a relationship which they would naturally have if this phenomenon were properly emphasized. Modern scholarship, while it has tended to repudiate the ethical element on the side of which Grotius committed some slight degree of error, has not thereby improved upon his position. The perfect synthesis of justice and practice in international law must be worked out by the understanding of the way in which the nations apply the concepts of reciprocity, uniformity, and equality in practice.

For practical purposes it is necessary to have some clearer statement of the documentary sources from which a knowledge of current international law may be gleaned.

For the historical materials such as Roman law and past state practice, the texts of that law and of international acts in the past are used. Not even the documents of civil and canon law or the texts of early commercial codes are without value. These materials at once supply information upon the history of international law and contribute to a knowledge of current law.

More directly in point, of course, are documents embodying modern state practice, such as national legislative acts and records of national judicial decisions on questions of international relations. When taken from one nation they may show practice divergent from commonly accepted international law; when collected from many nations they

reveal the consensus—or lack of any consensus—of opinion on the points of law dealt with. This is equally true of instructions issued to national representatives abroad.

Of greatest value and weight, however, are the texts of international settlements of various types, including the awards of international courts and international agreements, the nature of which will be described shortly. The perfect documentary source is the text of an international agreement signed by many powerful states declaring international law on a certain point or series of points.

The law developed by international practice according to these processes presumes to cover the whole field of international relations. There are to be found in the law of nations the most general principles regarding the nature of the state and the nature of sovereignty and of law, and likewise the most detailed rules regarding the enjoyment by diplomatic representatives of the recognized diplomatic immunities.[2] The relations of states are treated as they exist in time of peace, in time of war, and under conditions of neutrality. The nature and attributes of the persons of international law, their rights and obligations, and the modes of action available for vindicating these rights and obligations are set forth. The nature and powers of the instruments of international government—courts and commissions and congresses [3]—are described. On one hand, much attention is given to international transactions, rather than to substantive rights in the abstract. Thus there is much material descriptive of the methods whereby the international governing bodies—courts, commissions, and congresses—are created and operated. The presence of these subjects in works on international law is due to the absence of works dealing specifically with international government such as the one now in the hands of the reader, and it is bad both for international law and for inter-

[2] Explained, below, Chap. VII.
[3] Explained, below, Chaps. X-XII.

national organization, for it detracts from the strictly legalistic character of the former and it obscures the independent existence of the latter. On the other hand, very little attention is given to international economic and cultural intercourse by comparison either with the amount of attention given to these matters in national law or with the amount given to purely political matters in international law. Of recent years there has been a considerable change in this respect, but tariff legislation and the regulation of immigration, for example, are still left largely to national discretion.

Naturally enough, the multiplication of the documentary records of international law produces some confusion. As will be seen, this leads individual states to attempt to simplify matters by reducing the number and the complexity of their outstanding obligations. It also leads to efforts on the part of states or private individuals to digest or codify the law of nations for scientific convenience. In a sense all the writing of private scholars in this field is merely an effort at codification, for these scholars cannot make law; they can only record it and summarize it and reduce it to system and ordered statement. Some among them have recognized this by the titles adopted for their works; thus Fiore calls his treatise "International Law Codified," and Field and Internoscia expressly call their compilations "codes" of international law.

Official codification has followed at a leisurely pace. After three centuries of private efforts in this direction, the states are beginning to make up in part for their indifference to international law in the past. For fully official codes and codes which rest not merely upon the authority of one nation, we must turn to the great international conventions adopted by the states of the world in formal congresses and conferences, such as the Geneva Convention of 1864 setting forth the rules of law regarding the treat-

ment of the wounded in the field.[4] Such acts have multiplied rapidly since the opening of the present century.

From such acts of codification it is a slight step in point of form, although a tremendous stride in point of principle, to the action of legislation or the making of new law. The existing law is not only codified but also revised. Finally, entirely new law is adopted to supplement pre-existing law. This law relates to fundamental constitutional arrangements in the society of nations, such as the neutralization of Switzerland or Belgium, and also to the details of international procedure, such as the rules adopted at The Hague in 1907 for the conduct of war on land.

Such is the nature of international law, its origin and development, and its later treatment in private and public codes. Much must be said further regarding the functions of international agreements, or treaties, in relation to that law, and regarding its enforcement in daily life by the nations. Many points of contact exist at which international law makes connection with international institutions of various types—courts, commissions, and conferences. Finally there arises the problem of possible joint international enforcement of international law. To all of these topics we shall turn in successive chapters, and first to the making and execution of international agreements or treaties.

[4] Specimen, below, Appendix A, Document No. 5b.

CHAPTER VI

CONSULAR ORGANIZATION AND PRACTICE

A STUDY of modern international institutions and practices must logically begin with an examination of the present status of the consular and diplomatic systems. The classification of international governmental institutions as legislative, executive, and judicial cannot be applied with any success until a comparatively late stage in the evolution of international relations. Such a classification depends upon the idea of the regulation of international relations according to law. This law is to be made by legislative bodies, administered by executive agencies, or applied in litigation by judicial organs. Nothing of that character is found in seventeenth century Europe; not until the nineteenth century did such concepts enter the field of international affairs. Meanwhile international relations, not to be conducted by a legalistic method, were carried on by the method of personal negotiation, through diplomatic and consular officers. And, as between the two sets of agents, diplomatic and consular, the latter must take precedence in the history of the growth of international organization. In this early epoch of government not by laws but by men, of government by personal negotiation, the consul was the pioneer.[1]

The essential cause which has produced the modern consular system is the need for some official governmental assistance to, and supervision over, the conduct of international commerce by the private citizens of the various nations. The Greek city-states found it necessary to secure

[1] For references see, below, Appendix B, § 6. For diplomatic officers see the following chapter.

representation in each other's ports and markets for the protection and assistance of their merchants abroad. The Greek consul was a citizen and officer of the state in which he resided and constituted a much more important figure in international relations than did the transient and fugitive diplomatic agents of the same period. Rome likewise employed a system of commercial representation abroad, and modern nations, in working out their consular services, are thus merely responding to a natural need which has been felt since the dawn of international relations. Indeed, this need is the most elementary and unescapable in the whole range of those relations. Consular representation is the original and most fundamental form of official international representation.

All sorts of variations appear among the forms given by modern nations to their consular representation abroad. The organization and methods of operation of no two national consular services are exactly alike. Therefore, to be accurate a description of the consular system must deal only in those fundamental matters where there is substantial uniformity among the nations. Moreover, it would be impossible to give anything but a very general survey of the consular system except by setting out at great length a mass of detailed material which has no general significance, and which could mean nothing apart from the circumstances and actions of the consular representatives in individual cases. Leaving the detailed regulations of the different national consular services aside, therefore, we may turn to the principal elements in modern international consular representation as we know it.

It should be noted at the outset that every nation of political and, especially, of commercial, importance, maintains consular representatives in the territories of the other members of the community of nations. Under normal circumstances there is no state or quasi-state, whether it be able to claim and exercise diplomatic representation or

not, whose business interests are willing to see it go without consular representation in the important markets and harbors of the world.

These consular representatives reside in the various ports and other commercial centers of the nations to which they are accredited. Wherever industry and trade are active there are to be found consular representatives from all other parts of the world; meanwhile, representatives have gone out from that state to the regions from which raw materials are to be obtained or where finished products may find a market.

Each nation decides for itself upon the method to be followed in choosing persons to exercise consular representation abroad on its behalf, and some mode of selection is regularly provided for by law. The work naturally calls for an acquaintance with the various branches of international commerce, together with commercial and international law. Command of the language in common commercial use in the region to which the consul is to be sent is indispensable. In view of these facts it has been found advisable in several countries to establish schools for the preparation of candidates for the consular service or to make arrangements with private educational institutions for this work. The suitable candidates are then selected more or less by means of a series of technical examinations determining the fitness of the applicants for entrance into the lower and middle ranks of the service. The recruitment of the higher posts is generally left to promotion from the lower ranks, or to selection, on grounds not readily made the subject of formal examinations, outside of the existing personnel.

Consular agents are grouped, for administrative purposes, into various classes. These naturally differ from one national service to another, yet, on the whole, there is a measure of uniformity here as in other phases of the system. Among the titles most frequently used are: Consul

General, Consul, Vice Consul, Deputy Consul, and Consular Agent. There are many consular clerks, often so called, and many consular representatives of no special title and rank or, on the other hand, of very special title and rank created to meet special circumstances.

Each consular office abroad has its proper territorial jurisdiction, which results in a districting and redistricting of each of the important nations, on the part of all the others, for this purpose. The idea that the United States, for example, is so parceled out, on the books of the British, French, Italian, and Japanese governments, may be a novel idea to an American citizen, but it is a commonplace of actual practice. The importance of the consular officer depends to a greater extent upon the importance of the district in which he is stationed than upon his rank or his relation to the other consular representatives from his own nation who are stationed in the same country. At the same time, the rank of the consular representative in charge will correspond, under ordinary circumstances, to the importance of the consular area. Finally, some effort is made to organize the consular representatives abroad into a more or less complete hierarchy among themselves and in relation to the diplomatic service. The several districts and their representatives are not left to depend individually upon the home office.

Ordinarily, the field service is controlled by either the department of the national government dealing with foreign relations or the department of commerce. At one time or another, in one or another nation, the national consular agents have, however, been controlled by colonial departments or departments of the government dealing with naval affairs. This is due to the fact that consuls have sometimes been regarded by the country sending them out as colonial agents,—especially in the case of consuls sent into African and Oriental countries,—or as naval officers. Early Venetian and Genoese consuls were, in fact, colonial gov-

ernors. The control of the consul is still in an ambiguous position for the reason that his position as foreign representative of his national government would imply control by one department of that government, while his work in connection with the foreign trade of his country would make it advantageous for him to be controlled by another department.

In like manner, the degree of control exercised by diplomatic officials over the consular representatives from their own country who are stationed in the territory of the state to which the former are accredited varies greatly. In general it may be said that a certain amount of control exists, having been conferred upon the diplomatic representatives by the home government. On the other hand, no diplomatic representative, at all events none but the very highest, and then only under instructions from the home government, could dictate to consuls in the same country the proper action for them to take on matters on which standing instructions have been provided.

Consular representatives are coming to be paid mainly by salary. In earlier times they were frequently regarded as private commercial adventurers, sojourning abroad, who could be utilized and prevailed on to perform certain functions for their governments, or they were regarded as agents and representatives of private business interests or of the merchant community itself. They are now pretty generally regarded as public officers, representatives of the state, and in no way private merchants. As a result, they are not required to perform their consular services out of a sense of honor or duty while supporting themselves by private business. Nor are they dependent for their pay, as was the case for many years, upon fees collected in the performance of their duties, although fees are still collected and go in part to the consul as pay. In so far as fees are still used, the government provides, for the convenience of the consul—and his clients—tables of the fees which

may be legally charged, in order that there may be no misunderstanding and hard feeling between the consul and his fellow nationals who come to him for his services. Similarly the consul is provided with fee stamps, the use of which prevents misunderstandings between him and the home government. Even with all precautions, however, the fee system is a source of constant annoyance to those who should receive nothing but help from the consul. It would be illogical to place the charge for consular service entirely upon the national treasury and to make no provision for special payments by those who in actual fact receive the special services of the consul. But the regulation and administration of the charges to be made is a perplexing problem.

As in the matter of recruitment, so in the matters of promotion, retirement, and pensions, each nation follows its own bent. Other members of the international community are not interested except to obtain additional light on the best methods of managing their own consular services. These problems are wholly within the field of administrative technology and impinge upon the international field only indirectly.

The difficulty of securing suitably equipped persons to accept consular posts, particularly some of the subordinate posts in the service, has led various nations to resort to the devices of merchant consuls and native consuls. The former are consuls who perform their official functions while engaging at the same time in trade for their private interest. As has been seen, this practice was at one time the normal form of consular representation. Similarly, the native consul, a person selected by a foreign state to act as its representative in the territory of his own nation, was a familiar figure in ancient times and was used, apparently, in the Middle Ages. To a certain extent the practice constitutes an independent historical source of the modern consular office. However, the native consul was

always totally inadequate to the purpose in many parts of the world, as, for example, the Orient; and, even with all the exceptions to the doctrine of territorial sovereignty which modern states are accustomed to make in the interest of international coöperation, it is not to be expected that a nation will be content to entrust the protection of its interests abroad to an alien, particularly an alien who is a citizen of the country in which he is to perform that service. Accordingly, the nations are increasingly willing to incur the additional expense involved in sending out their own citizens for purposes of consular representation abroad, and they strive to avoid the handicap incident to the employment as a consul of a person who is subject to all the local regulations of his home country and city by confining their slight use of the native consul to the lowest ministerial and clerical posts in the service. Similarly, the merchant consul, who is likely to confuse public office and private business, or to sacrifice one to the other, or to utilize official position—unconsciously, perhaps,—for personal profit, is eliminated as far as possible. These traces of more primitive forms of consular representation are gradually disappearing.

The consul is concerned in his daily work with a multitude of affairs relating to the state on whose behalf he acts. To perform this work he is given a certain measure of authority by the state which appoints him, and this authority is defined in a commission with which he is provided at the beginning of his mission. On the other hand, the permission to exercise the powers committed to him by his home government comes from the government of the state within whose jurisdiction he expects to exercise his functions and is embodied in a document called an "exequatur." The reception of individual consular representatives from other states is a purely voluntary matter on the part of each nation. However, consular intercourse has been so generally accepted by modern nations that refusal to par-

ticipate in such interchange could fairly be regarded, and could only be explained, as a manifestation of an unfriendly disposition. At the same time, it is useful, and it is a matter of common practice, for the nations to agree specifically one with another in consular conventions or in special consular clauses in general commercial treaties upon the terms under which they will exchange consular representatives. The consular convention is thus the immediate foundation and legal basis of all consular intercourse.[2]

Once commissioned by the home state and officially received by the foreign state the consul carries on his work under several sets of rules. The terms of his commission and his exequatur, together with the instructions from his home government in amplification of the former, are of most immediate importance to him in defining his powers and duties. Back of these stand the laws of the two nations concerned; these, in turn, must be read in the light of existing treaty agreements between the two states; in case of conflict the former must be followed by the individual consul rather than the latter. Finally, back of all stands the system of common international law to which the consul will often turn for information regarding his rights and obligations. The fact that the consul carries on his activity in the field of private interests, real and personal, results in his being subjected to minute regulation by both the sending and receiving state. In practice, as can well be inferred, the individual consul is largely relieved of the necessity of referring to these different sets of legal principles and rules by having such matters cared for by the department of foreign affairs of his home government. He will receive from that source, either in general or special instructions, or in response to his inquiries, any information on these questions which he may desire.

The activities of a consul may be variously classified.

[2] For a typical consular convention see, below, Appendix A, Document No. 1.

He has certain duties relating to the persons and property of his clients, his fellow-nationals who happen to be present within his consular area. He must keep a record, ordinarily, of such as are permanently resident there, and of transients who apply for services at the consulate. For all of these he must endorse or "visé" passports, certify to births, marriages, and deaths, and even, if so authorized, perform marriages and draw up and attest wills. He may extend assistance to travelers who are out of funds, to the sick, to the poor. He aids in securing the burial of deceased fellow-nationals or in having their remains transported to the home country. He assists stranded sailors and wanderers of all sorts to return home. He must protect his clients, individuals or business concerns, from injustice in the local courts, in respect either of their persons or their property. This function is the modern version of the original power of the consul to determine litigation between fellow-nationals in the local district, a power of which a few traces remain in the West, and decreasing portions in the East. He is called on to secure, if possible, the release of fellow-nationals from unjust detention or compulsory military service, a duty which has fallen with special weight upon American consuls because of the number of returned naturalized Americans resident in all sections of Europe.

The consul is also of much service to fellow-nationals who are not present in his consular area but resident in the home country. Their property within his jurisdiction is in his general care; property interests acquired by inheritance will, for example, likewise be protected by him. The relevant and necessary evidence, both documentary and testimonial, must be secured by him, and, if need be, title must be proved before local probate courts. In all sorts of litigation connected with the local interests of business concerns at home the consul is called on for work in the courts in his consular district. Finally, and perhaps most im-

portant of all, the consul collects, compiles, and transmits to the home government all possible information regarding local export and import markets and, working with and through the diplomatic representative of his nation stationed in the capital of the country in which he is located, information regarding political events and conditions. This service of information is, as far as it goes, the foundation for international commerce as fostered by the official activities of the nations.

On behalf of the home government, as such, the consul performs certain quasi-diplomatic duties. He is called on to watch over and insist upon the execution of commercial treaties and other international agreements with the state in which he is stationed, in so far as these depend for their execution upon the local authorities. He is called on to act in demands by his government for the extradition of fugitives from justice, under existing extradition treaties. In case of inability on the part of the diplomatic representative from the home country to carry on his work a consular officer of higher rank may be temporarily and specifically charged with such work. Finally, the original condition of things, where the consul was in full power as a diplomatic representative, is reflected in a few cases today where diplomatic and consular representation is united in one officer.

The consul, it must be admitted, is a national official, commissioned to act for the state. He is not accredited to another government, it is true, but, at the very least, the consul is an official of the state from which he is sent, in spite of the attempt still made in some quarters to interpret his position as that of a private representative of the national business interests—and as such he may be called on to take quasi-diplomatic action at times.

In his administrative capacity the consul has a very burdensome list of duties. He must endorse cargo-manifests, crew lists, and other documents for merchant vessels

about to sail for ports in his home state. He must inspect, often at great labor, emigrants about to depart from their home country for settlement in his state, enforcing the national immigration laws as far as possible at that stage. Finally, he acts as a judicial officer in many petty maritime cases and commercial disputes, and takes depositions of evidence for use in the courts of the home country. Within limits the consul performs duties in this connection which seem to run counter to the principle of territorial sovereignty, and which go straight back to the age of the Crusades for their origin.

To enable him to perform his duties unhindered the consul is accorded certain immunities of person and property. These include unrestricted communication with his home government and his colleagues in the consular and diplomatic services of his country. This freedom of communications extends to the right to have access to his fellow-nationals at the time in the country, especially when they are under arrest. He is frequently held to be immune from taxes on his person and his personal property and from detention or prosecution for either civil or criminal offenses except criminal acts of a very serious nature. He may maintain an office and archives which are inviolable, and he may extend this inviolability to property of deceased nationals by sealing it up. The degree of immunity enjoyed by the consul, in such matters as taxation and military and jury duty, for example, depends largely on whether he is a merchant and a native or a bona fide consul with no local interests except his official work. In the latter case he is free from control by the local authorities in all respects pertinent to the conduct of his consular duties. It is, however, one of the disadvantages of the merchant consul and the native consul that such immunities cannot readily be secured by them.

To guide the consular representative through the maze of law defining his powers and duties and also his official

privileges and immunities his home government usually provides him with certain forms of consular literature, in addition to his commission and instructions, although he may, of course, provide himself with this material. He should have a working library on the various subjects of international commerce and law, commercial law and general international law, and the law of the nation where he is stationed. He should have reliable manuals or guides upon consular law, or those portions of public and private international law likely to be of special service to consuls. He may profitably possess published collections of consular precedents and cases. He will find useful a formulary for consular officers, in addition to the table of forms given in his instructions. He should have a set of the general instructions issued to the diplomatic service of his own country. Finally, the consulate, which should be maintained permanently by the state whose representative is to occupy it, and maintained, thereby, on a higher level than would be possible if it were left to each succeeding representative to provide a consular establishment, should be equipped with the ordinary geographical and statistical materials such as maps, tables of values, weights, and measures, and dictionaries and encyclopedias indispensable to effective office work.

The tenure of office of the consul may come to an end in various ways. He may resign and his resignation be accepted. Death may terminate his work. On the other hand, outside causes may bring his stay to a close, temporarily or permanently. Such, for example, is the effect of recall by his home government or the cancellation of his exequatur by the receiving government. The outbreak of war between the two nations will ordinarily lead to one or both of these steps, although it is conceivable that neither nation might move to terminate consular representation between them. Even in that case the effect of war would be to suspend the treaty on which that intercourse

rested. This is of critical importance. International organization in the form of consular representation is continuous in normal times; in time of war it is entirely suspended. It might be contended, with some reason, that the very time when official international communication is most needed is in a period when disputes arise between nations, and that in time of war there are many subjects which need settlement between the belligerents in the course of the war. This reasoning will be found to apply more forcibly to diplomatic representation. As matters stand, however, and particularly in the consular field, the legal nature of war, with its stoppage of trade, is held to preclude the continuation of international communication of this type.

Surveyed as a whole, the consular system suggests several conclusions. The total result is an enormous and elaborate web of official representation connecting the various members of the international community.[3] That web is growing in complexity and in toughness with each year. Further, the basis of the service is to be found in the quite simple desire for private commercial profit, for personal profit and convenience. The simple and plain facts of international commerce and international travel are the reasons for consular representation, not any sophisticated and fine-spun theories of international relations. The creation, maintenance, and improvement of the consular service is a result of the demand of the commercial and traveling public, and any substantial curtailment of it would meet emphatic protest from that quarter. Since the dawn of international relations, in ancient, Medieval, and modern times, the nations have found it useful and even indispensable to provide themselves with some such arrangements. Any system of international organization to be developed today or in the future must take care of the interests now entrusted to the consular service or carry the present system along with itself.

[3] See, below, Appendix A, Document No. 3.

CHAPTER VII

DIPLOMATIC ORGANIZATION AND PRACTICE

THE term "diplomacy" is employed by many writers to mean many different things. So diverse are the ideas back of this common term that no possible progress can be made in the present discussion until some understanding has been reached upon the sense in which we shall use it.

Sir Ernest Satow, a leading authority on the subject, goes so far as to include in his treatise on "Diplomatic Practice," in addition to his consideration of the simpler forms of diplomacy, a description of the forms and procedure of international congresses and arbitral tribunals, much international law pure and simple, and the subject of treaty negotiation proper. At the same time he omits all mention of the consular system. It does not seem best to follow such a plan here. The last topic has, indeed, already been studied in its own name and may now be left out of further account. Furthermore, we shall consider international courts, commissions, and conferences separately later, as institutions standing by themselves. For our purposes, therefore, the field is narrowed to the subject of negotiations by diplomats acting individually. This is a strict interpretation of the term "diplomacy," and might be called diplomacy proper, in contrast to various forms of diplomatic activity which, by reason of their complexity and formality, become something distinct from simple diplomacy, deserving attention in their own names.

Even with this affirmative definition of the subject, it is well to take notice of two or three things which ought

to be carefully set off from diplomacy proper. One is foreign policy and another is foreign relations or foreign affairs. The former phrase refers, as already explained, to national programs of action in international relations, to national purposes or objectives or motives to be carried out through the existing framework and procedure of the national foreign service. The phrase "foreign relations," on the other hand, refers to the totality of events and actions transpiring among nations or between one nation and the other members of the existing state-system. Neither of these things is diplomacy proper; the phrases diplomatic policy or diplomatic relations may be used in the place of "foreign policy" and "foreign relations," but the simple term "diplomacy" should be reserved for use in referring to the organs and practices whereby the nations carry on their political affairs one with another through individual personal representatives.

There is one topic, however, which is commonly omitted from discussions of the general subject of diplomacy, but which should at least be noted in this connection. This is the Foreign Office, or that department of the national government which has control of the nation's foreign service, consular and diplomatic. The department of foreign affairs ordinarily has the control of the consular service, although this may be shared with the department of commerce or some other department of the central government. Invariably it has control of the diplomatic service, and as such it deserves to be included in any review of the machinery of diplomacy.

It is the function of the department of the national government dealing with foreign affairs to recruit, classify, instruct, and control the field force of the foreign service; and a monopoly of this control is ordinarily created on its behalf by national law.

Moreover, it is the task of the Foreign Office to provide such a mechanism of administrative divisions or sections

or bureaus at the capital of the nation as can take care of the various sorts of business arising in the course of a nation's foreign relations. The members of the field force must rely very largely, for the success of their efforts, upon the equipment and ability of the department of foreign affairs. The field force depends for its original composition and the constant maintenance of its personnel and equipment upon this department of the home government. As the standard rises or falls in the department, so will the standard of ability and service rise or fall in the field. Defective organization and defective administration at home mean ineffectiveness and failure abroad. Many of the failures and blunders and positive sins in diplomacy which are attributed to diplomatic representatives abroad are really due to causes beyond their control, in the Foreign Office at home.

To go into a study of the department of foreign affairs here, however, is both unnecessary and impossible. Suffice it to say that the standard principles of administrative organization and practice are defied only at the peril of the national interest. There must be unity of control over, and consistency of action among, the various bureaus of the department. There must be ample provision of distinct administrative units to care for the distinct varieties of work to be done. There must be a clear demarcation between the determination of policy and routine administrative work, and unqualified employees must be prevented from interfering in discretionary business of the former variety. In short, the national government must provide an adequate administrative machine to support the consul and the diplomat abroad.

The task of recruitment likewise belongs entirely to the national authorities. Each nation adopts the means which it prefers to secure competent diplomatic representatives. The diplomats form part of the national civil service and may be regulated as all other parts of the civil

service are regulated with respect to methods of selection, treatment,—including salary and pension,—and retirement. Whether an examination system is to be used in judging candidates for admission to the diplomatic service is to be decided by each nation for itself. Whether adequate salaries are to be paid, and whether any provisions are to be made for retirement and pensions, is likewise to be decided by the national governments. The nations observe the experiences of one another as various methods are tried from time to time, and a process of imitation is going on whereby the procedure followed in all countries tends to become the same. But in all cases the source of changes is the national policy of each state.

Certain general reflections, however, may well be set forth here.

It is obvious, for example, that the principal diplomatic representatives of a nation must be in political sympathy with the officials in control of the national foreign policy at home. The diplomatic representative abroad largely determines the success or failure of the national policy. No set of instructions can possibly be so complete as to dispense with the need for discretion and judgment on the part of the representative in the foreign capital; and in the exercise of this discretion and judgment it is essential that the diplomat be in harmony with his superior officer as to the foreign policy to be pursued. The success of the national policy for the time being, whatever it may be, requires consistency and unity above and below in the foreign service, for it is an elementary rule of administrative science that control must be effective from above. Nothing can insure that result in the field of personal diplomatic negotiations except subtle and delicate personal and political sympathy between the foreign office chief and the diplomatic representative abroad. Whether the desired result is to be attained more readily by a system of appoint-

ments at discretion or by appointment as a result of technical examinations is another matter.

It is none the less desirable that heads of missions should possess those qualities of tact and manner which are conducive to smooth diplomatic negotiations. The bearings of a machine are not improved by being rough and unpolished. The appearance of strength and integrity is superficial, and the smooth and effective operation of the machine is retarded. Diplomatic representatives who have the task of actually conducting conversations and negotiations of various sorts are engaged in a form of personal intercourse, and certain personal qualifications are therefore pertinent in their selection. The ability to subordinate feelings and prejudices and personalities to considerateness and reasonableness and common decency is indispensable. We do not want weak or insincere or dishonest diplomats, however polished they may be. Equally, we do not want egregious boors for diplomats (sic) however strong and sincere and honest they may be. Honesty and sincerity can be found in combination with decent manners and considerateness.

Below the grade of the principal diplomatic representatives personally engaged in negotiations there are, however, large numbers of diplomatic agents to whom rules almost the opposite of those just stated apply. Personal manners and political beliefs are of little consequence in a mere secretary or a law clerk in an embassy. The task of the members of the staff in a diplomatic establishment is to supply information to the head of the mission and to carry out administrative details. They are engaged in impersonal work, and have no political or discretionary power. Expert training in history, law, economics, and, above all, the technique of government and diplomacy, is the thing required in such persons. Candidates for these posts may best be selected by a system of technical exami-

nations, a procedure which would be intolerable for heads of missions. Likewise, it is in regard to such positions that permanence of tenure, experience in the service, promotion for merit, and other salutary administrative practices may be, and ought to be, adopted. With respect to heads of missions, these practices have little or no value, and under certain circumstances would be clearly injurious. When questions of policy and of discretion no longer arise in the work of the diplomat he may be made a purely technical administrative officer; that is not the condition today and the diplomat at the head of a mission must continue to be a personal political representative. For technical members of the establishment, however, the opposite is true.

The future may see a considerable change in the relations between these two classes of diplomatic representatives. This depends upon what happens to international relations in general. If international organization develops very far, so that international assemblies or councils for the regulation of international relations preëmpt the field, in which the nations are represented by persons who are sent there to debate and vote rather than to negotiate, then only routine administrative details will be left to the resident diplomat. In that case he might well be merely a legal clerk or agent. Furthermore, if and in so far as the development of telegraphic communication narrows the discretion of the foreign representative and gives the home office control over him, the same result will follow. National representatives in the new international legislative bodies would enjoy the national confidence such as is accorded to elected representatives, and in the second case legal and business ability would be desirable. But in neither case would political attachment to a personal superior be in point.

A purely international aspect of the question of the selection of diplomats arises in the requirement that diplo-

matic representatives must be personally acceptable to the governments to which they are to be accredited. This leads to the practice of obtaining the consent of a foreign government to the appointment of a certain individual as diplomatic agent to that power before making the selection definite and before dispatching him upon his mission. The United States did not always follow this practice, but, on the contrary, contended that any American citizen must be acceptable to any foreign power which consented to enter into diplomatic relations with us. In part, that attitude was an expression of national pride and sensitiveness which was not entirely dignified and considerate; in part, however, it was a premature attempt to minimize the personal element in diplomacy. It has been largely abandoned now, because it has come to be seen that the rule of personal acceptability is in harmony with the actual nature of diplomacy, whether we like it so or not, and also because the equalitarianism and excessive nationalism of an earlier period have yielded to common sense. Here, as in the case of the problems just discussed, the future of the rule is dependent upon the course of events in general international relations.

Just as a state will at times employ natives or citizens of a foreign country for consular representation on its behalf in the territories of their own country, so various nations have from time to time employed foreigners as diplomatic representatives either in the foreigners' own country or in a third country. The latter case raises only one question, namely, the ability of an alien to act loyally and effectively on behalf of the state. The former practice raises, further, and in an acute form, the question of conflicting loyalties to native land and client state. Most states now refuse to receive their citizens as diplomatic representatives of foreign powers, and except for backward states with a dearth of diplomatic talent, the practice has generally gone out of use.

After the foreign service force has been recruited the next task is that of classifying the members.

Broadly speaking, the foreign service as a whole must itself be subdivided and the first step is the establishment of separate consular and diplomatic services. This separation is not wholly logical or satisfactory, and presents many difficulties. The line between the commercial and legal work entrusted to the consul and the political work of the diplomat is hard to locate in the abstract and is in practice rather vague and imaginary. In the result, consuls, as has already been pointed out, participate in quasi-diplomatic work in connection with treaties and extradition proceedings, while diplomats are deeply concerned with commercial and financial relations among the nations. Further, we find cases where the consular and diplomatic offices are combined. There exists just enough confusion between the two branches of the foreign service to show its latent unity, and indications are not wanting to suggest that the two branches may in the future be brought together in one service.

The diplomatic service proper, like the consular service, is classified into several ranks corresponding roughly to the regulations adopted by the European nations in 1815 and 1818 at Vienna and Aix-la-Chapelle.[1] The principal ranks are those of Ambassador (with which are to be classed the nuncios and legates of the Pope), Envoys Extraordinary and Ministers Plenipotentiary, Ministers Resident, and Chargés d'Affaires. In addition, there are various special diplomatic representatives called Agents, Attachés, Secretaries, Counselors, and what not. The typical diplomatic establishment consists of a chief of mission holding one of the four principal ranks, together with a varying number of Secretaries, Attachés, and clerks. There is more freedom in the use of titles and styles for

[1] Text, below, Appendix A, Document No. 2.

the subordinate positions than for the principal offices, and there is nothing to prevent a nation from inventing its own nomenclature for its subordinate diplomatic agents.

The respective rank of the principal diplomatic representatives formerly had an important bearing upon their powers and upon their ability to conduct their business; rights of representation and of negotiation hinged upon the formal status of the foreign representative. At present this is still true but to only a very limited extent. Ambassadors and Ministers are accredited to heads of states, while Chargés are accredited to the Secretary of Foreign Affairs. Ambassadors alone are held to represent the sovereign personally. But all this signifies little in practice. The rank of a diplomat relates chiefly nowadays to ceremony and precedence. Indirectly, the effect on the real business of diplomacy is perceptible, since priority in precedence often means an advantage in negotiations. The surface effect and appearance also in matters of ceremony and precedence is not without importance also.

Furthermore, the relative rank of the diplomatic representatives resident in a given capital depends in part upon the standing of the states which they represent. This is largely a result of the rule of reciprocity in rank whereby two states entering into diplomatic relations—and the establishment of such relations is always the result of a bilateral international agreement—arrange to exchange diplomatic representatives of equal rank. Thus in Washington the Great Powers are represented by Ambassadors, generally speaking, and the smaller powers by Ministers. The effect of this rule or procedure is, however, sometimes curiously adverse to its intention. The Great Powers will not send diplomats of first rank to the very small nations and therefore accept merely Ministers or Envoys from them in return. It is a case of reducing the rank of the representatives exchanged to correspond to the level of

the lower of the two powers. But the small nation may be exchanging diplomats of first rank with another small nation which regards it as an equal. The result is to place the Great Powers in a position of equality with the secondary powers, in the capitals of many small states, a result precisely the opposite from that aimed at by the rule.

What this means is evident. Rank alone tells little about the significance of the representative to the government to which he is accredited. The power behind the representative, not his official title, determines his influence. On the other hand, rank, having lost ground as a factor in determining the legal powers and political influence of diplomats, has come to mean more in a ceremonial way as the doctrine of state equality has gained ground. If the states themselves are to be considered formally as equals, the only ground for precedence among their representatives is the relative rank of the latter. It is not surprising to find that salutes and all sorts of social privileges are standardized on this basis.

The present tendency is to get away from these discriminations as far as practicable. To avoid disputes over precedence, rather than to work out a system of precedence accurately reflecting some scale of real power and influence, seems to have been the principal object of the nations since 1815. The most important step in that direction is the adoption and spread of the twin devices of the alphabet and the alternat in actions involving several nations or their representatives. According to these forms of procedure, the nations involved take their places in a roll call, a seating plan, or a table of signatures by virtue of the position occupied in the alphabet by the initial letters of their names. In the case of a signed document it is arranged that each power shall retain that copy on which it appears at the head of the list of signatories, the various copies having been signed in such manner that each power signs once in the first position, once in the second position,

and so on.[2] The order of signing may be settled by lot equally well, and the alternat employed in connection therewith. The motive and the net result of all this is, of course, to eliminate considerations of rank among representatives and among nations, so far as any effective application of it goes. The world seems to be tending toward the goal marked out by America, namely, the abolition of discriminations in rank among nations and diplomatic representatives and the employment of one uniform diplomatic title or office by all nations.

The diplomatic representative receives his authority from his appointment by the home government and his reception by the government to which he is accredited. His letter of credence is the formal evidence of his appointment to the representative office at a certain capital. In addition, a "full-power" may be provided for the ordinary work of the office or for special tasks committed to his charge. These documents are for the information of the foreign government and form the basis for the relations which are to be set up with the newly arrived diplomat. If all is agreeable to the power in question he will be formally received by the sovereign, the chief executive, or the Foreign Minister, and diplomatic relations between the two states will be thus established.

The diplomat receives oral instructions from his home government before setting out on his mission, and he carries with him general regulations and special instructions in writing. Furthermore, he receives from his foreign office a constant stream of advice and instructions which

[2] If Argentina, Brazil, Chile, and Denmark were to sign a document in English by alphabet and alternat, the result would be as follows:

Copy retained by Argentina:	Copy retained by Brazil:	Copy retained by Chile:	Copy retained by Denmark:
Argentina	Brazil	Chile	Denmark
Brazil	Chile	Denmark	Argentina
Chile	Denmark	Argentina	Brazil
Denmark	Argentina	Brazil	Chile

control his actions in the conduct of his office. These documents constitute his version of the credentials handed to the foreign government, and correspond to the latter in scope and authority. Needless to say, perhaps, they are fuller and more precise than the latter.

The work of the diplomat at his post defies precise or complete definition. He must conduct negotiations with the government to which he is accredited; he must observe and report what is going on about him; and he must perform certain functions on behalf of his own state toward fellow-nationals who apply to him for passports, for the inspection and endorsement of passports which they already hold and, in general, for services not unlike those performed by the consul. This is all that can be said, and it leaves the main work of the diplomat to be covered by those vague phrases "diplomatic negotiations" and "observations" which are filled out by each observer of international relations according to the dictates of his own imagination. What is to be negotiated and what is to be observed cannot be defined in advance, yet they constitute the heart of the problem.

In the actual conduct of negotiations the diplomat enters a complicated and delicate field of action. Some efforts may be made to instruct him concerning the "manner of negotiating," but the business is too complicated and too subtle to be completely reduced to formal rules. The diplomat must rely upon his own tact, his own feeling, his own common sense to help him in his work. Much has been written cautioning the young diplomat against haste, against the use of flattery and bribery and falsehood and other cheap and therefore ineffective methods of action. Such advice is sound enough. The difficulty is to apply the principles when needed, and to recognize the exigencies when they are needed; in this nothing but the sound judgment and instinctive wisdom gained by experience in dealing with persons and politics can serve. So long as inter-

national relations are conducted by personal representation this is bound to be true.

The same must be said concerning the whole matter of style and ceremony. Not all of the mannerisms and rules of the etiquette of diplomacy are essential. Not all of them are, on the other hand, superfluous or irrelevant. The amount of such formalism has greatly decreased in the past century, and particularly in the past generation. With the advent of republican states and civilian diplomats the use of ceremonial costume, long deprecated by the United States, has declined perceptibly. The greater part of the punctiliousness and formality which does remain is due to an effort for precision and accuracy in a field where the materials dealt with and the issues involved are very complex and indeterminate and where the competitive national interests involved are great in magnitude and at the same time ill-defined. Propriety and form are an integral part of substantive right especially where procedure is still in the stage of personal negotiation.

The matter of written documents is similarly important; the art of literary composition constitutes an intimate part of diplomacy. Indeed, the term diplomacy is derived from *diploma,* which was a document in the form of a sheet of paper folded into two leaves; a certain famous collection of early treaties has the phrase "containing diplomas (*continens diplomata*)" in its title. The written record remains, once it is made, and it behooves the signers of a document to exercise the most scrupulous care about its wording. To say that two powers "are not prepared to act" (now) is not to say that they "will not act" (next year), and many apparent euphemisms and circumlocutions in diplomatic documents reflect what are often very laborious attempts to say just what is meant, and no more and no less. It is undeniable that diplomatic writing contains much bombast, and is often guilty of evasion, and worse. But it is equally true that much of the criticism of diplomatic diction is due

to shallow inattentiveness to exactness in detail and to childish lack of thought upon the subject.

Some part of the difficulties attendant upon the composition of satisfactory documents in diplomacy is due to the question of language. So long as Latin could be used by all diplomats the situation was relatively simple. To some extent this situation was perpetuated by the general adoption of French in the seventeenth century in the place of Latin as the international diplomatic language. French possesses qualities of range, accuracy, and flexibility or delicacy which make it valuable on its intrinsic merits as a diplomatic medium, and the language of Louis XIV has therefore never lost its position in the world of international relations. Matters of this sort change, however, in response to considerations of what appear to be practical utility. The French is now being abandoned by certain nations and English or Spanish or some other common language is being employed, even where English and Spanish are not native tongues. Thus Germany and Austria employ German in dealing one with another, Japan and Russia employed English at Portsmouth in 1905, and the South American states commonly employ Spanish in negotiations among themselves. Documents are sometimes drawn up in two or more languages in parallel columns. In such cases one of the versions may be regarded as the standard text, or, indeed, two texts may be accorded equal authority and potential discrepancies left for adjustment as they appear. In many cases the merits of the French have been foresworn without commensurate convenience and benefit. It is absolutely impossible to produce two texts of a given document, one in Spanish and one in English, with identical meanings. Even single texts yield to varving interpretations; how much greater the difficulty when two or more national tongues are used!

The outcome of this question of language cannot be

foretold, but the solution may partake of three elements. The leading national languages are likely to continue to compete one with another for preference in international dealings and to be recognized by different nations at different times according to present practice. By the generous use of translators and interpreters this way of doing business may be made to yield results which, if not wholly satisfactory, will at least be tolerable. Secondly, the study and use of foreign languages by people in general is likely to increase with the increase of international travel and communication. Along with this, we may see important changes as a result of the incorporation into one language of words and phrases in use in another; a process of amalgamation is steadily going on which tends to make the different languages more nearly alike. Finally, we may well see some serious effort to develop an artificial international language. To historically-minded persons such a suggestion seems ridiculous and in some way or other weak and futile. It bears on its face the appearance of artificiality. Notwithstanding all this, the circumstances of the case seem to justify the conclusion. If telegraphic codes, scales of weights and measures, signal systems, and other artificial media of communication have been successfully devised and put into use under similar circumstances the course of events is not likely to be different in the field of language.

The individual diplomat is not alone in the foreign capital; he is a member of a group of representatives from all countries who, collectively, form the "diplomatic corps" at that capital. His relations with his colleagues will depend somewhat upon his position in the corps; if he is a newcomer he will be expected to defer, socially and diplomatically, to his colleagues; if he is an older member he will enjoy some influence in matters properly of concern to the corps as such.

The standing and powers of this somewhat amorphous body depend upon local court or governmental regulations. The diplomat of highest rank and longest tenure is commonly the "dean" of the corps; but he does not exercise any substantial authority over the other members. Questions of diplomatic privilege form the chief concern of the corps as such, and its dean and the members would protest as a unit against any mistreatment of one of their number. At times, joint action is taken by the ministers present in a certain capital on some substantive point in international relations, as when the diplomatic agents in Peking protested in 1921 against any interference by the Chinese Government in the administration of the customs revenues in China according to the standing agreements between China and the Powers. In such a case, however, it is not the diplomatic corps which is acting but the nations there represented. The chief concern of the corps, in other words, is diplomatic procedure, etiquette, the privileges and immunities of its members, and social intercourse.

In certain important commercial cities the foreign consuls act together from time to time as a "consular body" in a manner similar to that of the diplomatic corps. Thus the consular body at Vladivostok in 1920-21 took counsel concerning the maintenance of local order and safety for foreigners. This is, however, rare. The whole subject of the diplomatic corps is rather fugitive and formal. The corps is so loosely organized that it hardly deserves to be regarded as an international governing body.

As in the case of the consular system, the result of this practice of international exchange of representatives is to cover the world with a web of bilateral bonds running among the capitals of all the nations. These bonds are less numerous than in the case of the consular system, but they are of greater legal and political significance. They have for centuries in the past constituted the main form of existing international organization, and for some time to

come they will remain the principal avenues of international intercourse.[3]

Given this diplomatic system, it remains to be noted that international law attempts to define in some measure the powers and privileges attaching to the members thereof. The rules already reviewed, relating to diplomatic amenities and the forms of diplomatic procedure, are part of what might be called the technique of diplomacy. The law of legation, on the other hand, deals with the right to send diplomatic representatives in the first place, and with the very practical question of the rights of diplomatic representatives in relation to the law and officials of the state where they are stationed. The law of legation is principally international law, though national laws, statutory and administrative, deal with the subject also.

The primary rule to be noted is that, as a general thing, only an independent state may send or receive diplomatic agents; indeed, the right of legation is frequently used as the supreme test of a state's independence. There are, however, many cases which are difficult to deal with on this assumption. Certain states of the German Empire held a limited right of legation previous to 1918. Bavaria even attempted to deal with Berlin by diplomatic note as with a foreign power at one time in 1920-21. The British Dominions have been accorded the privilege of sending Ministers to Washington. The Pope exercises a right of legation in certain states of Europe and Latin America, and in February, 1921, there appeared the novel spectacle of the Papacy appealing diplomatically to the League of Nations on certain international questions! Yet on the whole the principle is sound, and what we should do in the above cases is to admit that the German states, Canada, the Papacy, and the League are independent members of the existing state-system to the degree in which they act freely in international relations.

[3] See the tables, below Appendix A, Document No. 3.

The members of the community of nations, however, do not exchange diplomatic representatives upon the basis of the principles of common international law alone. Each exchange is based upon express consent in the form either of a treaty or some simpler agreement. The reception of diplomatic representatives from other states is a legal obligation resting upon each member of the community of nations, and refusal would constitute a valid ground for complaint and a demand for commensurate reparation. But the manner, and even the simple fact, of discharging that obligation is commonly decided by special agreement between the interested parties. The further step of agreement upon the individual diplomat to be sent and received has already been noted.

Once received by the foreign power, the diplomat is accorded certain concessions of jurisdiction in view of his position and functions. International law defines the immunities which the receiving state is bound to accord to the foreign representative, and the national laws set forth these rules with a view to their application in the courts of the nation. These immunities include the ancient privileges of personal inviolability and independence of personal action, including freedom from arrest for acts under civil or criminal law. The diplomat enjoys the same relief from customs duties and personal taxes, witness duty and other similar burdens, as does his colleague, the consul, but in a more definite manner and to a greater extent.

The original view of these immunities seems to have been that they were necessary in view of the impropriety and discourtesy of enforcing upon a foreign sovereign or his agent the local law, and to the fact that no state was entitled to enforce its own will upon another state, equally sovereign, or its head or diplomatic representative. It is now seen that these privileges are essential to the effective operation of the system of diplomatic representation, and that they must be supported and defined with a view to that

desirable end, irrespective of any theory of sovereignty.

One result of this change of view as to the foundation of diplomatic immunities is seen in the alteration of the rules of the law of nations on the subject of asylum in legations and embassies. The right of extending asylum to fugitives, formerly claimed by foreign representatives and reluctantly conceded to them in view of the doctrine that the embassy was foreign territory enjoying exterritorial status, has been curtailed in various ways. Particularly significant is the principle that a foreign representative must not receive and accord asylum to fugitives from justice, coupled with the rule that the grounds and buildings of the embassy are inviolable, even when so used. The reasons for this ambiguous position are found in the conflict between the desire to accord as much immunity to the diplomatic establishment as is necessary for its effective operation and the unwillingness to accord any unnecessary immunity to it. Likewise, the diplomat may worship his own God in his own way in his own chapel, and fellow nationals are free to join him in this worship; however, he must not make this a cause of disturbing the public peace.

All these privileges are regulated, as has been said, by local law. The home government of the diplomat will instruct him regarding the immunities which he is to claim for himself and these will correspond to the privileges accorded by his own government to foreign representatives in its territory, including those from the state to which he is accredited. By this process of reciprocity, practice on diplomatic immunities is generalized until the common rules of international law on the subject appear as a summary of the practices of all the nations. Meanwhile the diplomat is controlled exclusively by his own government in respect to the special costume which he shall wear, if any, the way in which he shall conduct the internal affairs of the embassy, and the reception of gifts and decorations

at the hands of the government to which he is accredited. The result is that the rules governing the operations of the diplomatic system are found in general international law, written and unwritten, and in the national legal systems of all the states, including in the last the various codes of administrative regulations issued for the guidance of the national civil servants. The diplomat, hardly less than the consul, needs to be provided with manuals and guides wherewith to inform himself on the vast amount of law and procedure connected with the conduct of his office.

Finally, a diplomatic mission may be terminated in several ways. The person holding the mission may die, retire automatically by virtue of age, resign, or be recalled to make way for a new appointee. These are entirely matters of national law and have no bearing on international relations. Of real importance in the international field, however, is the recall of the head of the mission, leaving affairs in charge of a subordinate—here the mission is not interrupted—or a discontinuance of the mission entirely by withdrawal of all diplomatic representatives. So much a part of normal international relations is the exchange of diplomatic representation that such action is construed as unfriendly and is the usual prelude to war. More striking and emphatic in tone, but of less consequence internationally, is dismissal of a diplomat by the receiving state. In such a case, although continuance of diplomatic representation between the two countries is not interrupted, diplomatic relations between them is bound to be gravely disturbed. It is of some significance that the institution of international representation is stable enough to persist through an episode of this kind.

CHAPTER VIII

TREATY NEGOTIATION AND TREATIES

THE ordinary work of the diplomatic representative consists in the conduct of negotiations relating to current questions at issue between his own state and the state to which he is accredited. These negotiations may be conducted orally, in conversations with the Foreign Secretary of the state to which the representative is sent, or in writing, by exchanges of diplomatic notes. In the former case the element of personal intercourse is predominant, and the action is transitory and leaves little trace of itself behind, unless a memorandum of the agreement reached in the negotiations is drawn up and signed by the participants. In the latter case the correspondence remains to serve as a record of the transaction; though here also, in the absence of a signed statement summarizing the exchange of views, the chance for disagreement as to the real results of the negotiation is great, and the degree of inconclusiveness and impermanence in this form of action is therefore also considerable. This is all the more inconvenient when the negotiations have concerned not some special case, as, for example, the citizenship of a certain individual, but a general question, such as the principles which the two states agree to follow in the future in settling disputed cases of citizenship.

For these reasons—namely, the unstable and impermanent character of purely personal diplomatic negotiations—this primitive form of international government was supplemented at a very early stage of international development with the device of the formal written agreement.

An elaborate practice of treaty-negotiation sprang up among the Greek and Roman states of Antiquity. Such a result followed naturally from the desire and effort to leave a permanent record of diplomatic agreements behind, and, in its simplest form, constituted merely a final stage of personal diplomacy. Indeed, the noun "treaty" seems to have been formed on the basis of the verb "to treat," used to describe diplomatic negotiations; when diplomats treat with one another for peace a treaty of peace is the result. The treaty is of such a distinctive character, however, and has developed to such an extent on its own account, apart from its parent practice, that it deserves study by itself. The negotiation of treaties and their analysis and generalization among the states is a distinct branch of modern international government.[1]

It is to be noted, first, that the usual object of the formal treaty today is to provide for certain and definite action in the future whenever a given type of question shall arise—a question of citizenship, of commercial privileges, of extradition—without the necessity for special diplomatic agreement every time upon the merits of the case. So far as the process of treaty negotiation is successfully extended, therefore, the practice of personal diplomacy is rendered superfluous. The greater the number of questions which are settled in advance by treaties, the fewer will be left for settlement by diplomacy as they arise, assuming, of course, that the treaty is faithfully executed on both sides.

This elaborate extension of treaty negotiation is preceded by a much simpler stage where the treaty itself has for its object merely the settlement of a concrete case. Such, for example, is the treaty providing for the sale of a given piece of territory. This simplest type of treaty is hardly more than a compact *ad hoc,* or a contract promising a specific performance, in contrast to the treaty nego-

[1] For literature on treaty negotiations see, below, Appendix B, § 8.

tiated upon a general subject to operate continuously into the future. The latter treaty approaches legislation in its nature, especially when it is concluded among several states and deals with subjects in a general and comprehensive way. Thus the treaty, which begins within the range of simple personal diplomacy, ends in one of the most advanced and final stages of international government.

Under ordinary circumstances treaties are negotiated by the regular diplomatic representatives permanently accredited between or among the states concerned. For such a purpose the standing powers and instructions of the diplomatic representatives are often adequate; a regular diplomatic representative would not hesitate, if a sufficient occasion demanded, to enter into treaty negotiations with the Foreign Secretary on the basis of his standing instructions. In most cases, however, special authorization and instructions are needed by the representative abroad; and, even if he enters into negotiations for a treaty with the state to which he is accredited, he will communicate with his home government for authority and instructions to continue the discussion, and he will be able to sign an agreement, in the absence of such special authority, only *ad referendum,* that is, upon the understanding that the agreement is to be referred to the home government for approval. In these days of swift communication and when treaties must commonly be submitted for approval to representative bodies before being made effective, the diplomat finds few occasions for such unauthorized action, while, on the other hand, all treaties are, in actual fact, signed *ad referendum.*

When special "powers" are issued to diplomats for the negotiation of treaties, these documents perform the function performed by the credentials of the diplomatic representative in ordinary cases. The "full-power" serves to identify the diplomat personally, and to describe the scope of his authority for the current negotiation. It ordinarily

authorizes him to sign on behalf of his state. Indeed, it is of little value if it does not do so. The full-power often pledges ratification by the state, provided the agreement made does not exceed the limits of discretion entrusted to the agent. But there would be no obligation resting upon a state which had given authority to its agent merely to arrange for an exchange of prisoners, to ratify an agreement for, let us say, the exchange of territory.

While the negotiation of ordinary treaties may be left to members of the regular diplomatic service, special treaties of great importance, such as treaties of peace and general international conventions among more than two powers, are ordinarily concluded by delegates or commissioners specially chosen for the negotiations in hand or for representation at the conference where the convention is to be drawn up. The press of business upon the regular diplomatic service and the fact that specially qualified agents are, or are not, available, are considerations which determine whether or not special agents shall be utilized for the purpose. Where special agents are used they are given diplomatic rank for the time being to facilitate their work, and are provided with credentials and instructions in diplomatic form. They become, for the time and the purpose, diplomatic agents, even where they are acting as delegates to an international conference or congress.

The term "negotiation" should properly be confined to the first stage in the making of a treaty. In this stage of the proceedings the proposals of the negotiating parties are put forward, discussed, harmonized, and tentatively agreed upon. The next step, and a crucial one, is to draft a treaty or convention embodying the agreements in substance already reached, and to do this in such manner that the text will be satisfactory to the parties. Finally, the treaty must be signed. This completes the preliminary work of the diplomats and includes everything that can possibly be considered part of the negotiation of the treaty;

even the drafting and signing of the agreement might well be excluded from the concept of negotiation. The treaty now passes to the home government for further disposition.

Treaties negotiated by diplomatic representatives are now almost universally submitted to representative bodies for approval before becoming effective. Whether this needs to be done is purely a matter of national constitutional law in each state, although things are in such a position now that states are not likely to feel great confidence in the binding effectiveness of treaties not so submitted; and in the near future international law may hold that such action is necessary, just as it now holds that treaties may be concluded on behalf of the states only by duly authorized persons, and just as ratification by the formal head of the state is held to be necessary, whether based on the consent of a representative body or not. Few treaties fail to provide, in one of their articles or clauses, for ratification within a given period of time.

The original object of this ancient rule requiring ratification by the head of the state was to protect the latter against the errors of a diplomatic agent, primarily as to action in excess of the legal power conferred upon the agent, but also as to mistakes of policy. Hence this power of ratification, like the power to select diplomatic representatives on behalf of the state in the first place, and the power to consent to ratification, if such a step is required by the national constitutional law, is conferred by the provisions of national law upon one of the national organs of government.

Finally, limits are ordinarily set by national laws and constitutions upon the range of subjects upon which treaties may be concluded by the government, or upon the disposition which may be made of certain subjects by the government in treaty agreements. Thus the government may be forbidden to alienate national territory by treaty, or to change the form of national government, or to im-

pose burdens upon the national revenue without consent of the popular chamber. This whole matter—the range of the powers enjoyed by the government and the permissible modes of exercising these powers, the so-called "treaty-making power"—is ordinarily dealt with quite fully in the national constitution. In addition, it is the subject of a vast deal of scientific—and pseudo-scientific—speculation and writing.

The step of ratification has taken on a new significance in recent times as a result of the action of public representative bodies in seizing upon that occasion as an opportunity to exercise control over the Foreign Secretary and the diplomatic representatives of the state. For such action raises immediately the question of the duty to ratify.

It may be stated definitely at once that there is no obligation of ratification where the agreement actually signed exceeds the powers of those who signed it, be they diplomatic representatives or Secretaries of State or Presidents. More than that, there is a constitutional inability and a duty not to ratify in such circumstances. Where there has been no excess of power in a legal sense there is some room to maintain that a state, in selecting a diplomatic agent, commits its advantage or disadvantage to his judgment, discretion, and skill. In actual practice, all states, having this second opportunity to reflect upon the policy involved in the proposed agreement, do not hesitate to take it and to reject treaties on grounds of policy. This most frequently happens, of course, when the Executive who negotiated the treaty and the Legislature or representative body to which the treaty is submitted for approval have divergent views as to the desirable national policy. In such cases the only thing to be said is that the ordinary rules of representation in government must be applied. If the Executive is not at the time truly a national representative in principle or in fact or neither, while the Legislature is, no one can complain if the latter will not accept

treaties drawn by the former, unless the principle of public responsibility in government is to be given up. If both arms of the government are in theory representative, yet disagree in policy, it is evidently a case where the mechanism of representation is defective, leaving divergent mandates standing to conflict with one another. If the conflict be due to changes of public opinion in the passage of time, the case is the same, but it must also be recognized, in such cases, that reconsideration of policy is not, by itself, a procedure which can be condemned. In none of these cases can it reasonably be argued that the action of the representative body deserves to be ignored, or that it would be better if that were possible.

In view of the very real difficulty of this problem, whatever the cause of that difficulty may be and however natural the cause of events leading up to it, attempts are made to take care of the situation in advance. The agents chosen to negotiate the treaty are at times selected with the advice or consent—tacit and implied or explicit—of the body which is later to be called upon to ratify the treaty. Thus some degree of accord between the home government and its agent is assured, not only in point of law, but in point of policy. Such a procedure is wholly desirable. Second thoughts are useful, and the value of two independent judgments upon a treaty is unquestioned, but this gain must not be sought at the expense of consistency and effectiveness in state action. If the public assembly is to have the final word on the treaty, the first word ought not be said in indifference to or defiance of the policy of that body. And the whole situation is greatly alleviated by the insertion in the text of the treaty of a provision stipulating ratification at discretion by the home government. In view of the fact that the ratifying body can hardly hope to control foreign representatives in practice, even though their appointment be subject to its approval, in view of the fact that their instructions must naturally come from the execu-

tive, such a solution seems to be inevitable. Control by the legislature of the selection of representatives to negotiate treaties would undoubtedly have some effect, but not a great deal. The practice of subjecting international agreements to public approval is not going to decrease; on the contrary, it is going to increase; and it remains to adjust matters in view of that movement by a device in the mechanism of treaty negotiation to take care of it.[2]

A similar line of reasoning is to be applied to "reservations" to treaties on the stage of ratification. Reservations which merely interpret the provisions of the treaty text present no difficulties; but this is merely to raise the question whether a given reservation is merely interpretative, that is, whether it serves merely to bring out the agreed meaning of the text, or whether it constitutes a change in the agreement as understood at the time by one or more of the parties. The net result is that if a state desires to make reservations it does so at its peril, while, if the co-signatory allows the reservation made to stand, it, in turn, may suffer thereby. It is impossible to say either that a reservation made has no effect unless explicitly agreed to by the other parties or that, if allowed to stand unchallenged, it has the effect of altering the obligations of the treaty for the state making the reservations. The law of nations has not reached a point where these detailed problems are settled. The test to be applied is the test of joint agreement or mutual consent between or among the parties to the treaty; just what will constitute evidence of consent in the matter of ratifications with reservations remains to be settled in the special circumstances of the case, checked and reënforced by the risk of counterclaims and refusals to perform the obligations of the treaty in the future. Where reservations or amendments, including changes in the text and essential modifications of meaning, are stated

[2] Example, below, Appendix A, Document No. 4, a and b.

by one party and accepted by the other, all difficulty is removed.

After ratification by the parties severally, evidences of this action are exchanged.[3] This exchange of ratifications is the definitive step in the conclusion of the treaty and gives it binding force upon the contracting states. A publication or promulgation of the treaty usually follows and renders it binding, subject to the constitutional law of each state and common international law, upon the citizens of each of the contracting states and, so far as may be by international law, upon third states. It will be noted that the range of binding effect of the treaty increases at each stage, from signature through ratification and exchange to promulgation. Signature binds the government, ratification and exchange of ratification binds the state, promulgation binds the people of the state individually.

The effect of treaties upon third states or states not parties to the agreement varies with the nature of the treaty and the action or inaction of these states. On the one hand the doctrine of the legal independence of states forbids any two states to impose legal obligations upon a third state without its consent. On the other hand, outside states may become parties to a treaty by giving such consent. Between the two extremes, and especially in the binding effect of these acts, there are many variations.

States not parties to a treaty may be asked to adhere to the agreement or to accede to its terms, and this invitation may be extended by separate diplomatic action or in the text of the treaty or in both ways. The distinction between accession and adhesion is slight, and the two terms are often confused. So far as there is any distinction, it lies in the fact that by accession a state becomes a party to the treaty, while by adhesion it simply recognizes the terms as agreed to by others and pledges to respect them.

[3] Examples, below, Appendix A, Document No. 4.

This distinction is of importance where the treaty is of such character that accession would involve the new state in obligations to do certain things, as, for example, to participate in an exchange of military or economic statistics among the signatories. Where a cession of territory by one state to another is involved, third states could hardly, in the nature of the case, do more than adhere to the treaty.

In the absence of accession or adhesion, third states are merely under obligation to take notice of the existence and effect of the treaty between the contracting powers. The results, in point of fact, are the same in the end, in the case of treaties such as those for the cession of territory, as though the state had formally adhered thereto. Likewise for treaties embodying and declaring rules or codes of international law; third states may in the nature of the case be compelled to accept them as evidences of the common law of nations in spite of the fact of not being signatory thereto, as in the case of the Declaration of Paris in 1856. Further, non-signatories may by independent action adopt the rules of law embodied in such treaties without joining in the signature of the treaty itself, as did the United States, in part, with respect to that same Declaration of Paris. It is hardly too much to say that the effect of treaties upon non-signatory states depends more upon the contents of the treaty in question than upon the formal action or inaction of these states. With the great increase of the number of treaties of a law-making character, this is doubly true. Treaty-making is becoming increasingly legislative in character, both within the individual states and in their relations to one another. It is a far cry to the age when treaties were merely contracts between personal sovereigns negotiated on their behalf by personal agents, and could in the nature of the case bind only the signatory parties.

Several questions arise in connection with international

treaties which are of an essentially legal nature, as, for example, the rights of states signatory to the treaty by virtue of the terms of the agreement. These questions lie in the field of abstract or pure law, rather than in that of international governmental practice. Nevertheless, certain questions of this sort arise directly out of the process of treaty negotiation, and these problems cannot therefore be overlooked in any study of that process.

As has already been suggested, the scope of the treaty signed by the agents of the states must conform to the scope of the powers entrusted to them. Any agreement in excess of the powers conferred upon them can have no binding force unless it is conferred by some additional action of the state, such as ratification in spite of the extended scope of the agreement. The agent cannot commit his principal to obligations which are beyond his powers, although the latter may make good the defect by himself accepting those obligations.

Again, the principal cannot be held bound by agreements made by his diplomatic agent where the latter has, in the course of the negotiations, been subjected to fraud or duress to compel him to sign. The state as such may be "compelled" to accept a treaty at great disadvantage to itself by reason of the fact that the only alternatives open to it are still greater disadvantages or sufferings. But in such a case the state has lost its freedom of choice as a matter of fact at an earlier point of time, by allowing itself to be put in such a position that it can be confronted with the alternatives of conquest or agreement to pay an indemnity; as a matter of law, its choice is still free as between the alternatives presented. In the case of the agent, he has no choice when confronted with fraud or a threat of death; or, even if it is insisted that the same freedom to choose exists in his case as exists in the case of the state whose territory and capital have been occupied, the only

choice that he actually has is between his own interests and those of the state. For this reason he is not capable of binding the state by such a choice.

Finally, the treaty as negotiated cannot abrogate the accepted rules of international law. Treaties may be concluded with the direct purpose of revising the accepted rules of international law, and two states may agree to act in their relations with one another in a manner at variance with these rules. But such a treaty can have no binding effect in the laws of third states, nor will the rules of international law be revised for them without their consent as a result of that treaty. The utmost to be gained in such cases is that third states will recognize that its obligations exist as between the signatories. This they must admit, but may, on the contrary, enter a legitimate protest where their rights are adversely affected by a treaty contrary to commonly accepted international law.

The validity of treaties is affected not only by the manner and conditions under which they are negotiated, but also by the course of subsequent events. And these may easily lead to the total disappearance of the treaty or its replacement in whole or in part by a new agreement.

The simplest mode in which a treaty may pass out of the system of effective international agreements is by the fulfilment of its terms or expiration according to a time limit set in those terms. By such a process treaties are lapsing continually, and if this were the only force operating in the field the existing treaty system would be seriously depleted with the passage of time, and only such treaties would remain as stipulated obligations which were still unperformed or were permanent and continuous in their nature.

Such a result is forestalled by the constant replacement of expiring treaties by new agreements. Old treaties are constantly revised, in whole or in part, and thus the treaty nexus is carried along continuously. The multiplication

of state rights and obligations as a result of the repeated negotiation of single treaties leads to a condition of confusion and complexity which in itself calls for a process of constant revision and consolidation. States are from time to time compelled by this factor to pause, take stock of their outstanding treaties and treaty rights and obligations, and attempt to consolidate these rights and obligations and render them uniform and consistent. This leads to a renewal or revision of old treaties; and it may also lead to the abandonment of old treaties by mutual agreement without any further steps, as well as to the replacement of old treaties by entirely new ones.

Treaties or parts of treaties may likewise come to an end by the action of the beneficiary in renouncing rights accorded by the terms thereof. This would not of itself give a right to release from obligations incurred by the treaty and could only take place under ordinary circumstances in connection with one-sided treaties. These are rare, and the case where a state is willing to renounce treaty rights while not securing a release from the corresponding obligations is rare. Hence this mode of terminating treaties or treaty obligations is unusual.

Finally, treaties may be terminated by a process of denunciation. One of the parties may denounce a treaty according to provisions made in the text of the instrument itself. Or one of the parties may denounce the treaty according to the rules of common international law. This may take place when it is discovered that there are defects in its original validity due to action by the negotiators in excess of their powers or due to duress applied to the negotiators. The proper stage at which to act upon such facts is that of ratification, and ratification may be taken to cover any such facts as these which are known at the time. But newly discovered facts of this nature will certainly justify and—what is more important for our purposes—probably lead to denunciation later. Beyond this,

denunciation will be likely to follow upon the failure of one party to perform its obligations under the treaty, and also such a change in circumstances in either of the states parties to the agreement or in general international relations as to make the treaty dangerous to the existence of one of the parties or to invalidate the exchange of benefits upon which it is based. The denunciation in such a case will give a right to compensation to the other party for benefits actually conferred and for loss of compensating benefits, but no state can hope to hold another to treaty obligations apart from some substantial degree of mutual benefit or in circumstances endangering the safety of the state. Indeed, it is this very reason, turned in the other direction, that entitles the second party to compensation upon denunciation by the first.

By these processes treaties are made, revised, abandoned, replaced, and extended, and the web of international treaty obligations is kept in constant repair and effectiveness.

The negotiation of treaties according to the processes just described has gone on steadily and with an ever accelerating frequency during the past four or five centuries. The results appear in the enormous mass of treaties and treaty obligations existing at any one time, a body of material which is constantly renewed, constantly revised, and which is constantly increasing in extent and in its internal complexity. Each decade sees an increase in the number of treaties concluded, the number of subjects taken up for settlement by the process of treaty negotiation, and the degree to which the states are involved in this system of relations.

The treaty nexus may be studied as it stands at any given point in time; and an analysis of existing treaty rights at any given point in the past gives a fairly adequate understanding of the existing state system and the existing

system of international practice at that time. Moreover, despite the fact that, with each advancing decade, and almost with each new treaty made, some old treaty passes out of effective existence as a statute of binding obligation,—so that the vast majority of all the treaties on record are now obsolete, and only the more recent ones, such as have not expired and have not been superseded or abrogated by succeeding compacts, are directly effective,—these older treaties are not of merely historical interest. For the provisions which they contain furnish evidence regarding the principles upon which the nations may be presumed to desire to regulate their relations, in the absence of any conventional agreements in effect to the contrary. In other words, they provide the materials from which the rules of the historic common international law may be inferred by a process of induction. Finally, it is with the external aspects of this net-work of treaties in which the modern states of the world are and have been constantly enlaced that we are chiefly concerned, and not with the contents of those treaties; for this purpose the treaty system of a decade ago is as useful for study as that of today.

From an inspection of published collections of treaties[4] it appears that modern states have concluded some thousands of treaties with one another since the dawn of international relations. In view of the nature of the material, it is, of course, impossible to render such data precise within two, or even three, figures. All of the collections contain many national statutes, decrees, and other acts besides treaties proper. There are many duplications, and doubtless not a few treaties have been entirely lost from their pages. Nevertheless, the general result is sufficiently reliable to be dependable for the simple inferences which may be made from it. And the mere fact of bulk deserves attention if nothing else could be said. Here is a

[4] See references in Appendix B, § 8.

vast body of treaty practice and treaty law which forms a solid element of international organization on its own account.

The existing body of international conventions may be analyzed in several ways. The agreements among the nations may be classified according to form and also according to subject matter, and each method yields its own peculiar results. Of the two, the former classification is simpler and reveals more regarding the mechanics of international practice.

The "treaty" proper is the basic type of international agreement and is an agreement in full form and style between two or more states, independent at least for the purposes of that particular treaty.[5]

There is, however, great confusion in actual practice in the descriptive terms used to refer to various international compacts. The usage of daily language cannot be accepted uncritically. The term treaty may be used either generically, to refer to all sorts of international agreements, or, more specifically, to denote the typical, formal, international compact. It is in the latter sense that it is used here.

A treaty, or, rather, the text of a treaty,—although there is no such thing as an unwritten treaty, and the term refers to the document in which the agreement is recorded rather than to the agreement itself—may be analyzed into various parts.[6] First comes the preamble, which declares that the parties named have, through their agents, as named, agreed to the following articles for a certain purpose, also named. Then follows the body or text of the treaty, usually divided into articles, and even, on occasion, into chapters, sections, clauses, paragraphs, and so on, giving the substance of the agreement. Articles dealing with the general principles of the agreement come first, followed by special articles which apply these principles. At the end are often

[5] Specimens, below, Appendix A, Documents No. 4 and 5.
[6] See marginal analysis of Document No. 4 in Appendix A, below.

found articles dealing with the way in which the agreement is to be carried out, and, perhaps, articles providing for guarantees of execution. At the end also come provisions concerning ratification and the exchange of ratifications and the date when the agreement shall be effective. This completes the body of the treaty, and the statement follows that this agreement has been made at a certain place and on a certain date and has been signed by the participants. Finally come the signatures and seals of the agents. There may be annexed to the treaty any number of appendices or schedules containing details of rates or similar material which operate in execution of the principles of the treaty, but which it has not been thought best to include even among the special articles.

Much labor has been spent upon the art or science of interpreting treaties. But such work is part of the science of logic rather than of international relations and, in any case, refers to the subject matter of the treaty rather than to the form. Regarding the latter, as just described, the chief difficulty concerns the act of signing and sealing the document. The giving of guarantees is rapidly disappearing now, but the problems connected with the powers of the signers are not diminishing in numbers or in complexity. As greater care is now taken in the assumption of international obligations by treaty, and as opposition to secret treaties increases and likewise the demand for public ratification of treaties concluded by the executive arm of the government, this question is rendered more difficult than ever. The rules regarding the power to sign are partially principles of constitutional law and partially principles of international law pure and simple. What we have to note is the procedure in the case.

The negotiators are identified and their powers defined by their credentials and full-powers. The identification and declaration of powers in the preamble must lie within the limits of the former. Further, the treaty itself must

lie within the limits of these full-powers. And, finally, the signatures and seals must correspond with the declarations of personal identity contained in the credentials. The seals used by the signers are not state seals, but private personal seals used for purposes of identification. Needless to say, they are not necessary in a day when personal signatures are adequate for these purposes, but they repay attention because they reveal the fact that the negotiators sign primarily as individual persons, and only indirectly as state officials. The question of due powers may, therefore, always be raised, and if raised must be settled by reference to the credentials and full powers just described.

There are many varieties of international agreements beyond the "treaty" proper. The term "convention" has been used in various ways in modern treaty practice to describe international agreements. On the one hand, it has been used in reference to international agreements of minor importance, such as postal conventions, and therefore of somewhat informal style—sub-treaties, if they may be so termed. On the other hand, the term has been used to refer to great international agreements signed by several nations, in full form, such as the Hague Conventions. Evidently there is some confusion here. The real distinction seems to run between agreements upon subjects of a political character and agreements upon subjects of a governmental or administrative character. Thus we always have "treaties" of peace, of alliance, of cession, but "conventions" regarding postal service, and "conventions" for the exchange of consular representatives. Even that distinction is not consistently followed, and the two terms are often used interchangeably.

Various other forms of international compact are in use. A "declaration" is a joint statement of international law as it is understood by the parties or a statement of the policy which they intend to pursue on a given subject, or a mixture of both. Such was the Declaration of Paris of

1856 relating to the rules of naval warfare. A *compromis* is an agreement to arbitrate on certain terms a certain dispute which has arisen between the parties; it is to be contrasted with the "treaty of arbitration" which provides for the use of arbitration by the parties in disputes which shall arise in the future.[7] The term "protocol" is used to describe either memoranda or records of discussions, articles drawn up in explanation of the terms of the main body of the treaty, or records of an exchange of ratifications to a treaty.[8]

It will appear that some of these distinctions are distinctions of substance as well as of form. Other classes of international agreements are definable in the same way. Thus a "capitulation" is a military agreement for surrender of one of the parties, and "the capitulations" are, or were, treaties between Western Powers and Turkey and other Eastern states relative to privileges of citizens of the former while in the East. The connection between the substance and the form of international agreements is not arbitrary, even including the distinction between treaties and conventions. The more important subjects are dealt with in formal treaties and conventions, while agreements upon questions of minor importance are embodied in less formal pacts called by various names, such as "agreement," "arrangement," "exchange of notes," *procès verbal*, "additional article," and *modus vivendi*.

One important aspect of this practice is found in the fact that such informal agreements, where the participants feel free to rely on them, may be concluded by executive officials, even subordinate executive officials, with less ostentation than would be involved in the conclusion of a full treaty, and even, perhaps, without that process of parliamentary ratification which is necessary in the latter case. Where legislation is necessary for the execution of the agreement

[7] Example, below, Appendix A, Document No. 4.
[8] Same, 4c.

the check of the representative body exists in that form, of course. Still, the loophole is and must be very large under the circumstances.

Two other forms of international agreements remain to be noted, one a very minor form and one a very significant form.

The executive agreement without posterior ratification deserves to be compared with the executive agreement based upon prior national statute. In all states today there has grown up a practice of enacting statutes dealing with matters arising in international relations, such as tariff laws and postal service legislation, while providing in the text of such legislation for discretion by the executive authorities in applying the law to goods or mail coming from other states. Agreements are thereupon made with other states for reciprocal remission of tariff duties or the division of postal charges by the parties. This practice constitutes a fertile source of international agreements.

Lastly, the "final act" is the supreme treaty form.[9] This term refers to the concluding agreement reached in an international conference where several treaties or conventions have been signed and which recites the circumstances and objects of the conference, indicates the course of events in the conference, and lists the results achieved in the form of separate conventions. The final act does not contain a minute record of the proceedings of the conference and merely lists by name the agreements concluded, and it does not add anything in substance to what has already been accomplished, but, in point of form it is the most striking and solemn international agreement.

Before reviewing the various classes of international treaties by reference to the subjects with which they deal, it will be well to set aside entirely two great classes of "treaties," so-called.

[9] *Final Act* of Second Hague Peace Conference, below, Appendix A, Document No. 9.

Many leading European and American states have concluded agreements with native tribes or semi-civilized people dealing chiefly with the cession of territory, but also with such matters as the payment of tribute, the rendering of services of one sort or another, and commercial relations. The United States concluded some five hundred "treaties" of this kind with the Indian nations prior to 1871, when the practice came to an end. These compacts deserve to be called treaties only in a formal sense. They have been so regarded in our jurisprudence and constitutional government, but clearly they do not rest upon the essential assumption of treaty negotiations, namely, the independence of the contracting parties. The treaty form was used for tactical purposes, to save the faces and consciences of the European settlers and to assimilate the process of dispossessing the Indian nations to the accepted system of the European law of nations, and also for the superior moral and psychological effect in the eyes of the Indian of this form of action in contrast to a simple notice to him to vacate. The pretense of free consent was considered, apparently, to have a certain argumentative value and the question of constitutional jurisdiction was avoided, while placing the immediate burden of enforcement upon the Indian chiefs who had signed the "treaty."

In the second place, notice should be taken of the "Concordats" concluded by the Papacy with various states with the purpose of protecting the interests of the Catholic Church in the territories of those states. While these agreements take the form of treaties or conventions they deal almost exclusively with religious and ecclesiastical matters and hence do not relate to the normal subject matter of international relations. And we cannot, in view of all the facts of the case, regard the Papacy as a state in the full meaning of the term; such agreements are to be regarded rather as agreements between states and a pri-

vate, or, at most, a quasi-public organization than as treaties in international law.

With the subject matter of the great majority of individual treaties neither the student of diplomacy nor of law has much concern. The cession of this piece of land, the granting of this or that commercial privilege, the settlement of this or that claim are not, in themselves, of more importance for common international law or the elaboration of international government than are the contents of private contracts for the private or public law of the state where they are made. Given the methods of diplomatic negotiation and the legal rules concerning consent, interpretation, and termination, and the nations may agree with one another upon tariffs or territories at their pleasure. Of course, the student of law is interested in the classification of treaties as executory, executed, declarative, and so on, according as they provide for future performance, create a new legal status, or declare a given rule of law or line of policy. This, however, relates rather to legal form than to subject matter, and does not alter the conclusion stated. This is all the more true because of the fact that as yet there seem to be few bars to the conclusion of individual treaties between the members of individual pairs of states contrary to common international law.

While not interested in the specific content of given treaties, however, the student of law and diplomacy finds it convenient to classify treaties according to the general nature of the subjects dealt with. They may be classified as treaties of peace, treaties of alliance, treaties of cession, boundary treaties, treaties of commerce, consular conventions, and so on through dozens of titles, covering all conceivable aspects of international relations.[10] For few questions arise among the nations which have not been the subjects of international treaty agreement. Or, on the other

[10] Text of one of the most important of modern treaties of peace is given, below, Appendix A, Document No. 5a.

hand, treaties may be grouped into two great classes, namely, treaties dealing with legal and governmental subjects and those dealing with concrete topics having no implications for international law or organization. Of the former class are treaties declaring rules of international law and conventions establishing international courts or commissions or conferences;[11] of the latter class are those ceding a piece of territory for a certain purchase price.[12] The former are of vital significance for the student of international government, the latter have little more to do with that subject than a private horse trade has with national constitutional law.

It is, of course, difficult to draw the line between these two classes of treaties with complete precision. It is still more difficult, in many cases, to classify a given treaty, because of the mixture of elements to be found in its provisions. The treaty of arbitration is easy to classify, and likewise the treaty agreeing to the cession of a given piece of territory. The treaty of commerce, however, may include provisions for the remission of tariff duties and also provisions for the exchange of consular representatives, and while the former have no special significance for international law or government, the latter have.[13] Even the treaty of cession, the purest type of non-governmental or non-legal treaty, may contain statements of the grounds for the cession in point and thereby take on an added significance.[14]

It would be of no special service to recite here a list of the different varieties of treaties by subject matter. Among the more important, beside those already named, are treaties of guarantee, treaties of navigation, treaties deal-

[11] Declaration of Paris, of 1856, below, Appendix A, Document No. 5b.

[12] Treaty between the United States and France for cession of Louisiana, 1803.

[13] Treaty of commerce and navigation between the United States and France, 1800, Arts. VI, IX, X.

[14] Treaty between the United States and Mexico for cession of territory and payment therefor, Art. IV.

ing with laws of copyright and patent, the settlement of claims, the protection of property, and jurisdiction over aliens, including the related subjects of naturalization and citizenship and extradition.[15] In the past century and a quarter there has, however, been a notable change in the predominating character of treaties, so far as their subject matter is concerned. A collection of treaties of the early eighteenth century bears the title "collection of treaties of alliance, of peace, of truce." Of late years there have been fewer such political treaties or treaties dealing with personal and formal diplomatic questions and more treaties dealing with legal, economic, and governmental affairs. There have been fewer treaties of alliance, marriage treaties, and treaties relating to the privileges of rulers and princes, and more agreements dealing with questions of international law, providing for the extradition of fugitives from justice, the settlement of pecuniary claims, the exchange of commercial and postal facilities, and the establishment of international judicial or administrative organs.

A secondary result is to be seen in the increase in the number of treaties signed by more than two powers, or what may be called general international acts. This is attributable to the fact that it is natural for several states to combine in law-making treaties while it was not natural to expect them to combine in treaties of the older type, creating special and exclusive privileges, or establishing special ties of marriage or alliance against hostile dynasties between friendly royal houses. The more recent international agreements are of a broadly coöperative character

[15] Treaty of guarantee between the United States and Panama, 1903; treaty of navigation between the United States and Denmark, 1857; treaties on patent and copyright between the United States and Japan; treaty on settlement of claims between the United States and France, 1880; treaty of amity and commerce between the United States and China, 1844, Art. XIX; treaty on naturalization between the United States and Ecuador, 1872; treaty of extradition between the United States and Bavaria, 1853.

in contrast to the narrow competitive agreements of an earlier age.

The character of the treaty nexus is thus being altered within itself. Not only is the web of treaty obligations growing greater in magnitude and internal complexity; it is also growing firmer and more stable in quality. Bargains on concrete questions of no permanent significance are being superseded by what looks very much like international legislation on legal and governmental matters of general and continuing interest. Just as personal diplomacy is converted into something far more significant for the problem of international government by its metamorphosis into treaty negotiation, so the latter takes on a new and far more significant nature by the reorientation of its outlook as to subject matter. To this is to be added the changing character of the process of treaty negotiation, whereby treaties between two parties are increasingly supplemented by treaties concluded in international conferences among several nations. The transition from personal contract to public legislation is here seen in all its detailed steps.

When the contents of the treaties concluded among the nations are examined more closely the relations between provisions found there and the whole body of national and international law appear to be very ambiguous. Treaties have been classified in the preceding pages as legal and governmental, on the one hand, and economic and political, on the other. Disregarding the latter class henceforth, it remains to define the processes by which the provisions of a treaty stating a rule of law to which the signatory parties have agreed becomes effective. This investigation leads in two directions. On the one hand, it leads to an inquiry into the relation between the law of treaties, if it may be so called, and national law; on the other side it leads to the problem of the relation between treaties and international law.

It is obvious from an inspection of the text of many

international treaties that their provisions, although stated as rules of law, and sometimes precisely because they are stated in that form, need further action in order to be effective. The general principles, and even the comparatively detailed rules, of a treaty may need elaboration in statement and in the explanation of their precise meanings. In any case they need to be carried into practical execution. Treaties sometimes relate merely to the state as such; thus, a treaty recognizing the independence of one of the contracting parties would need no elaboration upon that point, and it would call for no direct application in actual life. The effect intended is an effect in the field of theory and abstract law, and it is accomplished by the very act of concluding the treaty. In the case of a treaty providing for reciprocal commercial rights for citizens of the contracting states, however, there is a need for further legal statement and also for practical application in actual life. After all, the individual is the ultimate unit of political and legal action, and most treaties call for results in the realm of the individual citizen. In this great range of cases additional action is necessary in national law and government to carry out the treaty. Let us note those cases carefully and in detail.[16]

Certain types of treaties may be carried out by the simple action of executive officials without further coöperation from other governmental bodies and without any change in the national law. A treaty signed by the United States recognizing the independence of the consignatory state would automatically constitute such recognition. Furthermore, even if the agreement contained also a pledge to receive diplomatic or consular representatives from that state, it could be carried into execution by the President alone, in the exercise of his constitutional power to conduct the foreign relations of the nation.

[16] On the relation of treaties to national law see literature cited, below Appendix B, § 8.

Where, however, the action needed must be taken by subordinate officials who have no discretion and who must act solely in accordance with instructions from superior officers, such a procedure is impossible. In such cases some further action is necessary in order to set the machinery of the national government in operation.

In certain of these cases, again, the chief executive might carry the treaty into execution by issuing the necessary instructions to subordinate officials. This would be true, for example, where no statutory or constitutional provisions existed to control executive and administrative action in that field. Such situations are relatively rare and can be found in the United States only in the field of foreign relations. Thus the President could instruct the Secretary of State to issue an exequatur to a certain individual in execution of a consular convention with a given state, without reference to any statute or other legal standard.

In most of these cases, however, action by subordinate administrative officials depends on authorization from the legislature, because the chief executive is unable to issue new instructions to his subordinates for the execution of the treaty in the face of national legislation to the contrary or in the absence of appropriate legislation. Even in the United States, where treaties become an integral part of the law of the land, and where a treaty acts to repeal previous statutes in conflict with it, this is true, especially as regards the payment of money from the treasury, and in the case where legislation contravenes a prior treaty. In these cases favorable or supporting legislation by Congress is needed, or, at the very least, careful abstention from hostile legislation.

If the executive is somewhat dependent upon the legislature for its power to act in execution of national treaty engagements, the judiciary is doubly dependent upon both the legislature and the executive branches. What the "political" departments of the government do or say as respects

the nature and extent of the obligations of a treaty will be accepted by the judicial department as final in many cases, particularly as to the effectiveness or ineffectiveness of the treaty as a whole, the annexation of territory by treaty, and, as above, the actual administrative operations under the treaty. In another sense, however, the courts have more opportunity and power to carry into execution treaty obligations than do the other two departments of the government. Thus, where the requisite action has been taken by these departments it is to the courts that the matter comes in the last instance if there be any doubt or dispute about it. Again, where no such action is necessary the courts are free to act upon the treaty directly, in a number of nations, applying the treaty in litigation between private parties wherever it is in place. This is true especially in the United States, because of the constitutional position of treaties in the national legal system, as already defined. It is not true, however, that this posture of affairs is wholly exceptional, and it seems fairly certain that the drift of things is toward this solution of the problem of the application of treaties. With the growth of the practice of subjecting treaties to national representative bodies for approval in legislative form, this method of action is bound to spread. Thus all branches of the national government will gain increased authority in carrying into execution the national treaty obligations.

Such a result is earnestly to be desired. As matters now stand in the field of international government, a treaty depends for its execution upon the national governments of the signatory parties. Whether it is executed or not, and the terms on which it may be executed, are matters of comparative national constitutional law and government. Failure of a national government to act means that the treaty fails of execution. There is, of course, a distinct moral obligation to act, and this obligation is not only moral but also legal, in the sense that it is supported by the

accepted principles of international law. It is not, however, enforceable by a signatory state in any judicial tribunal, national or international, and it therefore lacks a perfect binding force in operation. The national courts cannot attempt to compel the legislature to act in execution of the treaty. The legislature could usually compel the executive and the judiciary to act by the processes of statutory legislation or impeachment, but if the legislature, the repository of the national discretion, sees fit to refuse to carry out the national obligations, no adequate legal or governmental redress is available to the other state. In default of execution the signatory state not satisfied with the performance of the other party to the treaty may legitimately put forward diplomatic protests and seek compensation for value received and for any losses incurred. But the fact remains that in order to be finally effective a treaty must be incorporated into the national legal systems of the signatory states and thus made binding and operative in the hands of the executive, legislative, and judicial organs of the state.

Such is the relation between treaty law and national law. It remains to be seen whether the relation between treaty law and international law is as intimate and, if so, whether it is of the same type or form.[17]

That relation may be stated tentatively and in general terms at the start by adopting a mathematical form of expression. As diplomacy is to treaty negotiation so treaties are to international law. The latter is a higher stage in the process of evolution of international governmental practice. The former develops into the latter, but is superseded by it in so far as the latter expands to cover more and more of the territory of international relations. The second stage is entered from the first because of a desire to secure a more general and more permanent form of regulation for those relations. It is a case of developing general law out of

[17] See what is said, above, Chap. V, on another phase of the relation between treaties and international law.

a system of more or less specific contractual agreements in order to pass, and with the result of passing, beyond the stage of contract to the stage of legislation in international life.

The processes by which the materials of treaty agreements enter into the composition of general international law vary in their simplicity and directness. Certain treaties or joint international declarations set forth international law directly and expressly, and leave no additional act necessary to this result. Such was the Declaration of Paris of 1856 which ended by declaring that, in naval war, "blockades, to be binding, must be effective." On the other hand, international law can be derived from certain economic or political pacts only by a process of induction, of inference, by indirection, and by a somewhat hazardous generalization from the specific instance to a common principle. Thus many treaties ceding territory in exchange for money payments imply that, in international law, territory may be properly acquired by purchase. A single case of the kind would not, however, be of any legalistic value. Thus, the guarantee by the United States of the territorial integrity of Panama in connection with the acquisition of the use and occupation of the Canal Zone could not be relied on as proving that states receiving concessions of that sort must guarantee the territorial integrity of the ceding state.

The same is true of treaties apparently in conflict with commonly accepted international law. So far as binding at all, they constitute exceptions to, not evidences of, the rules of the international common law, as national statutes make exceptions to the national common law. In the international field, the repetition of such a treaty by many states will lead to an alteration in the rules of the common law itself based on the evidence afforded by these treaties.

The names and numbers of the parties to a treaty are, however, of as much importance in the discussion of trea-

ties as are the provisions of the treaty itself. Thus, the legalistic value of treaties and their effect on common international law depends to a great extent upon the number and importance of the signatory powers. A treaty between Siam and Haiti would not have much effect on the law of nations, even if it pretended to declare international law directly and in express terms. A treaty signed by ten or twelve leading states of the world would be decisive on the subject with which it dealt, even if not cast explicitly in the form of a law-making treaty. According to the doctrine of independence, no state can be legally bound without its consent, and a given state could by express declaration refuse to be bound by the rules set forth in or deducible from the last-named treaty. But in the absence of such specific and explicit action or, what is the same thing, by common international law, other states would be presumed to agree to the rules accepted by the powers signatory to that treaty. It would be almost conclusive evidence upon the content of the current accepted law of nations on the subject with which it dealt. Not only would the doctrine of state independence be ignored in so far as it is not covered by the theory of presumptive or implied consent; the doctrine of state equality, likewise involved in the case, would also be passed by in silence. The injured state may be partially conciliated and satisfied by the proposition that, while states may be equal in the right to enjoy such legal rights as they possess under common or conventional international law, they are not entitled to equal political power in the making of law or the control of international government. Leaving these problems of legal theory, it may be confidently concluded that treaties among several of the Great Powers specifically declaring rules of international law would contribute most effectively to the formation of general international law, even if these Powers did not through their agreements exercise any recognized international legislative authority.

CHAPTER IX

GOOD OFFICES AND MEDIATION; COMMISSIONS OF INQUIRY

IT is conceivable, perhaps, that international relations might proceed smoothly from month to month and from year to year merely by means of the practices of diplomacy and treaty negotiation. If no other complicating factors were introduced in the problem these forms of international organization might be sufficient. As a matter of actual experience, however, they are not sufficient to meet all the needs of the situation. The reason for this is the appearance of what may be called the international dispute. The international dispute arises precisely because the procedures of diplomacy and treaty negotiation are inadequate to provide for the management of all future and contingent relationships between nations, and, because, in turn, once the dispute has made its appearance the inadequacy of diplomacy and treaty negotiation to resolve the difficulty and settle the dispute is accentuated at each succeeding stage.

Direct personal diplomatic negotiation is not always inadequate to settle an international dispute, and, where successful, it constitutes the first and simplest method of removing the trouble which its own negligence or incapacity has allowed to develop. What happens here is that the machinery and practice of diplomacy as it is ordinarily conducted catches up with its task. It removes the dispute by securing a diplomatic agreement of one sort or another, including, as one of the possible forms of settlement, an international treaty.

This simple method of dealing with the international dispute is not, however, capable of resolving the more difficult and complicated questions which arise between nations. The technique of such a method is too primitive; it does not possess resources of procedure and treatment adequate for the task. There is nothing left to the contending parties but to continue to put forward their own views of the facts and the principles and to urge their claims and try to secure satisfaction of their interests by bargains and demands, persuasions, threats, or aguments. What is needed is an entirely new approach to the questions in dispute, and, particularly, an approach from a point of view, a right, and an interest, radically different from that of either of the two contending parties. That method and that approach have been found in the practices of mediation and arbitration, or, to speak in still broader terms, in the judicial settlement of international disputes.

There are two forms of diplomatic practice which serve to prepare the way for arbitration or judicial settlement proper. These are mediation and the still milder form of international treatment of international disputes, good offices.[1] Each of these preliminary stages has its peculiar nature and function, and it is worth while to exert some care to draw clearly the distinctions between them. Both good offices and mediation begin within the field of simple diplomacy, but in the end they go very far beyond that field and get well over toward arbitration. On the other hand, both stop short of true arbitration, and good offices stop very far short of that point. The use of one or the other may pave the way for arbitration. Equally well, the use of one or the other may achieve a settlement of the dispute, and render a resort to arbitration unnecessary.

The proper occasion for the exercise of good offices or mediation is the existence of a dispute between two nations respecting their rights and duties toward one another.

[1] See literature cited, below, Appendix B, § 9.

War may be impending, and may possibly be averted by these means. Or a war which is already being waged may be brought to a close by securing an agreement between the parties. This agreement may be an agreement on the merits of the case,—the most definitive result which can be hoped for,—or it may be an agreement for arbitration on the merits, pending which, or in view of which, hostilities are to be postponed or suspended or even terminated entirely. In any case the result will almost certainly take the form of a treaty, since a dispute so important as to have reached the stage of mediation or arbitration can hardly be settled in any less formal manner. In the circumstances described the resulting treaty will very often be a treaty of peace or an arbitration convention. Mediation in time of peace is, naturally, the commoner of these forms of action, but there are many examples of good offices or mediation in the termination of wars.

Whether the action in question is to be called "good offices" or "mediation" depends upon the distance to which the parties to the dispute are invited to go in adopting a new method for settling their quarrel. For what really happens is that the nations in dispute are invited to compose their dispute for the good of the general peace. This invitation comes from a state or states not party to the dispute, and whether it amounts to good offices or mediation depends upon the extent to which the third party goes in offering assistance in the premises.

Good offices consist merely in offering to provide a meeting place where representatives of the disputing nations may meet together to discuss anew, perhaps under the presidency of the third party, the subject matter of the dispute, or in offering to receive and transmit to the other party written proposals and counter-proposals dealing with the question in dispute. In such a case the third party refrains from giving any opinion or advice upon the substance of the question, and confines its activities to the

mechanical steps just described. From this point on, therefore, good offices do not possess any resources beyond those of ordinary diplomatic discussion. It does, however, serve to renew discussions when the parties themselves have drawn apart, and in this way may affect the future course of the dispute considerably. It is undertaken in the hope that renewed or continued discussion may result in some agreement. It is based on the supreme truth that conference is indispensable in such situations and that the more conference the better, so long as any issues remain open between nations.

In mediation we reach an entirely different sort of thing. Here the third party takes up for consideration the substance of the dispute itself and attempts to discover a solution. This is, of course, of far more significance and, potentially, at least, is of far more service, than merely inviting the parties to continue trying to find a solution themselves. The mediator enters into much more intimate relations with the nations in dispute than does the party who merely offers good offices. The mediator must therefore possess the confidence of the parties in greater measure. There must be no suspicion that the mediator is attempting to secure a certain solution for motives of immediate self interest in that particular solution. The mediator must necessarily enter into discussion with both parties; or, if the parties meet face to face for discussions between themselves, the mediator must, in the very nature of the case, meet with them and enter into the discussions, whereas in the case of good offices the third party may never meet the disputants or either of them. The mediator may even sign the treaty which embodies the settlement reached, as did the American Secretary of State, "in the character of mediator," in the settlement of the war between Spain and Peru, Chile, and Ecuador in 1871. The mediator may thus become, to a greater or less degree, perhaps merely by implication, a guarantor of the settlement.

It is worthy of note that in good offices and mediation, and especially in the latter, there appears, for the first time, the case of a mandate or grant of authority resting upon international, rather than national, basis. Diplomatic representatives are purely national agents. Even the diplomatic corps is, at best, a composite of national agents. Except for the general international consent back of the existence of the diplomatic service as a whole, no truly international authority is exercised by the diplomats. The power whose good offices or mediation are accepted by other states, however, acts as an agent or official representative of two or more nations directly.

Good offices are, very naturally, offered more easily and accepted more readily than mediation. Once begun, however, good offices may develop into mediation, if the third party is led to take up the substance of the question at issue between the parties. Thus President Roosevelt began in 1905 by merely extending his good offices to bring Japan and Russia together at Portsmouth to try to reach an agreement for a settlement of the conflicting interests at stake in the war. At a later point he was led to interest himself in the terms of the settlement, and in the final event he practically dictated the terms of the settlement. Similarly, in the following year he began by persuading France and Germany to go into conference on their claims concerning Morocco, and ended, in 1906, by drafting the main item in the settlement reached at Algeciras.

As in all other fields of international relations, the terminology of this body of procedure is somewhat unsettled, even after three centuries of practice. Thus the formula "good offices" is occasionally used to describe the diplomatic action of one state toward another for a certain purpose apart from any dispute between the latter and a second or third state. Likewise a power exercising "good offices" is sometimes spoken of as an "intermediary" in the case. Finally, the two sorts of action are at times con-

fused for sheer want of knowledge or want of care in the use of terms.

To be of any service the mediator must be neutral and impartial. The parties to the dispute are naturally very suspicious of any outsider who enters the scene and undertakes to find a settlement of their quarrel. Only in the rare case where the mediator very clearly gains nothing by the result, and where both parties are and remain equally satisfied with the settlement, will the mediator escape all suspicion and insinuation. The gratitude of the parties will only be earned where both feel that they have secured the better of the settlement. What is probably the most remarkable case of mediation on record, when all the circumstances are borne in mind, came about when, in 1918, Germany, through Swiss good offices, in effect asked the United States, an enemy state, to act as mediator to secure mutually acceptable terms for an armistice and preliminaries of peace with the Allies.

The mediator will not, of course, be led to undertake such an ungrateful task without reason, and yet that very reason may well affect the formula of settlement proposed to the parties. As a rule, the third state is led to act in such cases by national interests which demand protection. Indeed, it would hardly seem proper for a third state to take action in the premises unless it had some substantial interests to defend. Mere idle meddling would be intolerable and entirely void of that essential basis of all legitimate diplomatic action, the necessity of defending substantial interests of the state. Such a requirement today, however, means primarily that these interests are first of all the interests which all nations have at stake in seeing the general peace preserved and war averted. Nations which may, as prospective neutrals, expect to see their commerce injured if war breaks out and nations which fear that they will themselves be drawn into such a potential war have every reason for promoting a settlement on those general

grounds. This is the common basis for joint international action to mediate a quarrel likely to lead to war. In such a case, also, the action may be affected because one possible solution rather than another is desirable in the interests of peace. Thus President Roosevelt, because he was primarily interested in seeing Japan and Russia reach any solution which would end the war, was interested almost as much in seeing that the solution reached was just in order that it might really end the war and not be merely temporary. That meant that at the time of the settlement he was compelled to oppose first the Russian views and then those of the Japanese.

Beyond its interest in the restoration and maintenance of peace, however, a nation may very well be interested in seeing one solution rather than another adopted by the parties because of the indirect advantages to be had by that nation from one solution and not from the other. In the case of neighboring states such a condition is almost certain to exist. And if it does exist the third nation will commonly regard that desired solution as just on general grounds and feel free and even "compelled" to promote such a settlement for the sake of all concerned.

It is not to be assumed that the contending parties are unaware of this situation. Indeed, in earlier times all efforts at mediation were regarded as nothing but indirect efforts at self-aggrandizement. They were therefore viewed with grave suspicion by the parties in dispute. With the growth of the cost of, and consequent desire to avoid, international war, and with that development of closer international relations which, in actual fact, has made the just solution of a given dispute that solution which accords most with the interests of third states, this instinctive hostility has somewhat diminished. Nevertheless, the action is not so simple and natural and free from suspicion that it can be admitted without a careful definition of its legitimate scope and procedure.

To begin with, the third party normally possesses no jurisdiction over the question in dispute or over either of the parties. They cannot, therefore, be summoned to meet and settle the dispute by discussion, nor can any solution be imposed upon them. Even where the action is to be taken by two or more third parties, or by the family of nations in general, no such jurisdiction exists at common international law. Granted that, in the interest of the general peace and of general justice, or in its own special interests in peace and justice, a third party or a group of third parties has a right to attempt to secure a settlement under such circumstances, precisely what may be done with that end in view remains to be seen.

The simplest case of all occurs where both parties to the dispute request a third state to extend its good offices or to act as mediator. Nothing then remains but to accept the request and perform the task as skilfully as may be. In rare circumstances, as where no peaceful or just solution seems possible of attainment and the attempt at mediation can lead only to further embitterment and to the useless involvement of the third power, the latter may decline the request.

An intermediate stage is found—and in many ways this is the most natural form of procedure—where only one of the disputing parties requests good offices or mediation, in view of its own inability to secure satisfaction either by diplomacy or war. The third party still has no jurisdiction over the other disputant or over the issue. Assuming that the request of the first disputant is to be acceded to, the third party may only turn to the party of the second part and offer to extend good offices or to act as mediator in accordance with the request of the first party. The second party is under no obligation to accept such an offer, and will accept or reject the offer as circumstances dictate. Here are to be considered the possibility of securing satisfaction by persisting in direct diplomacy or war, the

desirability of getting some settlement at once, and of conciliating the opponent and the would-be mediator. If the offer be rejected there is nothing more to be done. If it be accepted the subsequent course of events is clear from the previous case.

The third case arises where there is no request from the disputants. Here the would-be mediator may, if circumstances seem propitious, as already outlined, offer to both parties at once or to first one and then—if accepted—to the other, to furnish good offices or to act as mediator. The offer may be accepted by both disputants or rejected by one or by both. In either of the last two cases the effort fails. Thus President Roosevelt's first attempt to extend his good offices to Russia and Japan was balked by the attitude of Japan alone. In all of these cases mediation may be offered, accepted, or undertaken, upon certain conditions previously stipulated by the disputants, or by the third party, and these conditions must then be observed in all future negotiations unless repealed. In the same way, the disputants and the mediator alike may, at any stage of the proceedings, lacking an agreement to the contrary, withdraw and terminate the whole affair.

Under certain circumstances these normal principles may be varied considerably, apart from any specific international treaty agreements touching the matter. In cases of civil war or colonial revolt the request of the rebellious group for mediation may not be accepted as freely as that of a state whose independence has already been recognized. The quarrel is in law a domestic matter, and in most cases the very issue is that independence the establishment of which could alone make mediation by a third power legitimate and even an offer of mediation welcome to the mother country. Napoleon III was suspected of desiring to promote the separation of North and South when he suggested mediation during the Civil War in the United States. This does not entirely preclude the use of good offices and media-

tion in such situations, but it does mean that their range of application and their value is strictly limited.

On the other hand, there are situations where the "third party" possesses a basis for action which gives greater authority to the "offer" than inheres in such action in ordinary circumstances. Such a situation exists where a common superior possesses a right to come forward and invite, or to come forward and compel, the parties to accept good offices or mediation to settle their dispute. Such action was taken in times past by Rome, by the Papacy, by the Emperor, and, in modern times, by the great powers of Europe. This is not free international practice at all but, so far as admitted or tolerated, is constitutional government. Where not admitted voluntarily and justified on that basis, but imposed by force, it is intervention. In that case it must be justified, as any intervention must be justified, not by reference to any general right of intervention but to the special circumstances of each case, the necessity of self-defense or equally cogent interests; of "armed mediation" there can be none in normal circumstances.

It will be noted that, under ordinary conditions, acceptability, not justice, is the quality sought by the mediator in the formula of settlement. The object is peace; the mediator is not a judge. For the higher form of settlement other procedure is needed, namely, arbitration. Yet it may be suggested that immediate justice between the parties may result as frequently from the attempt to find a settlement acceptable to both parties as from the decision of an arbitrator who knows that his award must be accepted, right or wrong, but who has a very inadequate body of legal principles to guide him in his action.

Another method of dealing with such disputes which serves as a preliminary to arbitration, and which should be examined together with the exercise of good offices and mediation, is the use of a commission of inquiry.[2]

[2] See literature cited, below, Appendix B, § 9.

The commission of inquiry is based in theory upon two phenomena familiar to all who have studied international relations. On the one hand, it is undeniably true that much of the difficulty of settling international disputes amicably derives from the initial difficulty of establishing a statement or version of the facts to which both parties will agree. On the other hand, this difficulty perpetuates itself by allowing passions to be roused on either side which not only obstruct agreement between the parties on points of principle but also prevent a clear settlement of the facts in the case in preparation for agreement on points of principle. Given goodwill in point of principle to start with, it would still be of little avail, and would often be destroyed very shortly, by claims and counter-claims on questions of fact.

Thus the first task of the mediator is often that of allaying international tension and getting agreement upon the facts. It may then appear that, the facts being what they are, the solution follows almost automatically because of the spontaneous agreement of the parties on the law and equity of the case. Seeing that such a task is useful when performed by a mediator, the nations have in very recent years developed the commission of inquiry to perform the same function, while abstaining from any treatment of the substance of the dispute in principle. The commission is to take over the function of ferreting out the facts and providing time for passions to cool and for inquiry to be made into the real merits of the case.

Here for the first time we meet an international governmental body, an organ made up of several members representing several states. The diplomatic corps would constitute such a body if it were more closely organized and enjoyed an international mandate. In the commission of inquiry there is no doubt on this score. Here we have a body of persons acting as a unified international governmental institution.

The commission of inquiry is organized by the appoint-

ment of representatives by the disputing parties, with or without an umpire, with provisions for majority votes or unanimous consent as the parties may prefer. The questions examined are questions of fact, and the final settlement and political considerations are removed from the scene. The members of the commission are chosen primarily for their expert scientific ability, rather than from the diplomatic forces. The atmosphere of the commission is, therefore, more conducive to calm and able discussion than it might otherwise be. For that reason a surprising degree of unanimity can be obtained in the decisions of the commission.

Following the report of the commission on the facts, the parties are free to settle the question of principle or of honor, and to act upon the application of the latter to the facts as found. The fact that the report of the commission is known may make difficult an agreement upon the principles or law to be applied, since the outcome would be a foregone conclusion. This situation may be avoided only by prior agreement upon the principles. This step, however, is, in turn, likely to influence the decisions or discussions of the commission in the same way, although not to the same extent. In the former case the report of the commission leaves the definitive settlement open, and there may be a need for good offices or mediation or arbitration on top of the work of the commission. For that matter, mediation may be used to induce the disputants to accept a commission of inquiry or arbitration in the first place. Still further, in the second case the commission may amount to a court of arbitration. The "questions of fact" and "questions of law" are not, of course, always distinct or even distinguishable in these cases, and the commission inevitably tends to include legal questions in its work. In this manner a "commission of inquiry" which sat in Paris in 1905 upon an Anglo-Russian dispute over the action of a Russian fleet in firing on English fishermen in the North Sea during the Russo-Japanese War found on the facts

and also upon the liability of the parties arising out of the facts. Such action serves to show the relation between the commission of inquiry and arbitration, but is likely to bring suspicion on the commission of inquiry as a court in disguise.

Not until the end of the nineteenth century was there any general international recognition and organization of the commission of inquiry. Then, in the Hague Convention already mentioned, the nations endorsed the institution for its proper purpose and defined the procedure to be followed in making up the commission and in its operation.[3]

It will be obvious that the most important step to be taken in connection with the organization and practice of good offices, mediation, and inquiry is to place such functions in the hands of permanent commissions with power to take the initiative in the face of international disputes, and to summon the disputants to further discussions between themselves, to mediation, or to inquiry. Acceptance of mediatory recommendations might be left to voluntary action by the parties. But the inauguration of such action and response to it should be made automatic and obligatory to be most effective. Steps of this sort are being taken in many quarters today, as we shall see. And when so organized, mediation, or conciliation, as it may be called in such circumstances, is probably the most valuable means available for composing disputes and preserving peace among the nations.

[3] Text, below, Appendix A, Document No. 6.

CHAPTER X

INTERNATIONAL ARBITRATION

NEITHER good offices nor mediation provide a means of settling international disputes unless the solution worked out in conference or proposed by the mediator is acceptable to both parties, and it will command the assent of both parties only if it appears to offer to them the maximum of advantage obtainable in that particular case at that particular time. The parties may conceivably take account of the advantages of a peaceful settlement instead of war. They may take account of any indirect or remote advantages to be derived by the acceptance of a settlement of the current dispute which is less favorable on its merits than they would desire to accept. In international relations, however, with the constant rise and fall of national power and advantage and the constant shifting of support to one party or another in the diplomatic game, the nations are not prone to seek these indirect advantages which might come by the support of legal principles calculated to bring a general benefit in the long run. They are prone to seize the immediate advantage and take a chance on being able to do the same thing in whatever circumstances may arise in the future. Thus it is that the formula proposed by the mediator must be acceptable, not so much because in conformity with general principles which might be acceptable in themselves for constant application to all cases at all times, but because it represents concrete benefits at the time in the case in hand.

The result is to diminish considerably the value of mediation as an international practice. Mediation is the

sort of task which, being performed, may easily have to be performed all over again at once, not because of any change in the subject matter of the dispute but because of the relative positions of the two parties and their abilities and courage to demand greater things for themselves. Each mediation is a new task, not to be performed by reference to any preceding act of the same sort or any principles or rules of law, unless the results of the application of such rules or the rules themselves appeal at the time to the parties as desirable. This prevents the use of artificial or antiquated legal rules or principles, just because they have once been established, and irrespective of their intrinsic justice. In this way, as has been pointed out, mediation may secure greater substantial justice and equity in certain cases than a more legalistic settlement. The result in the total number of cases, however, is to produce instability, uncertainty, and disorder, and to allow free rein to capricious political claims which take no account of any general principles of law.

This is partly accountable for the reluctance often felt by third states to undertake the task of mediation. The mediator has no fixed rules which he is free to follow in proposing a settlement. Not that there are no such rules of law or equity in existence which could be called on to settle the dispute. There may not, indeed, be any such generally accepted rules applicable to the case; many aspects of international relations are still in that position. Even where such rules are available, however, the mediator dares not depend upon them for fear that the parties will not agree with him or with each other on the merit of the rules or the results of their application. To the world in general, interested in seeing a peaceful, a permanent and, to that end, a just settlement, this objectionable fact presents itself even more sharply.

The attempt to remedy this defect in the practice of mediation leads to the use of arbitration. The mediator,

anxious to be free to devise a solution which shall avoid war at the present and avoid it for good and all if possible, so far as this particular case is concerned, may ask to be freed from the necessity of too solicitously conciliating the particular demands put forward at the time by the parties. He may then be authorized to apply existing principles of law and equity to the case by a prior agreement of the parties to accept the result of his mediation. Agreed mediation results in setting up the mediator as judge of the dispute. This is arbitration in all but name. Indeed, at one time in the history of arbitration the judges were called indifferently "arbitrators" and "amicable mediators."

Arbitration [1] may be formally defined as the settlement of international disputes by judges chosen by the parties. Several elements in this concept deserve special notice.

Arbitration is judicial settlement. That is to say, it is settlement by a person or group of persons acting in a judicial capacity, attempting to settle the dispute by reference, not to the claims of one or the other of the parties, for those conflicting claims, indeed, constitute the dispute itself, but by reference to some standard common to both parties and external to the particular dispute. That standard may be merely one of general convenience—convenience to the parties and to the community at large—or it may be one of philosophical justice, as conceived by the arbitrator and as presumed by him to be conceived by the parties. Where the arbitrator is able to discover legal rules, rules, that is, which have actually been accepted at some time in the past as such by the parties, which are applicable to the case in hand, he will not hesitate to utilize them, even where those rules have not been accepted generally by the family of nations. For the arbitrator, although acting on the basis of a pledge by the parties to accept his award, knows that the award must in fact be accepted and carried out by the parties if it is to be effective. It would, therefore, injure

[1] On arbitration see literature cited, below, Appendix B, § 10.

his standing with the parties to hand down an award not capable of being justified by reference to previous declarations made by them. Whether the arbitrator decides the case by equity or by law, he is acting in a judicial capacity, and where legal foundations are not used in the process it is because they do not exist. The deficiencies of the system of international law, however, should be kept distinct from the supposed deficiencies of arbitral procedure.

Note may be profitably taken at this point of the fact that judicial settlement is a more primitive form of international government than legislation, or even administration. Logically, perhaps, the making, the administration, and the explanation or interpretation of law would seem to follow in that order. Historically it has been otherwise. Judicial settlement began in international law while yet there was available merely the customary law and special compacts between individual states. The revision of the law and its codification have come much later. Meanwhile, of course, the law of nations has been somewhat revised, digested, and codified by the judicial process. But the deficiencies of the law continue to operate as a handicap upon the arbitrator.

The arbitrator is not, ordinarily, left to his own resources respecting the standards to be applied in settling the case submitted to him. The parties to the dispute commonly agree at the time of the submission on the principles to be applied in the case, and this provides the arbitrator with his necessary basis of settlement. Where the parties simply agree to a settlement "according to the principles of international law and equity" the arbitrator is left free to do very much as he pleases. On the other hand, if the bases of settlement are closely specified by the parties, the arbitrator will depart from them at his peril, even where the bases agreed upon seem to him to be out of accord with common international law. For settlements

according to common international law a submission on general grounds is preferable.)

Implicit in these conditions regarding the basis for the decision of the arbitrator lies the most significant principle governing the practice of international arbitration, namely, the principle that the jurisdiction of the arbitrator and all that this involves is derived from the special consent of the parties, exercised in a choice of a particular judge for a particular case to be decided at a particular time and place. There exists no general arbitral jurisdiction based upon general agreement of the community of nations, covering all the issues, or even any special group of issues, submitted in advance of their appearance to any court of continuous sessions. The arbitrator is chosen by the parties at the time, and the issue to be settled by him, as well as the time and place of the trial and the standards to be applied in reaching the decision, are defined at the same time. This is the essence of arbitral settlement.[2])

Endless variation is possible among the methods adopted in making up the arbitral tribunal. A single arbitrator may be chosen by agreement. Each party may first select one or more judges and then an umpire may be chosen by agreement. The umpire may be chosen by lot or by the judges already named, or by third and fourth powers who have been named by the parties. All of this procedure is settled in the agreement for submission.

In each case submitted to arbitration, therefore, the critical legal step is the agreement to submit the case. This agreement is ordinarily embodied in what is called a *compromis d'arbitrage,* one of the special forms of international treaties. It is in this document that provisions are made controlling the choice of arbitrators, the scope of

[2] All that is said in this chapter and in the five following chapters is predicated of the situation prior to or apart from the existence of special agreements such as the Covenant of the League of Nations.

the question, the time and place of the trial, the procedure at the trial,—including the languages to be used, the forms of argument and counter-argument to be permitted, the submission of evidence, and whatever else is necessary. The bases of the award are here specified and the document closes with provisions for the rendering of the award, provisions for carrying out the decision and, perhaps, for guaranteeing execution. This is the simplest and most primitive basis for an arbitral trial.)

Where a dispute involves several nations the *compromis* for arbitration may, of course, be signed by more than two parties. In that case the relative positions of the parties in the trial will be defined in the text.

Very different from the *compromis* for the arbitration of a dispute which has arisen, and providing the machinery and rules for this arbitration, is the arbitration treaty proper, which provides for the submission in the future of disputes between the parties as they arise. Such an agreement may cover all varieties of disputes, or it may cover only a certain list of disputes described in general terms, or it may cover all disputes outside of a certain specified list of exceptions. In any case, the object is to provide in advance for the submission of a question to arbitration without leaving for discussion, at the time when the dispute arises, the question whether it shall be submitted or not. When a dispute has actually arisen between two nations, the atmosphere is not suitable for the conclusion of an agreement to arbitrate, even though the question be such that in general—apart from the current case—there would be no hesitation to submit it to arbitration.

The agreement in advance to submit certain questions to arbitration upon occurrence may take several forms. The earliest form was the arbitral clause, a clause inserted in a treaty dealing with commercial or territorial or any other subjects, providing that if disputes should arise in the future over the meaning of terms of the treaty or any

questions arising out of the treaty, these disputes should be submitted to arbitration.

The arbitral clause was followed by the bi-lateral permanent arbitration treaty as just described, covering different questions of one sort and another, apart from any particular treaty. This is the prevalent type of arbitration treaty today.

The third stage is the multi-lateral or general arbitration treaty, providing for the submission to arbitration in the future of all disputes of a certain sort arising among the parties, and signed by a large number of states. This type of arbitration treaty is a little in advance of general usage today.

For this, in the technical language of diplomacy, is "obligatory" arbitration. By this it is meant that, once such a treaty is concluded, the signatory states are under legal obligation to submit certain cases to arbitration when they arise. Of course, this obligation arises from a sovereign act of consent made at an earlier time, and is therefore a self-assumed obligation. In that sense it is not obligatory but voluntary. But at the time of the dispute the legal obligation is real and—what is, perhaps, more important—is felt very keenly in the state of opinion existing at the time of the dispute.

On the other hand, even the existence of such a treaty does not avoid the necessity for a special agreement at the time of submission. This is attributable to the fact that the issue must be defined more precisely than can ever be done in advance by a general treaty, that judges must be chosen, times and places for the hearings selected, and all the many details of procedure arranged. Few general standing arrangements of this kind exist. There are few standing courts, no forms of action, no sufficient code of procedure; and no way exists for making good these deficiencies except by special agreement at the time. This means that a large part of the force of any agreement in advance to arbitrate

certain cases as they appear is destroyed. Not until, in addition to the promise in advance to arbitrate a specified set of cases as they arise, there exist a standing court, a prearranged method of initiating the action, and a previously established code of procedure ready for instant use, does the need for the special agreement at the time disappear.

The questions specified for submission to arbitration vary greatly. No question is incapable of submission to a mediator, of course, for he may devise a formula of settlement in reliance solely upon his own ideas of convenience and expediency, apart from any law or formal equity, so long as he can secure its acceptance by the parties. Where legal standards are to be used in the settlement, however,—and agreements to arbitrate generally specify that such standards are to be so used,—the range of questions capable of submission is immediately restricted to those on which there exist accepted rules or principles of law or equity, namely justiciable questions. Such are questions of treaty interpretation, which, as has been pointed out, was the earliest type of question submitted to arbitration. Such, likewise, are questions arising under national statutes and accepted rules of international law. Yet the great difficulty here resides in the number of questions of large importance which arise in international relations for whose settlement there are no legal standards available.

Turning to the other side of the question, there are certain types of questions which have commonly been excepted from the scope of pledges to arbitrate future disputes. These are questions of honor and of vital interest, and questions affecting the national independence or the rights of third powers. These exceptions may, of course, be used as disguises for a reluctance to arbitrate based on other grounds. "National honor" may be employed to cover anything which it is desired to withhold from arbitration. The terms are so general that they are—like all

general terms—subject to abuse. The terms as used merit examination.

The exception of national honor explains itself. No nation could voluntarily submit to arbitration a question imputing to it dishonor and shame, for the simple reason that the very admission of the possibility that the nation had acted dishonorably would itself be a dishonor to the state. What is to be treated as a question of national honor is, of course, a question of fact. Such questions as are in fact felt to be questions of national honor may justifiably be withheld from arbitration. The more important fact is that conceptions of what affects the national honor are changing. The national sensitiveness of the early modern period, of the seventeenth and eighteenth and early nineteenth centuries—which made so much ado about questions of diplomatic precedence, which cast suspicion on the offer of good offices and mediation—is dwindling to a more prosaic and sensible tone. Nations with secure prestige are not likely, in this unsentimental age, to hold out on this ground very long.

Similarly with questions which affect the vital interests, the independence, the very existence of the state. No state would submit to arbitration a question which might result in a decision that it had no right to exist. The logic of such a step would be questionable, and such a loss of sovereignty could only be tolerated, on any accepted theory of international relations, as the result of a direct consent on the part of the state, just as it is well established that in the interpretation of treaties no loss of sovereignty and independence may take place by implication or indirection. Again the important thing is not to try to deny the principle itself, for the principle is sound, but to notice that its consequences are not as extensive in application as they once were. As the state system becomes more and more stable, and the nations are more and more firmly established, the

questions which in reality do affect their vital interests are fewer and fewer. With the development of a legal system defining national rights more fully, less is left to political manœuvering. With the continued existence of certain states side by side, relationships spring up which cut down the zone of undefined potentialities between them. A new state may have its existence menaced, and, what is more, may feel that its independent existence is menaced, by questions which an older state would accept as arbitrable with far more safety and equanimity. This is not merely speculative. The new states of Europe are conspicuously apprehensive about events and actions in the territories of their neighbors which are not of sufficient importance in the eyes of the older and more firmly established states to justify in the minds of the latter the feelings of the weaker states.

As for questions affecting the rights of third parties, the case is somewhat different. Such questions are likely to increase rather than decrease as time goes on; at the same time, it is well agreed that the rights of third parties may not, as a matter of principle, be settled by decisions between others. The solution lies, apparently, in two directions. The third parties may be invited to join in the case, or may even be brought in under standing treaties of arbitration. Or secondary arbitration cases may be instituted to settle issues derived from the decision in the first. After all, this is an exception relating not to the subject matter of questions submitted to arbitration but to the parties to the cases submitted. It argues a defect, not in the nature of arbitration, but in the existing mechanism of conducting cases.

In actual practice several states have agreed to arbitrate all international questions. There is revealed in such action a curious mixture of cynicism and idealism, of practicality and romanticism. Considerations of national honor and pride are put aside for the sake of getting a settlement

without the expense and waste of war. In the enthusiastic support of the peace ideal, the limitations of arbitral practice due to the insufficiency of the legal materials available, are overlooked. At all events, the tendency seems to be to eliminate the traditional exceptions as described and to take care of the real interests formerly covered by those exceptions in some other way. It may be added that the preliminary question of the propriety of submission may itself be arbitrated.

Finally, as regards the questions submitted to arbitration, it should be recognized that there is a vast difference between the questions of public law submitted to arbitral tribunals and private claims submitted to international commissions. The former are the questions which attract attention. The latter bulk large in actual practice. Even in the latter case, of course, the nations whose citizens have claims against each other and against the governments act on behalf of their citizens and make these claims their own in arranging for the creation of mixed commissions to evaluate them and often to adjudicate upon them. Moreover, the principles of national liability determining the settlement of the various claims presented are principles of public law. Without the latter, and the action of the states as such, no hearing and settlement could be had on the claims. But, granted the provision for hearing and settlement, the claims actually settled are claims of private individuals.

In practice there is often a close intermixture of public and private law in cases submitted to arbitral courts. In the end the commission is led to try to settle the cases coming before it by any law applicable—public or private international law, Anglo-American or Civil law, or what not. And the further we go in that direction the more evident does it become that arbitration is, whenever circumstances permit, judicial settlement.

Once the arbitral award is rendered, it is subject to

no appeal. The reason is to be found in two facts. There is no other tribunal to which, as of right, the case may be carried. There is no superior court; all arbitral courts are supreme courts. In the second place, the parties have pledged themselves to accept the award, duly made according to the convention of submission. The pledge of acceptance having been given, the rendering of the award makes it part of the treaty itself and of final effect, pending any action having legal power to alter the obligations of the treaty.

In point of fact, few arbitral awards have been rejected by the participants. One reason is to be found in the fact that by the time a state is willing to submit to arbitration the chief desire is to secure a settlement of some sort or other, and this is the chief reason for that willingness. This leads to the mutual pledge of acceptance and to its almost automatic observance, especially among Anglo-American peoples, whose respect for judicial decision is naturally strong.

In order for this rule to operate, however, the award must have been duly made. An award made in excess of the authority conferred by the parties submitting the case is not binding; nor is an award touching questions not submitted, or based upon considerations not open to the court acting under the convention of submission. Likewise, an award obtained by coercion or fraud, the use of threats or of dishonest documentary or oral evidence, would have no binding force. It is commonly said that in such cases the parties may ask for a revision of the award. It would be more to the point to say that the case may be resubmitted to a new tribunal for a new decision. The original award has no legal existence. It is not appealed, revised, or overruled. It is of no further importance at all.

Such is the nature and the form of international arbitration or adjudication. For a knowledge of the existing agreements for submission of cases to international judicial

settlement, the student must turn to treaties in force among the nations of the world at any one time. We shall later take notice of the new Permanent Court of International Justice which makes part of the general system of the League of Nations and which constitutes the highest point yet reached in the development of this form of international government.

CHAPTER XI

INTERNATIONAL ADMINISTRATION

IN addition to the international institutions already examined, there has appeared in recent years another devise for use in world government, namely, the international administrative bureau.[1] This institution fills a special place in the international constitutional system and yields rich results when carefully examined in comparison with the simpler forms of international organization.

We have seen that the outstanding defect of arbitration or judicial settlement is that such a process can be applied only when a dispute has arisen between nations. It is, therefore, a relatively uneconomical mode of caring for the maladjustments, the abnormalities, the breaks, in international life. An institution is needed to take care, now and in the future, of the normal, current, day by day business of international relations, the great bulk of which goes forward without contention, dispute, or interruption.

Simple personal diplomacy cannot perform this task. The established diplomatic representatives attempt to carry along the relations between the nations in the field of public law and high politics; and within that field the accredited diplomatic representatives possess a great advantage over the administrative bureau because they possess a measure of legislative power, a power to change the very conditions of their own work, while the bureau, as will be seen, has little or no such power. But the great body of international intercourse concerns private individuals, and not so much

[1] On international administrative bureaus see literature cited, below, Appendix B, § 11.

high politics as travel, commerce, and business. For the supervision of these forms of international activity something is needed unlike a court of arbitration and unlike a diplomatic representative. Some public official or governmental body with fixed personnel is needed to work in the field now occupied by the consul, but which will be free from the limitations of a national mandate and a restricted consular district. Such is the international bureau or commission.

The international administrative bureau has not, until very recently, received the attention which it deserves. For this there are several reasons. The institution is comparatively new; it is rarely spectacular in its operations; and it is hidden among the petty events of daily life, instead of being placed conspicuously out in the glare of high politics. Speaking broadly, the bureau does not affect national policies or international politics, and its work is done unostentatiously and silently in the world of business and private affairs.

The international bureau proper has for close neighbors in the general field of world intercourse the private international organizations described earlier. Such bodies lead off into the highly fascinating subject of modern cosmopolitanism. We are here concerned only with official international bureaus or commissions, of which there are today some fifty or more in existence.

These agencies may be examined from several points of view, such as the subjects with which they deal, the functions performed by them, or the jurisdiction enjoyed in the performance of these functions, and their forms of organization.

The subjects handled by these international bureaus vary widely. Moreover, as time has passed there has been some change in the subjects treated. Both matters may be reviewed together.

The earlier international administrative bodies dealt

with questions of international communications, such as river navigation and the exchange of postal matter. Such were the Central Rhine Commission (1804), the Danube Commission (1856), the Postal Bureau (1863), and the Telegraphic Bureau (1865). This may be compared with the familiar fact that, historically, the individual states have taken public control of the roads and bridges of the country at a very early stage. The provision, maintenance, or supervision of the means of communication marks the beginning of the extension of the scope of the power of government.

The international bureaus next to appear were those dealing with health and morals. Such were the Sanitary Council of Constantinople (1838), the Sanitary Council for Tangier (1840), and the Penitentiary Commission (1872). Apart from the elementary matter of communications, health and safety are the primary concerns of government.

A third group of bureaus includes several that have been created to deal with commercial and financial questions. Such are the Bureau for the Publication of Customs Tariffs (1880), and the Financial Commission for Greece (1897).

In recent years bureaus have been created to deal with general scientific matters in all the special fields of international life. Such are the Committee for the Exploration of the Sea (1899), the International Institute of Seismology (1903), and the Pan-American Scientific Commission (1907).

The bureaus dealing with commercial matters seem to have multiplied most rapidly, while the bureaus dealing with purely scientific questions are least numerous. The bureaus dealing with questions of health and the bureaus dealing with communications are more constant in their early appearance, their later expansion, and their continued multiplication, even in recent years.

It is not out of place to raise an inquiry at this point

concerning the reason or reasons which determine whether a given subject shall or shall not be included in the list of matters to be handled through an international bureau. The test is not the importance to state life, national and international, of the subject in question, for many subjects, such as immigration and armaments, which are of superlative concern to the individual states and to the international community at large, were left untouched by this movement. Nor is the test the absence of importance, or even the absence of contentiousness, as the Postal Union and the Sanitary Union amply demonstrate. The subject may be purely national in its incidence, but impossible of adequate treatment without international coöperation; so for the matter of health and sanitation. Or it may be purely international, such as the question of maritime law and international railway transport in Europe.

The fact is that there is no simple objective test which can be applied in answering this question. We are dealing with the old generic problem of the proper scope of governmental action. The nations will get as much international government as they want, and no more. The danger of too much government may be faced with equanimity. Complete internationalization is a remote bogey. When it seems best to the nations to provide a bureau to care for a given subject that step will be taken, and not before. There is no formal necessity for such action, and only the real needs of the case will lead to it. On the other hand, there is no formal limit to such action, and the expansion of international administration is subject to no *a priori* limitations as we move into a future bound, in the very nature of things, to call for more activities of the sort here described.

The international bureaus and commissions vary greatly in form and function. To attempt to study these organisms is like gathering some fifty pebbles at random from the beach and attempting to classify them and to reach general conclusions concerning pebbles as such. The reason for this

degree of variation is that the bureaus have come into being spontaneously, independently, and according to no concerted plan, and have developed in the same free and independent fashion. Only in recent years has the movement become conscious of its own place in the world; only of late has a deliberate practice of comparison and imitation sprung up in this field. The bureaus have, in the past, been created to meet certain needs and have been given duties according to the need in each case, and a form calculated to support the functions assigned to the organization. We have examined the needs which have led to the creation of these bodies. It remains to examine their functions and their forms.

The simplest task intrusted to an international bureau is that of gathering and distributing information. This task is not, however, as is sometimes suggested by the cynic, so simple and innocent as to be wholly unimportant. International discord and waste frequently arise from no other cause than a lack of data upon all phases of a question upon which different nations are each acting from their detached positions in the international community. With adequate data, the possibility of obtaining harmonious action by all interested nations is considerably greater, whether that result is left to chance or to informal and wholly voluntary coöperation. On the other hand, the states are not always willing to interchange such data directly; nor are they pleased to have requests for such data made, nor to have diplomatic and consular officers and *attachés* active in collecting such information on their own initiative. For these reasons the collection and distribution of information is not to be despised, when it is intrusted to an international bureau, quite apart from the fact that such work can be done more effectively by joint action through a common central office. With the increased use of statistics and statistical methods in government in recent years, the number of informational bureaus has multiplied rapidly.

The bureaus performing informational services have a threefold task, namely, to collect data, to assemble and print such data, and to distribute the results to the nations, or, if authorized to do so, to others interested in the information. The publications of the Geodetic Union, the Pan-American Union, and the Institute of Agriculture are constantly in great demand from all parts of the world. This service of information is also performed, of course, as an incident in the performance of their main work, by several international bodies whose chief functions are of another sort.

Closely related to the collection and distribution of information is the action of several administrative bodies in serving as clearing houses for the exchange of opinions and views regarding matters of common or concurrent interest. In this capacity the bureau is both a little more and a little less than a permanent international conference, for the speakers remain at home and exchange views at long range, without meeting face to face, yet the Bureau serves to raise the process of conference above the level of that ordinarily maintained in international gatherings for oral discussion and debate. Such bureaus, moreover, prepare the programs and the materials for discussion at the international conferences which are frequently held to deal with the same subjects. The ultimate object is concurrent national action, but action apart from any formal convention or agreement.

The similar, though not identical, function of keeping a record of facts and acts communicated to the bureau by member states may be mentioned in this connection. The bureau may become a depository or registry for laws or treaties in force in the territories of member states

The turning point is reached when the bureau begins to concern itself with the subject matter under discussion. The members of the bureau now examine the data available and the views put forward by different states and decide

upon the action which should be taken by member states. This decision may take the form of a model statute, or a draft convention, or rules of practice less formal than a convention. Such is the work of the Metrical Union (1875).

When this has been done the work of the bureau is, in most cases, finished. The results of its deliberations are referred to the member states for consideration and action as recommendations, but only as recommendations. Action still depends upon voluntary coöperation by the states themselves. This is indicative of the fact that international organization at present rests upon what may be described as the level of immediate consent. Just as in the field of arbitration, so here the states are unwilling to bind themselves indirectly, and in advance, to obey the rulings of an administrative body. A rehearing is demanded at each stage of the process; the decision is kept open as long as possible, and is taken in the last resort only by the state acting for itself, not through a delegated body of representatives.

Before concluding, however, that the whole work of such bodies is ineffective, one should remember that, assuming, as we must assume, that the states would not tolerate a supernational legislature, the highest and the very valuable service which is called for from any international organ is precisely that of inducing voluntary coöperation. Given the conditions of the problem,—the unwillingness of the states to submit to supergovernment, such bureaus perform the highest possible international governmental function in this field. If such a function appears to be unimportant the trouble is in the conditions of the problem which limit international action to that type.

In a few instances, indeed, more significant action has been provided for. In the cases of some ten or more international administrative bodies the bureau is given power to fix rules binding upon member states or their nationals, and even to carry out these rules in application to the daily

business of the world through its own staff of employés. Such, in general, are the sanitary councils and the commissions dealing with river navigation. Such, notably, was the International Sugar Union (1902).

Part of this actual administrative work which is at times conferred upon international bureaus consists in the collection of moneys, the keeping of accounts, the payment of expenses, the distribution of surpluses and other varieties of fiscal duties. In some cases this is the chief work of the bureau, in others it is done simply by way of paying the expenses of the organization. Certain of the bureaus are supported in part by private funds, but for the most part the expenses are paid by the member states, either by equal contributions or by contributions proportioned in amount to the size, population, or wealth of the member states, and in either case the collection and expenditure of the funds rest with the bureau itself.

Another somewhat special variety of work conferred upon the international bureau, but a function which is in reality only a phase of the power of administration proper, is the power to settle by arbitration disputes which arise in the course of operations of the bureau. Such power is conferred upon either the bureau itself or a special committee or office attached thereto. Such work is not, of course, administrative, but judicial, and must be understood by reference to the nature of arbitration as such.

The international bureaus to which actual authority over member states or their nationals is given may operate entirely in a local area and confine their work to the actions of individuals, or they may operate in the international field at large, and act upon the member states as such. There appears to be no essential difference between these two forms of jurisdiction. In both cases the bureau, by prior international agreement, is given authority which at the moment supersedes that of the state, either to act itself or to act through or upon its citizens.

It hardly needs to be said that bodies with authority of the sort just described are relatively few in number, and that the bureaus performing services of information are most numerous. Likewise, the major part of the work of each existing bureau is of the first or unauthoritative type.

It is rather surprising to find that the order of historical development does not correspond with this difference of type. The earliest international administrative organs were prevailingly of the class having authority over member states and their citizens. Such were the Central Rhine Commission and the Sanitary Council at Constantinople (1804 and 1838 respectively). The bureaus created since 1875 provide, relatively, a greater number of purely informational bureaus than do those created prior to 1875. Again, it is not always the bureaus enjoying administrative authority which are most useful. The Universal Postal Union, for example, is extremely serviceable to the nations, yet its bureau has no discretionary powers at all. Discretionary bureaus are, perhaps, the most useful in dealing with situations demanding direct and immediate action; yet even that is not always the case.

An explanation of these phenomena is discoverable in two directions. The earlier bureaus and commissions were created in response to very urgent needs for joint action. Things had been allowed to drift so long that nothing short of an organ of real authority would meet the needs of the case. Later organs have been created to minister to less urgent needs, and a less decisive action is felt to be sufficient. Furthermore, the nations have never been unwilling to create international organs of government of real power when convinced of the necessity for such action, and what counts is not so much the degree of authority exercised as the field in which the activity of the bureau falls. The need for joint international action is not always made clear to the national governments by those interested in

one variety or another of the world's work. And a great deal more can at times be accomplished simply by the collection and publication of information than would be expected. The underlying reason is the same in both cases. When a real identity or community of interests makes itself felt by the nations neither will they hesitate to act and act decisively, nor will it make a great deal of difference whether formal international action is taken or not, for the community of interest will dictate a spontaneous community of action apart from any joint bureau with discretionary authority.

Apparently, also, the form and structure to be given to an international administrative organization is little influenced by the functions to be performed by the organization after it has been established. Perhaps it would be more accurate to say that the fundamental principles on which such organizations are based are so firm that, in spite of variations of duties, the framework of the international organization is inevitable.

The essential element in all of these organizations is the standing bureau or commission.[2] In several cases the expression "international union" is employed. This is because in all such action there occurs a banding together of the nations, a loose international confederation for limited purposes. The bureau is merely the organ of the confederation or union, and it derives its international mandate from the act of confederation, the formation of the union, as a result of which it is created. The bureau is the administrative body proper and derives its authority from a treaty or "convention" which is the constitution of the union. This convention, supplemented by certain "regulations" or by-laws, controls the activities of the bureau in

[2] For illustration see *Convention for the Creation of an International Institute of Agriculture*, Arts. II and VI, below, Appendix A, Document No. 7, cited hereafter as *Conv. Inst. Agr.* The bureau is called a "permanent committee" in this case.

all subsequent practice, although the "regulations" are sometimes drawn up or amended by the bureau itself.[3]

Beyond these essential elements, there are two others deserving mention. The treaty or convention in question is concluded, ordinarily, by means of an international conference or congress.[4] This conference may reassemble from time to time to revise the constitution of the union, and it may select a body of delegates to meet during the intervals between the sessions of the conference for the purpose of supervising the work of the bureau, and, perhaps, revising the "regulations." Where such a body exists it is ordinarily called a commission, and the final administrative body a bureau. Neither the conference, the convention, nor the commission is administrative in character. As has been seen, the convention or treaty is an international contract and, as will appear shortly, the conference and commission are constituent and legislative bodies. Where the conference does not so much as create a permanent bureau, but confines itself to the conclusion of an international convention providing for concurrent national legislative or administrative action, the case is not one of international administration at all, and should be carefully excluded from this field of discussion. The same is true of a general federation or league providing opportunities for lawmaking conferences of one sort or another; this is merely a case of treaty negotiation as already described. Even where a bureau exists, the conference itself has no administrative character; while the union as a whole is an international federation or confederation of high or low degree. The bureau alone is the administrative organ.

The contrast in form between the conference or commission and the bureau is sharp. The former is a large diplomatic body meeting periodically to perform constituent

[3] *Conv. Inst. Agr.*, Art. V, Pars. 2 and 3.

[4] Called the "general assembly" in the case of the Institute of Agriculture; *Conv. Inst. Agr.*, Art. II.

or legislative, but no administrative, functions. The bureau is a small body of technical experts acting continuously in the administration of the principles laid down by the conference, or in the formulation and administration of detailed rules for the application of these principles. In the former body the rule of unanimous consent is very generally applied, while in the bureau, and even in the commission, this is not always the case. Indeed, the whole action of voting is rather unimportant in the bureau.

It should be mentioned that there is at times a fifth wheel to these administrative systems, namely, the Directing Government, as it has been called, the government of the state in which the bureau is located. Such functions of supervision are occasionally intrusted to the local government as would be conferred upon an interim commission of the conference if such a body existed.

Certain conclusions may now be formed upon the basis of the facts just reviewed.

As was said at the beginning, the administrative bodies here discussed, particularly the bureaus having administrative authority, such as the organs for supervising river navigation, constitute to a peculiar degree an application of international government to daily life, continuously, at the instant moment, and directly in contact with the ultimate units of international life, the citizens and subjects of the nations engaged in international intercourse of one sort or another. Other forms of international government, notably arbitration, operate upon international life intermittently, retrospectively, and indirectly, through the national units. The former, it need hardly be said, is much more useful where it is feasible.

The statement has often been made that such organs as are here discussed deal merely with non-political subjects, subjects not likely to cause international disputes or war in any case, because they are non-contentious. As has been shown elsewhere, this is simply not accurate as a

statement of fact, when it is considered that such matters as quarantine regulations and postal charges and sugar bounties, all direct manifestations of national sovereignty, have been dealt with by these bodies. Furthermore, the record reveals several sharp contentions among the nations in connection with the work of such bodies. What is undoubtedly true is that such bodies tend to remove a given subject from the field of political discussion and diplomatic contention. Once a subject is committed to the care of a bureau upon the basis of rules agreed upon in conference, it is removed from the arena of international politics. It is denatured, depoliticalized, so to speak. Not that the bureaus necessarily deal with non-political subjects, but that they deal with whatever subjects are intrusted to them in a non-political way. When the conference meets there is another story. The sharp disputes just mentioned took place, in point of fact, in conferences. If once a convention can be concluded and a subject referred to a bureau and kept there, there is some prospect that it will be dealt with on its merits and not by reference to what are often fictitious or artificial "national policies." The great danger, indeed, is that politicians will seek to withdraw the subject to the field of political discussion again and to interrupt the scientific treatment of the subject by the expert commission. It would be a curious thing, however, to disparage the work of the bureaus because of the success with which they keep subjects from becoming involved in heated political wrangling.

It is precisely this effect of closing off discussion on the case, for the time being at least, which makes the nations so reluctant to commit themselves to such action as the creation of a bureau. International relations being as unstable and variable as they are, the nations hope to gain more by a constant watchfulness and a readiness to take advantage of each turn of the wheel, each chance for advantage and benefit as it arises, than by securing permanent

arrangements of general benefit and going ahead to live under them. Only where such a catch-as-catch-can policy is fraught with too much risk, or costs more than it could possibly yield, is the other form of action likely to be taken.

Specifically, the nations have been willing to commit themselves to international administration only where national action must needs be ineffective to prevent injury, or where the international action is positively more economical. The adoption of the Sanitary Convention is an example of the former; national quarantine measures were ineffectual to prevent epidemics and plagues, and international action was needed. The creation of the Union for the Publication of Customs Tariffs is an example of the latter.

The persons in each nation who are interested in the sort of work undertaken by these bureaus and commissions are more eager for such a development than the public officials themselves. In spite of attempts to prove the contrary, it clearly appears that the states are less active in the formation and promotion of such bodies than are private individuals. That is, most of the public international administrative unions originated in private movements and were more or less willingly taken over by the states later. There is a regular series of steps in the process of conversion whereby private international activities pass into public activities. A private association or bureau is first given approval, then coöperation, then diplomatic status, and, finally, it is supplanted entirely by an official union and bureau. Safety and economy for the state have not been as powerful in bringing forth and sustaining such bodies in the past as private professional interest and loyalty.

This is reflected further in the divergent attitudes taken by the technical officials connected with the bureaus and the diplomatic representatives in the conferences and commissions. The former, laymen in diplomacy, have their attention and interest centered in their work on its technical

side—statistical work, research and publication, administrative technique. The latter, laymen in real life, are constantly fussing about state sovereignty and independence and national interests. The former have in mind the positive achievement of results in the field of action of the proposed bureau; the latter, the negative aim of protecting and defending national sovereignty. In many cases the establishment of the bureau is the work, not of the foreign offices at all, but of the postal, commerce, labor, or other departments of the national governments, acting in international relations for the time being. So far as sovereignty and independence are real considerations in this day and generation, and in the special fields where these bureaus operate, the diplomats can only be praised for guarding the holiest of holies and the experts only regarded as dangerously indifferent to the greater things of life. So far as this assumption is unsound, however, the reverse is true. It is unquestionably true that the unions have arisen chiefly to satisfy the social and economic needs of men, and not the political requirements of the states.

One of the rules most sacredly guarded by the diplomats is that of state equality, together with its corollary, the rule of unanimous consent. All states, as such, are equal in law, irrespective of size and power, and therefore none can lay down a rule for another. There are no *a priori* foundations of international jurisdiction, and the consent of each state is necessary for giving force to any rule which is to be binding upon that state. This is no place to discuss the rule of state equality, nor yet the rule of unanimity. They are calculated to prevent unjustifiable dictation by the Great Powers to the smaller states and to secure a fair hearing for the established rights of each. But when these rules are used to give the small power an equal voice in the control of decisions upon the content of law in the making, they are glaringly unjust; a citizen of Panama cannot fairly be given over two hundred times the power of a citizen of

the United States in the making of conventional international law. This conclusion is all the more inevitable and natural in view of the fact that unions of this sort are generally open to all nations that care to join,—unconditionally in most cases, upon conditions in others. If such a procedure is to be followed, and it is eminently desirable that it should be followed, it is only equitable that adherents accept such a position in the union as they are entitled to fill and not demand more.

The rules in question are, moreover, simply unworkable when it comes to the payment of the expenses of a bureau, the appointment of officials, and similar tasks. The smaller states simply cannot contribute as heavily as the larger ones. They cannot provide the same number of trained persons for service in the organization. They are not, moreover, interested to the same degree or amount in the services to be rendered by the bureau. Within the confines of the colonial empires are many states in everything but name. The persons engaged in the operation of the administrative bodies are therefore inclined to go upon what seem to them the realities of the case and to ignore the fictions. They are all the more inclined to do this because the rule of unanimity is an almost insuperable obstacle to action in international commissions—or, for that matter, in any other order of commissions.

A solution has been sought in several ways. In one or two cases schedules have been drawn up indicating classes of members contributing different quotas of the expense of the union and enjoying different voting-powers, and each state is allowed to choose its own degree of power and obligation.[5] In another case colonial units have been given representation in their own names, the result being to multiply and equalize the states of the world in startling fashion. Finally, in several cases agreements have been made at the beginning to abide by majority decisions in the

[5] *Conv. Inst. Agr.*, Arts. III and X.

course of the operations of the bureau, and thus national sovereignty is saved and the practical needs of the situation are met at the same time.[6] The behavior of those intimately connected with the promotion of such bodies may be stated mathematically. The greater the attention given to the realities of the case, the greater the effort made to actually accomplish something, just so much less is the attention paid to the fictions of diplomacy and legal theory.

The international administrative bureaus created since 1804 have not been uniformly successful. In addition to the fifty in actual operation, some ten or fifteen others have been established only to fail in actual practice. Such were the Suez Commission (1888) and the Albanian Commission (1913). The causes for the failure of these bodies and other similar organs are variously described. Thus, lack of power, unimportance of the subject matter—leading to indifference on the part of the contracting powers—and the impossible situations in point of fact with which certain bureaus have been confronted, have been set forth as causes for certain failures in the past. Likewise, the unanimity rule and the rule of equality have been held responsible for the difficulties and deficiencies of international administration. It has been felt that the success attendant upon international administrative organization in the past has been discouraging.

The fundamental difficulty lies deeper. Bureaus are not given adequate power, the situations in which they are placed are beyond their control, and the equality and unanimity rules are insisted upon, because the nations do not see any necessity for acting otherwise. The necessity is present, latent in the situation, but is not recognized. If it is not soon recognized, international social order may very well be badly crippled. The responsibility lies with political thinkers to make clear the need and the solution. Nations and governments will delegate discretionary au-

[6] *Conv. Inst. Agr*, Art. V, Par. 4.

thority to administrative bodies when convinced of the necessity of doing so, but only when they are so convinced. That they have not done so in the past is attributable to the absence of such conviction, which, in turn, is due to the weakness of the case made out by advocates of international organization who have talked much of the beauty of peace but little of the substantial economy and advantage of international government. The cause of the deficiencies of international administration is largely the weakness of support given it by those in the best position to support it.

CHAPTER XII

INTERNATIONAL CONFERENCES

THE most vital defect in the international organization of the past has been the difficulty of securing international conference where, and especially when, it was needed. This form of world government will therefore demand our best attention.

International conference may be defined as joint consideration and discussion by representatives of two or more states of matters of interest common to both. Whenever the representatives of two states meet together to settle an international difference, not by the arbitral or judicial process but by discussion and mutual agreement, we have the phenomenon for which we are now looking. Conferences of two nations, however, naturally lead on to conferences of several nations, as the problems of international life become generalized and expanded so that they affect more than two states. Eventually we reach the conference in which thirty or forty independent nations, perhaps the states of the whole world, participate. Bi-party conferences become tri-party and multi-party conferences as the interests of all states become further and further interwoven.

International conference in its simplest form is merely personal diplomacy as already studied. Whenever the Ambassador of a foreign state visits for business purposes the Minister for Foreign Affairs in the capital where he is stationed we have an international conference. The action takes on its full significance, however, when the conference is specially arranged before it takes place, when the questions for discussion are previously defined, and when the

discussions in conference are conducted by representatives specially named for the purpose. If, in addition, the conference includes several nations, as just described, the action is still more significant.

Like personal diplomacy of the simpler form, the international conference may end in one of two ways. A formal international treaty of one type or another may be signed; or the results may be left in the form of memoranda or minutes of the discussions. The more important the conference and the questions there discussed, the more likely is it that a formal treaty will be drawn up and signed. Likewise, where extensive agreements are reached in conference and definite decisions are taken, the results will be put in treaty form. Inconclusive conferences on unimportant topics are recorded only in minutes or memoranda of discussions.

When the treaty form is adopted for expressing the result the conference reaches its highest point of significance, and also the highest point of development possible for any of the special forms of international organization. For this is legislation, constituent or statutory. It is law-making. The adjustment of differences by personal negotiations and bargains and compromises is a comparatively simple thing; the conclusion of special contractual agreements regarding international relations, and the development of customary law, carry us but little further; the settlement of disputes by arbitration on the basis of existing law, and the administration of international business according to existing law, are not revolutionary, as far as the substance of international rights is concerned. But the revision and amendment of international constitutional and customary law by deliberate discussion and agreement reaches the most vital point of world government. Petty law-making is to be found in all of the other special fields of international government; here legislation is the principal business, and the practice of diplomacy, the negotiation of treaties, the development of the law of nations,

and international arbitration and administration are all, in turn, amenable to its control.

The subjects dealt with by international conferences range over the whole field of international relations. The decisions taken may relate to constitutional questions of deep and lasting moment to all nations, such as the decision to establish a compulsory court of arbitration. At times they relate to comparatively trivial concrete questions affecting two states only, such as the cession of a bit of territory by one state to another. The more critical questions, both constitutional and practical, arise in conferences held at the termination of wars, and we shall encounter at that point the whole general problem of peace and war and of the relation between peace and international organization.

No distinction need be made, probably, between the terms "conference" and "congress." It was once felt that a "congress" must be more formal, more important, and more general, than a "conference." But in view of the practice of speaking of the gatherings at The Hague in 1899 and 1907 as the "Hague Conferences" and of the gathering in Paris in 1919 as the "Peace Conference of Paris," this distinction vanishes. No international meetings were ever more formal, more important, or more general than these. It sometimes appears that the term "conference" is given to gatherings of diplomats for the discussion of political questions, while the meeting of experts and administrative officials on legal and scientific matters is called a "congress," as in the cases of the Postal Congress and the Pan-American Scientific Congress. Here again, however, the Hague Peace Conferences and the Pan-American Financial Conference rise to confound all attempts at differentiation by reference to the terms actually used in the names of international bodies. Indeed, there seems to be a tendency to get away entirely from the rather flowery

and pompous term "congress" and to stick to the simpler, more direct, and more accurate designation.

At times, the term "peace" is also used ambiguously in this connection. A "peace conference" is, curiously enough, a conference which meets in time of war to settle questions connected with the war. It derives its name from its object, which is the reëstablishment of peace. The conferences at The Hague in 1899 and 1907, on the other hand, are commonly referred to as the "Hague Peace Conferences" for this same reason, namely, that they were aimed at the more effective maintenance of peace, although, unlike most "peace conferences," they were not called at the close of hostilities to define the terms of peace between belligerents. Now every international conference is a peace conference, in a sense, for it aims at the maintenance or reëstablishment of international peace. It seems best therefore to classify international conferences more carefully, as conferences in time of peace and conferences for the termination of war.

International conferences in time of peace deal with a multitude of subjects, which may be grouped, roughly, under three heads: political subjects, legal problems, and questions of economics and finance.

International discussions on political questions are older than the conferences on legal or economic questions, for the reason that such a conference is not much more than simple diplomatic negotiation. By the same token, however, such conferences tend to diminish as international relations enter the stage of legal regulation and as more nations are called in to participate in the discussions. The result is that when we reach the later nineteenth century, and the period of multilateral international conferences proper, the meetings which deal with purely political or diplomatic matters are relatively few.

Frequently, especially since the development of "public

international law," such questions take on also a legal aspect. Thus, the conference held at London in 1871 regarding the Black Sea question issued a declaration concerning the inviolability of treaties.

More frequently, however, legal questions arise in connection with the details of current international practice, and a conference must be held to revise and codify the rules of international law relating to the conduct of war, the treatment of wounded in time of war, or the neutralization of certain sections of territory or certain bodies of water. It is worth noting that most of the early conferences on legal subjects dealt with the laws of war, just as the first treatises on the law of nations dealt with this subject. The reason is the same in both cases, namely, that war is the earliest and most critical form of international contact. The question of neutralization, again, harks back rather directly to the political sphere, inasmuch as the proposal to neutralize a given body of water can hardly be based on any established legal grounds and inevitably affects one nation or another adversely. Thus the neutralization of Belgium and Luxembourg resulted from the actions of the conferences, political in character, convened at London in 1830 and 1867. The Hague Conferences of 1899 and 1907 were conferences on legal subjects, as also were the London Naval Conference in 1909, the Conference of Brussels in 1874, and others.

Finally, economic and financial questions have become so prominent in international relations in recent years that several international conferences have been held to deal with them. Such was the Conference of Peking, in 1900, which dealt with claims for compensation for damages suffered by Europeans during the Boxer uprising in China, although at this meeting political and diplomatic questions arising out of the situation occupied the attention of the delegates in large measure. Such was the Conference on the Scheldt Dues in 1863, and such was the Conference

of Algeciras in 1906, in so far as it dealt with questions of trade rights in Morocco.

It is quite common, as this mention of the Conference of Algeciras shows, and as is also indicated by the comments on the Conference of Peking, for political, legal, and economic problems to arise for treatment in the same conference.

Speaking broadly, the last-named problems yield solutions more satisfactory from all points of view than the first two, and the second better results than the first. Economic questions can be subjected to statistical treatment and the knowledge and opinions of business men can be utilized; moreover, business is business, and neither eternal wrangling nor false pride nor national sentiment count as heavily in the business world as in the world of diplomacy. Legal questions might possibly be treated in a scientific manner, also, and professional lawyers and jurists might be called in for assistance. But the definition of general rules to govern all cases arising in the future is a delicate task for an international conference, and hence legal problems are not as easy of approval as they might be expected to be. When we get back into the world of political and diplomatic relations conditions are still worse. There are no fixed points to go upon, no generally accepted principles to apply, and not only is every delegate an expert—in his own estimation—but national desire, rather than inherent reason and right or the general interest, governs the outcome. In the fields of law and economics national greed is not unknown, but neither are considerations of common benefit, mutual protection, and good business for all.

The form given to the results of the conference varies with the subjects discussed, as well as with the extent and definiteness of the conclusions reached. Legal problems are commonly disposed of by an international convention, which constitutes for the future a code of the law of nations

on the subject with which it deals. Such were the Hague Conventions relating to the Rules of War. Economic and political problems are frequently settled by treaty agreements, and in such cases the whole body of theory applying to the negotiation and conclusion of treaties is applicable.

As has been said, the settlement in such cases may be a specific bargain for territory or an indemnity payment, or it may consist of the declaration of a general principle. The former type,—a mere contractual bargain,—resulted from the Conference at Hanover in 1861 regarding the Stade Toll. The latter type of settlement resulted from the Conference in London in 1871 respecting the Inviolability of Treaties and Navigation of the Black Sea. Such treaties or declarations as the latter, dealing with political problems, and at the same time attempting to provide a permanent rule of public law as a solution to govern similar cases in the future, approach the acme of difficulty and importance in the field of international legislation. They constitute international constitution-making. The one thing more important and more difficult is the closely allied task of establishing international governing bodies to exercise authority over the states in the future according to principles now defined in advance. Such action followed from the Hague Conferences and from the numerous conferences for the creation of international administrative bureaus. Practically all of the forty or fifty administrative bureaus now in existence have been created in this way.

It will be apparent that single international conferences may well perform various functions. The Congress of Vienna, for example, was primarily a conference for the definitive termination of war, yet it was also a conference in time of peace striving to prevent future war. It dealt with purely legal questions,—diplomatic rank,—with economic questions, and with political problems. It created an administrative bureau, it defined certain principles of the public law of nations in Europe, and it produced certain

political results still evident in the state-system of the Old World.

The form given to the decisions of the international conference is not the only thing influenced by the nature of the problems discussed. The organization and methods of action of the conference are subject to the same influence. This will appear as we examine the way in which the conference meets and sets about its work.

International conferences meet only upon invitation.[1] There are no regular or automatic sessions, as in the case of national legislative bodies. There is no presumption that a conference will be held at any time. In the normal course of events no conferences meet at all. The burden of proof is upon any one suggesting a conference at any time, because of the absence of any conviction that a continuous series of regular conferences is needed. No state has any recognized right to call the nations to a conference and the community of nations has no recognized right to summon its members to an assembly. The proposal made at the conference at The Hague in 1899 that such conferences should meet continuously at regular intervals in the future was considered a radical proposal indeed.

This situation gives the nation which initiates the conference an enormous tactical advantage. The agenda or program of discussions at the conference must be decided. What shall be discussed and what shall not be discussed depends in the first instance upon the proposal of the "august initiator" of the conference.[2] Frequently the acceptance or rejection by other nations of the invitations issued to them by the nation suggesting the conference depends upon the views held by the former as to the general advisability of the meeting and as to their own advantage in discussing the subjects proposed. Frequently they will

[1] Proposals for Hague Conference of 1907, below, Appendix A, Documents No. 8a, 8b, and 8c, cited hereafter as *Props. Hague Conf.*, a, b, or c.

[2] *Props. Hague Conf.*, b and c.

make reservations concerning the proper range of discussion in the forthcoming conference, thereby excluding certain topics from its jurisdiction. Frequently the agenda as originally proposed will be modified, in view of preliminary objections from the nations invited to attend the conference, and in order to obtain their consent to participate.

This power of defining the agenda before the beginning of the conference also gives great prestige and influence to the nation initiating the conference, an advantage enhanced by the fact that the conference will usually be held in the territory, and at the seat of government, of this state. It is likewise an occasion of suspicion. If a certain nation moves for a conference on a certain subject it may be assumed that it is for certain definite national advantages that the move is made. So Napoleon III was continually under suspicion because of his frequent suggestions for European conferences; he was suspected not only of having an ax to grind in each particular case but of desiring to secure a sort of diplomatic domination over Europe as a whole. The other nations, therefore, come prepared to combat the demands of the nation which is chiefly sponsoring the conference. Because of the way in which the agenda is drawn up, there can hardly be a set of openly competing programs when the conference meets; and this is an unhealthy thing in itself. Furthermore, competition or opposition which is stifled makes itself felt in a silent suspicion and mistrust and an opposition "on general principles." Where preliminary national views have been canvassed fully in advance, something like competing party programs exist at the outset, and it is generally agreed that such a procedure helps enormously, for the members do not then need to lose time in discovering each other's beliefs and demands.

The nation calling the conference is free, in the nature of the case, to invite such other states as seems best, subject to the danger of giving offense by failing to invite this or

that state, and to the danger of opposition to the results of the conference from non-participants. A nation initiating a conference on maritime law and failing to invite Great Britain would encounter both British resentment and futility of results. In such a case, other states would in all probability refuse to attend, for the same reasons.

Membership in the conference itself is limited to accredited representatives of states which have been invited to attend and which have accepted. This limitation is enforced through a system of credentials. Delegates carry commissions and powers identifying them as representatives of this or that nation, and these credentials are inspected by a credentials committee at the beginning of the conference.

The membership of the conference having been decided, it remains to select the presiding officials and the secretariat. Here again the state holding the conference has an enormous advantage, for that bane of international relations, precedence and diplomatic courtesy, decrees that the presiding officer and the chief secretary shall be chosen from among the representatives of the local state. When the deliberations of the conference are also conducted in the language of that nation the result is complete. The secretarial force, working with all the conveniences which the local government can place at its disposal, largely controls the documentation and the record of the conference, and the chief secretary controls the secretarial force. Even where no effort is made to abuse its power, the state calling the conference exerts an enormous influence on the conference through these simple facts.

The conference meets in full session at the beginning and may hold plenary sessions thereafter as often or as seldom as seems best. It ordinarily closes with one or more plenary sessions. In the intervals come many sittings of committees and commissions, in which experts are heard and matters are thrashed out in detail for reference to

full sessions of the conference for final decision later. The conferences on legal and economic questions employ the committee system and make use of experts more extensively than do those on political and diplomatic problems; in the latter the principal delegates insist on keeping things largely in their own hands. It is for this reason that there seems to be some ground for speaking of the former bodies as "congresses" and the latter as "conferences."

Debate is, of course, far freer in the committees than in the full sessions, especially among the experts in attendance at committee meetings, who are interested in the subject matter under debate and have few scruples about international delicacy and sensitiveness. Speeches at the plenary meetings are stilted, formal, flowery. The real argumentation in the conference, so far as there is any at all, comes in committee meetings. Steam-roller methods are not uncommonly employed in the plenary sessions to put through bargains made outside, either in committees or still further out in the corridors of the conference chambers. This is especially true where the plenary sessions are public and where committee meetings are—as is commonly the case—confidential. This may not be true where the conference is concerned with legal problems, where committee meetings have been public, and where a fight in committee crops out again on the floor in plenary session. All of this is quite like the situation in national legislative bodies, only in greater degree. To criticize the methods of doing business in international conferences is, of course, to criticize the common methods of legislation in all ranks of political organization—international, national, provincial, and municipal. That criticism may, however, be applied to international conferences with special aptitude. There seems to be something in the nature of the subject matter and in the traditions of the profession which encourages this particular sort of thing in international bodies.

Members of the conference are not ordinarily free to

vote according to their best judgment on proposals coming before them but are bound by restrictions from their home governments. They are instructed delegates, not discretionary representatives. As a further result, the votes are not so much counted as weighed. That is, the vote of a delegate is not regarded simply as one vote, but as evidence of the support of his government, whatever that be, great or small, strong or weak. The vote, moreover, is not given so much upon the basis of arguments or facts brought out in the conference as upon grounds of national policy maintained and asserted by the home government, not present at the conference at all.

This is made easier by the rule of unanimity which invariably prevails, as far as final decisions are concerned, at such conferences. After all, this is at bottom the negotiation of a treaty, the making of a contract. The consent of each participating state is therefore necessary to give binding force to the result. The doctrine of sovereignty admits national consent alone as the basis of national obligations. Even without any formal doctrine of sovereignty, however, the result would be the same. There are no *a priori* grounds on which any nation or nations can claim as of right to impose obligations upon another.

This requirement weakens the value and effect of committee decisions unless all members of the conference are represented on all committees. In that case the value of committee work is lowered by being made more cumbersome and difficult. The committee becomes a miniature conference, with all the power—potentially—and all the difficulties of a conference. The only solution is a prior agreement among the nations in conference to be bound by a majority or a two-thirds vote on decisions to be taken in the course of the conference. Such a vote would preserve the doctrine of consent and at the same time remove the necessity for unanimity at every step and on every point in the discussion. Whether the nations are ready for such a step, and

whether, on the whole, it would be wise, are other questions. Its effect on the procedure of international conferences cannot be doubted.

A similar result flows from the doctrine of state equality as applied in international conferences. The smaller states would generally refuse to go into conference with the larger ones if they were compelled to admit that the larger states possess some degree of jurisdiction over themselves as of right. Yet nothing could be more unjust and unscientific than to give the few hundred thousand citizens of Costa Rica equal power in international legislation with the hundreds of millions of subjects of the British Empire. And in actual practice, of course, the votes of different nations count differently in the results in the sessions of the conference. What is needed is a theory of national representation in international bodies which will rest on facts, not upon an outworn metaphysic of public corporations.

The conference ends with the signing and sealing of the treaty, as described in connection with treaty negotiation.[3] The fact that only signatories are bound by the treaty derogates somewhat from its legislative character. But for those who sign, and in so far as the signers do not impose reservations upon their signatures, the effect is to legislate into existence new rules of international law, assuming, of course, as we must assume, that the national states will ratify the actions of their agents. The delegates accept the new statute for their constituents as do members of legislative bodies in the national states, at least in national states where legislation is subject to referendum. This is the most vitally important process in international control.

The origin of international conferences in time of peace was found to lie in deliberate efforts to take thought for the morrow and to preserve the peace in the future by international arrangements made in advance of the actual need for them. Conferences for the termination of war are quite

[3] For Final Act of a conference see, below, Appendix A, Document No. 9.

different. Such conferences, called "peace conferences" by reason of the object directly in view, namely, the restoration of peace, are actually held in time of war and originate in the practical necessity for clearing up the problems at issue between or among two or more states whose interests have clashed and whose peaceful relations have actually been interrupted by the outbreak of war.[4]

It would be possible, of course, for belligerents merely to stop fighting, and to go on into the future without concluding a formal treaty of peace, and this has happened several times in the modern history of international relations. Such a method of terminating war, known as "simple cessation of hostilities," is, however, very unsatisfactory to all concerned. The belligerents themselves are left in doubt regarding each other's intentions. Hostilities may be resumed without warning. A constant attitude of defense and suspicion is rendered inevitable. Neutrals, again, or states which would be neutral if war actually existed, are left uncertain regarding their rights and duties toward the belligerents.

Finally, the status of occupied territory is ambiguous. The termination of war by the conquest or complete subjugation of one party by the other might leave no room for doubt. Even here, however, both logic and convenience require some formal notice to the world by the conquering power declaring its intention respecting the conquered territory. And where merely a portion of the territory of an opposing belligerent has been occupied it is doubly desirable for the status of that territory to be defined and made known to all the members of the society of nations. Where hostilities have long ceased and positive acts of peaceful intercourse have been performed by the recent enemies, third states must conclude that the war is over and, according to the rule of *uti possidetis*, that the occupied territory has passed under the sovereignty of the

[4] On peace conferences see literature cited, below, Appendix B, § 12.

state whose forces are in possession at the termination of hostilities. Obviously, however, it would be better for all concerned if the belligerents would clear up all questions outstanding between them in a formal and explicit agreement or treaty of peace. The superior convenience of such a settlement has led to the practice of conference for the termination of war.

As has been pointed out, such conferences are far older than conferences in time of peace. Indeed, they are as old as international relations themselves, since war and the termination of war are equally as old. From the immemorial dawn of tribal and interstate conflict belligerents have met together, quite naturally and simply at first, deliberately and ceremoniously later, to patch up the broken fabric of their normal relations one with another. And in spite of the knowledge that the peace to be made will not, in all probability, be permanent, in spite of the memories and feelings of war which still dominate men's minds, such meetings have never failed to appeal mightily to the peoples suffering from the hostilities, and in some degree even to the cynical professional diplomat who could but suspect that this was only one of the many pacifications hailed as complete and definitive at the time only to be proved hollow and transitory in the event.

Certain notable changes have, however, come over the typical peace conference in the past century. Of these, three deserve notice here.

First, there has occurred what might be described as a generalization of the peace conference in respect to the parties who are concerned and who are therefore invited to participate. Originally the peace conference included only the belligerents, and in the great majority of cases only two belligerents. This form of peace conference still persists, of course, and is illustrated best by a case where the belligerents come in contact and conduct their conference to a successful conclusion without aid from any third

state, as happened at the end of the war between France and Prussia in 1871. In later times, however, there has appeared a tendency to expand the peace conference to include several, and indeed many, powers. This has been attributable partially to a second tendency, discernible still farther beneath the surface of events, whereby wars have changed from "special" wars between two parties to "general" wars involving several parties. This has resulted, in the main, from the increased degree to which the interests of all nations are interwoven in modern times, and, more especially, from the practice of forming alliances for the furtherance of these interests. So long as all of the participants in the peace conference are belligerents, there is no sharp break with the traditional theory. Very early in modern international relations, however, it was felt to be advisable to call in states which had been neutral in the war, in view of the extent to which their interests were involved in the general settlement. This happened at Westphalia in 1648, at Vienna in 1815, at Paris in 1856 and again in 1919, to name only four famous general peace conferences, and it marks a new stage in international constitutional development.

In like manner the questions treated in peace conferences have been generalized. Originally the questions at issue between the belligerents in the war were, alone, put in discussion. With the expansion of the area of conflict, however, the necessity for keeping in view many collateral questions affecting the belligerents, and also states with whom the belligerents were in mutual relationships, became evident. Inasmuch as the object of peace conferences soon came to be that of making a permanent peace, and not merely patching up the current dispute, this necessity grew greater. In the end what was involved was a general review and settlement of all outstanding international disputes, a general pacification. The peace conference thus approached more nearly the nature of the conference in

time of peace, that is, an international constituent assembly of general jurisdiction. The traditional rule to the effect that only questions at issue between the belligerents come within the jurisdiction of the conference is still put forward by neutrals desiring to block consideration of questions affecting them and by belligerents desiring to avoid certain embarrassing problems. None the less the tendency described is unmistakable in practice, and in view of the fact that the conference has no authority to settle any questions except by the consent of the participants, and that such a method of settlement may as well be applied to collateral questions as to the main issues of the war, the traditional rule is to be regarded merely as one of convenience.

Such general peace conferences as are here under discussion have tended to decrease in number recently. Inasmuch as this implies a decrease in the frequency of general wars, no one can deplore the diminution in this form of international organization or practice. The reasons for this change, however, are more complicated, and deserve further attention at this point.

General wars have, indeed, decreased in frequency since 1815, and, in fact, since the middle of the eighteenth century. But this is due to increasing efforts to preserve the peace and to the special use of conferences in time of peace to settle outstanding questions likely to lead to war, a procedure which thus indirectly tends to diminish the number of general peace conferences which are necessary. It is due further to another device which is of still greater significance, of greater significance even than the general conference at the termination of a war, and which also constitutes the third way in which peace conferences have been generalized in recent decades.

As was pointed out above, the settlements made at the conclusion of hostilities have not always been the embodiments of pure justice and wisdom. This has led not only to the holding of conferences in time of peace to devise in

advance a settlement of better quality than that of a settlement to be attained at the end of a possible war, but also to the holding of conferences in the ensuing state of peace to revise settlements already made at the end of a preceding war. Such was the Congress of Aix-la-Chapelle in 1818; such, more clearly, was the Congress of Berlin in 1878; and the action of Russia, Germany, and France in 1895, regarding the Treaty of Shimonoseki between China and Japan, was of the same type. It was largely the failure of the Powers to take such action respecting the Balkan settlement of 1913 that prepared the ground for the events of 1914. The peace of 1919 was subjected to revision by Inter-Allied conferences during the whole of 1920 and 1921, and is still being revised as the years slip along. Considering this development along with the establishment of the conference in time of peace to prevent war, it is possible to say that peace conferences are being generalized, not only as to parties involved and questions discussed, but also as to the time when they are held. In addition, it may be observed that such conferences for revision of peace settlements attest further the interest taken by states not parties to the war, especially the Great Powers, where a settlement has been made by minor powers which appears to them defective from the point of view of their own interests or the balance of power and the general peace.

In organization and procedure, peace conferences do not differ materially from conferences in time of peace, and a brief review of the subject will therefore be sufficient.

A peace conference convenes as the result of either direct negotiations between the belligerents or action by a third state in providing a means of bringing the belligerents into conference. Participation is, of course, wholly voluntary, and depends upon calculations of the results which it may be possible to obtain from such a conference in contrast to those to be obtained by continuing the war.

The membership of the peace conference has already

been discussed. It should be recalled that at times the conference is attended by the mediator, in it happens that the war has been brought to an end through the offices of a mediator. This is very likely to happen where the mediator has been led to take action in order to defend certain national interests, and especially where the mediation has been performed by one or more of the Great Powers in defense of their own interests or the general welfare, and where the small powers, belligerents in the war, have been compelled to accept such mediation. In all cases, however, the belligerents must be present; a peace conference without them, even with mediators or conciliators present, would be "Hamlet" without the Prince.

The range of subjects discussed, or the jurisdiction of the conference, has also been described in another connection. A further set of considerations must, however, be added here.

It should be noted, first, that the jurisdiction of a peace conference must be defined in terms of subjects or questions, not in terms of parties or territory. The conference has no legal power over any territory or property, nor has it authority over any persons or states. More particularly still, the powers victorious in the war do not gain thereby any degree of legal authority over the vanquished nor over his possessions.

In the second place, the territory of one belligerent occupied by another is not thereby acquired in full sovereignty, even where the whole of the territory of the enemy is so occupied. In this case only a cessation of resistance and an at least tacit consent—albeit "forced" consent—to annexation or absorption in the conquering state, accompanied, probably, by a proclamation of the annexation by the latter or some overt act testifying to the same intent, will be effective in the eyes of other states. In the former case, only cession in an international agreement or consent to the

retention of the partially occupied territory by the state at the time in possession will be effective. This is one of the chief reasons for holding a conference between the belligerents at the end of a war.

Military victory, moreover, gives to the successful belligerent no legal authority to dictate terms to his defeated enemy. It is doubtful whether peace can ever be successfully founded upon dictation; it is certain that a treaty cannot, in its very nature, be dictated by one state to another. Not only must the conquered be taken into conference, but his consent must be secured, to render valid any changes which affect his rights under the status quo ante. A state may find it necessary to accept certain changes and to agree to certain terms of peace, in order to avoid certain other results, such as military occupation of its territories, massacre, or what not. But, after all, some alternative is present in such a situation, and freedom of choice, in a sense necessary to satisfy the doctrine of sovereignty, is preserved. Nor is this merely an imaginary freedom, for a state might prefer to go on with the war; cases have been known in which states have refused to bow the knee even when all seemed lost. The choice of agreeing to the proffered terms or continuing to resist is always present, at least in form.

From a strictly mechanical viewpoint, peace conferences are ordinarily organized much as are conferences in time of peace.[5] They are based on credentials and full-powers and, ordinarily, upon the principles of equality of representation and voting power, and they operate by unanimous consent—the consent of all allies must be obtained as well as that of all enemies. Presiding officers and secretaries are chosen, plenary sessions and sessions in committee are held, and the results are put in the form of a treaty and signed.

However, peace conferences are not usually as well

[5] For regulations governing organization and procedure of a peace conference see, below, Appendix A, Document No. 10.

organized or as well conducted as are conferences in time of peace. They are composed of diplomats in the narrowest sense of that word, and the personal element plays a very great part in the negotiations. They are smaller in membership; they do not make use of committees and commissions as fully as do the conferences in time of peace; they operate more secretly; they go less upon grounds of law and economics and statistical data generally, and more upon grounds of "policy," national ambition, and the personal opinions of the negotiators. There is more dickering behind the scenes, extra-conference agreements are more numerous, and there is more subterranean "accommodation" all along the line. Not common and permanent advantages, but exclusive, direct, and immediate, even if temporary, national advantages, are pursued. There is no fixed program or agenda to be followed and everything depends on the turns in the negotiations from day to day. The result is that the atmosphere is very unwholesome and not conducive to the production of a sound settlement. Indeed, the questions are not commonly approached as problems to be settled by joint efforts to discover sound solutions, but as contests in which each nation must seek to outwit the other in securing satisfaction. Another way in which this may be viewed is to note that there is no one present to represent the general interest of the society of nations. In conferences in time of peace, consideration of the general welfare need not be, and is not, entirely forgotten. In the diplomatic contests in a peace conference it usually is.

Such is the international conference, considered as a general institution. The student who wishes to appreciate the true significance of all that has been said above should study the records of individual conferences in as large numbers as possible, including such conferences as those held at The Hague in 1899 and 1907, at Paris in 1919, and at Washington in 1921-1922. While many new institutions and

new methods are making their appearance today in the whole field of organized international coöperation, the international conference still retains its primacy as the supreme special organ of international action.

CHAPTER XIII

ALLIANCES, THE BALANCE OF POWER, INTERNATIONAL CONCERT AND CONTROL

SUCCESSIVE imperial movements in Europe from the fifteenth to the twentieth centuries constitute one of the two or three principal threads of development in the history of the modern state-system.[1] Yet they have all failed. St. Helena, Amerongen, and the Siberian monastery where the last of the Tsars perished,—these are symbols of the defeat of imperial power and pretensions. There are new schemes of empire in the minds of some dreamers still, but in actual fact the world is back where Europe stood in the fifteenth century, and no great strong empire dominates the liberties of the free national states of Europe, nor, indeed, of any part of the world. The explanation lies in the third[2] of the three threads of modern international history, namely, in the development of defensive alliances and of the principle of the balance of power, which has great significance for the student of international organization, and to which we now turn.

If individual man is, in truth, a political or social animal, and by his very nature craves the society of his fellows, it would also appear that collective man, the state, is a social creature, if habitual behavior is any index. The behavior of states from the time when states first made their appearance in the world indicates that they stand in

[1] On the imperial movement in modern Europe see Schevill, as cited below, Appendix B, § 13.

[2] The second is the appearance of independent national states, for the results of which see Chap. II, above.

need, and realize that they stand in need, of the society and coöperation of their fellows. Speaking carefully, and weighing not the gross indications of nationalistic rhetoric but the net evidence of actual practice, we may say that states have never manifested a desire to live independently in either the economic or political spheres. Some degree of international coöperation is found as far back as we find national independence; the two are correlative modes of national life.

The simplest form of international political union is the alliance, which may be defined as an association of two or more otherwise independent states for a common purpose.[3] Political units which do not have control of their own international relations,—which are not, in other words, independent states in full action,—have no power in law to conclude alliances, and this rule is observed in actual practice. Where an alliance does exist the common purpose is usually defined in a treaty of alliance or equally definite diplomatic agreement stating the terms of the coöperation both as to the objects sought and the means to be employed in the process. In many cases the details regarding military or naval coöperation by the allies are settled in subordinate agreements made to supplement the principal treaty, and these agreements are frequently entrusted to military or naval officers for elaboration.

Two points deserve special notice here.

In the first place, the alliance is a definite first step in the process of international federation. This is recognized in many notable documents. The Constitution of the United States provides that no state shall make any "treaty, alliance, or confederation." Indeed, every treaty constitutes an alliance or a confederation *pro tanto*. The treaty of friendship and commerce concluded in 1778 between the United States and France on the same day which saw the conclusion of the military alliance between those two states

[3] On alliances in general see literature cited, below, Appendix B, § 13.

spoke of the parties as "the confederates."[4] An alliance and a treaty are to be distinguished in that ordinarily a simple treaty does not provide for joint action by the parties for execution of the agreement, while an alliance does.

In the second place, the alliance may be distinguished from the federation in the full sense of the word by the fact that there is no common organ of government. The activities of the allies are coördinated but not unified, and they are coördinated, usually, not by a standing body but by diplomatic consultations *ad hoc*.

The objects of alliances are as manifold as the interests which states may have in common, and, as in the case of the subject matter of treaty-negotiation, no purpose is to be served by a long enumeration of those objects, by the pedantic enumeration of treaties of alliance and guarantee, of treaties of alliance and assistance or subsidy, and so on. Nor would it be profitable to dwell upon the different varieties of alliances by reference to the motives which lead to their original formation, and to speak of alliances of blood, of faith, of interest. All alliances are alliances of interest and the interests are too many to be listed singly. A few of the more important and more common objects may be noted, as well as a few general inferences regarding the whole matter.

In the first place, it is an elementary rule of sound policy to provide at the outset a clear and specific statement of the objects sought by the alliance. Alliances in general terms are often called alliances "pure and simple." Such alliances are, on the contrary, neither pure nor simple. They are bound to be sources of continual disagreement between the parties. They are "entangling alliances" *par excellence*. They are agreements of indefinite liability for the parties and are certain to cause friction and misunderstanding later. Moreover, the objects as stated in a treaty of alliance must in fact coincide with the real interests of the parties

[4] Art. XXIII.

for otherwise they will be ineffective when the time comes to invoke the obligations of the pact. The parties will not support with men and money the fanciful objects stated in the text.

The most common purpose of alliances is to provide for military coöperation, defensive or offensive, or both. It is common to deride the idea that an alliance may be purely defensive. As to that it may be said, first, that, in point of fact, it is not impossible to point out alliances which have operated entirely in that rôle. Moreover, in so far as defensive alliances tend to become offensive in character this is due to causes much deeper than the alliance itself. Parties to a defensive alliance engage to protect one another in what they believe to be their legitimate rights and interests. That this leads to offensive action at times, and, more commonly still, to stronger action by the parties in defining and pressing for the satisfaction of these rights, in reliance upon the support of the alliance, is due to the fact that international government is still so rudimentary as to leave to individual nations almost entirely the business of defining and obtaining satisfaction for their rights. It is this which induces in the defensive alliance its offensive character, just as the same factor tends to make war always offensive in actual fact unless attention is focused on the mechanical question as to which party first undertakes military action.

The objects of alliances are commonly stated in the preambles of the treaties creating them. Often there is a profession of solicitude for the maintenance of peace and justice by means of the alliance. This is, in part, but another reflection of the situation just described. It is also true that for the real character of the alliance recourse must be had to the body of the treaty, just as it is true that many treaties, if their texts are examined, prove to be in fact alliances although they are not called so by name. But it may safely be averred, further, that the professions of solicitude for the maintenance of peace and justice by means

of the alliance are entitled to a considerable measure of respect, and this for a very definite reason, namely, that practically every alliance aims at the support of the balance of power, without which there can be, in reality, neither peace nor justice.

Before turning to this subject of the balance of power, however, two other matters are to be considered, namely, the legal aspects of alliances and the question of membership.

In common with all treaties, treaties of alliance involve many questions of law respecting the original power of the signatories to conclude the treaty, the duration and binding effectiveness of the pact, the scope of the obligations assumed, and the effect of the treaty upon other treaties and other parties. Because of the fact that definite action, and military action at that, is commonly called for, the question of the scope of the obligation of the treaty, of the appearance of the occasion for action under the treaty, called the *casus fœderis,* is especially vital. It is, however, a strictly legal question, and the student must be referred for its adequate treatment, as well as for treatment of all the various legal questions relating to alliances, to the treatises upon international law proper.

As to membership alliances may be bi-lateral or multilateral, dual, triple, quadruple, and so on. They may also be "general" in form, including, that is, a substantial number of all the states of Europe, or of the world. At this point we begin to reach the final stages of the development of alliances as instruments of international government. It requires a broader, a more general, interest to bind three states together than two, four than three, and so on. Likewise, it requires a more permanent interest to create an alliance of long term than an alliance for a short period, and it requires a permanent interest to justify an alliance for an indefinite term. It requires a very general and a very permanent object to establish a permanent general alliance, an international federation. Such an object, again,

is found in the maintenance of the balance of power. To that we now turn.

The "balance of power" is a concept respecting the power and alignment of the states in the political scene in Europe, in Asia, or in whatever region it is applied.[5] A balance of power would exist where no one state was in a position to dictate to other states according to its will. Out of this concept a rule of law might be made, to the effect that no state may legally claim or hold such a position. Or the matter might be stated as a practical probability: no state will be allowed to obtain and hold such a position. Finally, we might turn the idea into a statement of policy: no state should be permitted to attain such a position, and such a balance must be preserved as will prevent such a result.

As embodied in a statement of law, the formula leaves much to be desired. It is vague and difficult to apply. It appears to imply that states may not legally expand in power and possessions and political influence, which is not accurate. On the other hand, the formula does reflect a familiar and an accepted principle, namely, that no state may, of right, lay down the law for others. It consists of an attempt to insure the maintenance of that principle by action in the world of physical facts. It is not a principle or rule of law but a rule of action designed to reinforce and vindicate the law from the outside.

The formula as a statement of probability is of more value. Surveying the long course of international relations from Thucydides to Woodrow Wilson, it is clear that the states will not, if they can prevent it, permit such a predominance on the part of one state as will endanger their own liberties. As a scientific statement of habitual and characteristic behavior, as a law of the descriptive type, it is well supported by the evidence.

It is as a rule of policy, however, that the doctrine may

[5] On the balance of power see literature cited, below, Appendix B, § 13.

be regarded to best advantage. On the surface it is a rule of national policy, serving as a guide for each individual state. At a second stage it is an international policy, a generally recognized principle of public interest. As both, it has been proclaimed and supported consistently from the earliest times. It is generally felt to be necessary as a practical support for the observance of public law; in the absence of an international police for the vindication of the law, free combinations for security are necessary.

The concept of the balance may take any one of several distinct forms which vary considerably among themselves in value.

The simplest form of the balance is found where two states are somewhere nearly equal in power, and are, by force of circumstances, balanced one against another so that neither possesses a predominance over the other. This form of balance is most unstable and precarious. In its mechanical aspect it resembles a see-saw, or the beam of a pair of scales, which will tip violently if a slight weight is cast into one side of the balance. It is bound to result in an agonizing competition between the parties to prevent one from securing advantages over the other. It leads to the practice of "partition" whereby the rivals, by a "calculus of lands and souls," divide equally the possessions of a weaker neighbor and thus grow in greatness yet preserve the balance. It leads to attempts, on one side and the other, to secure the protection of alliances, counter-alliances, and cross-alliances, resulting in a veritable "nightmare of alliances," haunting the minds of all parties and creating a super-sensitive and suspicious atmosphere among them.

Some improvement is made in the second form of the balance, where a third state, not permanently allied to either of the rivals, holds the balance of power between them. This state, acting from time to time as a make-weight, has the power to exert a moderating influence upon

the other parties and to reassure each that he will be protected in his legitimate interests. On the other hand, the situation leads these rivals to curry favor continually with the third state, and it allows the third state itself to maintain its supremacy by dividing the rivals and playing upon their fears, and to assume an attitude of dictation checked only by the possibility that the rivals may make common cause against the dictator. While greatly superior to the primitive form of the balance, in view of the presence at the fulcrum of a stabilizing weight which will tend always to redress the balance, it is not entirely satisfactory.

The desirable form of the balance is found where three or more states are substantially equal and are not grouped in any particular or exclusive alliances one with another. This is the mechanical form of the equilateral triangle or, if the comparison is permissible, of the equilateral polygon. There is at once greater stability and greater flexibility in this form of balance than in the simpler forms. It is not so easily upset, because it has the capacity to adjust itself more readily to stresses and strains from without and within. There is a condition not so much of balance as of general equilibrium. Where these conditions exist, among not merely three but four or five or a larger number of states, the ideal condition exists. We then find ourselves back upon the familiar principle that a condition of general equality among the states is what is most to be sought. We also find ourselves demanding that exclusive alliances shall be dropped, as they tend to destroy the general equilibrium. The latter demand, however, leads to a more detailed consideration of the relations between the alliances described in an earlier part of this chapter and the balance of power.

The essential connection between alliances and the balance of power is found in the fact that alliances are commonly formed in order to resist the imperialistic efforts

alluded to briefly at the beginning of this chapter, and to preserve the balance of power.[6] Two endangered states will combine for mutual aid in defense against conquest by the powerful neighboring nation which is felt to threaten the security of both. In such circumstances neither the object in view nor the method employed seems to merit aught but approval and encouragement. In such a situation both the balance of power sought and the defensive alliance employed for that purpose seem sound and progressive for both local national interests and general international welfare.

If approval can be expressed for such methods when used under such circumstances it is still easier to approve the expansion of the defensive alliance, which has been formed to maintain a balance, into the general concert, in order to achieve a condition of international equilibrium. Our remaining discussion of alliances and balance will turn upon this phase of the problem: the formation of a general international concert and the preservation of international equilibrium and order by various means of international control.

Every experience with efforts at imperial conquest in Europe has served to reinforce all the convictions concerning the necessity for a just and stable distribution of power there which have been developing since the beginning of modern times. The most elaborate and the most successful efforts made at universal European empire have been defeated only by a system of defensive alliances, which have approximated a league of public safety for the reëstablishment of equilibrium and national freedom in Europe. The principle of the balance of power, far from being dropped, has in the most serious situations been placed for enforcement and administration in the hands of something like a permanent organ of international government, instead of

[6] For example see, below, Appendix A, Document No. 11.

being left to individual states or temporary alliances for its defense and support.[7]

It is the fashion today to criticize and abuse the idea of the general alliance or the international concert and its activities, along with the principle of the balance of power itself. Such criticism must be reëxamined here to discover its true value, for the principles of the concert and of the balance are present in recent efforts at international government just as they were a century ago.

It will be noted, first, that opposition to the concert and to the balance has usually arisen from hostility to the perversion by the concert of the principle of balance to serve the ulterior designs of the individual parties to the concert, and from aversion to the methods employed by the former for the maintenance of the latter. This leads us deeper, however, into the question whether such equilibrium could ever be maintained, and how it could be maintained, without stifling legitimate national activities and national growth. This question will answer itself if we examine more closely the nature of the methods employed for preservation of the balance.

The principal agency of international control used by the concert is intervention.[8] Of course, when any difficulty arises the first step is conference, with or without participation by the offending parties, and conference is followed by a recommendation regarding the action to be taken in the interests of peace and order. Such recommendation, if adopted, could be embodied in an agreement which would settle the matter once and for all. But in the last resort, where voluntary acceptance of the mediatory suggestions is not forthcoming, collective intervention with the use of military or naval force—intervention which might take the simple forms of invasion and occupation, or the more com-

[7] For text of the Holy Alliance see, below, Appendix A, Document No. 12.
[8] On intervention see references, below, Appendix B, § 13.

plex form of pacific blockade[9]—is always in the background. A threat might be sufficient, but whether force be actually employed or only threatened, the juristic nature of the proceeding is the same.

Now, according to common or customary international law, individual nations are free to follow their own policies in spite of the views of other nations, except in so far as they have limited themselves by the adoption of certain customary or conventional rules and principles for the regulation of international relations. Each state is free to judge for itself of the nature of those limitations and their effect upon its own action. No state may enforce the rules of law upon another, but may only demand voluntary obedience to those rules, threatening various actions if the demand is not met, actions which may vary from economic retaliation to the most serious steps known to international law. The aggrieved state is entitled, in the last resort, to go to war for the satisfaction of its rights, and it can be said that the first state is, from the beginning, under legal obligation to satisfy those rights. Does this apply to the concert and intervention for the maintenance of the balance?

It is certainly true that any international concert enjoys, and can enjoy, no right of general supervision over the actions of individual states. It could not, as of right, claim any such wide jurisdiction over even its own members. Much less could it claim such jurisdiction over outsiders. Nor could it, *a fortiori,* claim any general right of intervention to make good such supervisory jurisdiction. On the other hand, in so far as the concert or its members merely demanded the observance of established rules of international law, it would be wholly within its rights, even when it threatened to back up that demand by physical force. Moreover, the individual states to whom such a demand was addressed would be under legal obligation to submit to that demand. It is frequently forgotten that in demanding

[9] On pacific blockade see Hogan, entire, as cited, below, Appendix B, § 13.

its rights—providing that what is demanded really is an established right—a state is not assuming to dictate to another, but is simply acting under a system of law deriving its authority from other, broader, sources, including the consent of the state upon whom the demand is made.

Does this mean that the maintenance of the international equilibrium inevitably commits us to such action as the suppression of progress, the prevention of growth and change in the state-system? Is not such a task impossible? How can we prevent the increase of power of a progressive state, the break-up of mature or even decrepit states? How can we hope to regulate and control international birth, life, and death in the interest of world peace and order?

If the problem had to be faced in just this form it would be impossible of solution. If order and progress were necessarily conflicting elements in the international problem the outcome would be perpetual conflict. National growth must and will go on, and some attempts to preserve order will always be made by those states which stand to benefit by the established order.

The solution of the apparent conflict between the ideal of order and equilibrium and the fact of change lies in the practice of constant reorganization by consent. Every settlement, every order of things, every status quo, is in some measure unjust, unbalanced, almost as soon as it is made. It must be rectified and the balance corrected by constant revision, not by force so much as by consent applied in the recognition of new and changing facts.

The concert may succeed where the alliance failed because it makes provision for changes in the existing state-system in accord with the needs of the time. Not that there will necessarily be no war. The prevention of all war is less in point in this question than the promotion of such a development of international relations as will, in the long run and in the balance of calculations, tend to eliminate war

and also satisfy the just demands of the states. But can it be maintained either that the concert preserves the balance of power or that it operates by the method of consent? If a balance existed before the achievement of independence by some new state did not the concert destroy that balance? If the balance was lacking until the action of the concert was taken in each case,—and that action will, it may be mentioned, usually be undertaken only after the initial movement has been made by an outside state or national group,—did the concert not tolerate conditions of instability more frequently than it attempted to remedy them? And can the sort of "consent" yielded by the parent state be made the basis of any firm assertions or conclusions whatever?

The first question implies a misconception of the nature of the balance or equilibrium of power. What is to be maintained is not any given status or alignment but such a status or distribution of power that each state may be in a position freely to live its own life. This means that as time passes a given status—a given distribution of territory or population, of allegiance and sovereignty—may become obsolete and press for change. The balance or equilibrium of things is then to be served, not by a vain attempt to preserve the existing, or, rather, the preëxisting, balance, but by revising the legally established order. What the concert commonly does is to redefine the balance; it does not destroy a condition of balance in favor of a condition of unbalance, but rather it supplants an increasingly inadequate formula of equilibrium with a new and accurate formula; it does not deliberately tolerate conditions of unbalance, but moves to remedy them when evidence appears that such conditions existed. The concert does not, indeed, engage in preventive action as freely as it might. This is due mainly to the lack of uncertainty of its jurisdiction and to the tradition that international coöperation should take place only upon direct and immediate provocation, not for general purposes. But when problems have

once arisen, it may attempt to devise solutions which will last, and it may have the courage and judgment to recognize the facts and act upon them.

This may appear to amount to commending the concert for accepting every change that comes along; it may appear to reduce the task of maintaining the balance of power to the job of keeping pace with the upsets which constantly overtake that mythical condition. In the sense that the decisive facts in the problem are to be found outside the realm of diplomacy, politics, and law, and that the existing political and legal balance is either upset or not upset as a result of economic and social forces working independently of it, this is true. The task of law and government in this problem is to register and embody the forces of a non-political nature,—the growth of population, the increase of wealth, of intelligence, of national feeling. The balance of power in the sense of the actual distribution of power will always be what in fact it is, and no diplomatic legerdemain can alter the facts of nature.

The suggestion is probably true also in another sense. It must, apparently, be admitted that it is finally impossible to prevent the expansion and development of any given state which is in a natural position to develop its power and might. If the preservation of the international equilibrium depended upon the stifling of natural national growth it would be both an unrighteous and a futile task. How then can the equilibrium be preserved? If states are to be allowed to develop as they can, and new states to come into being if natural forces demand it, how can we prevent a disruption of the public peace and order, and consequent danger to the rights and interests of existing states? The answer to these questions may be found by again observing the behavior of the concert, particularly upon the question of obtaining the consent of the interested states to the necessary changes in the existing state-system.

The consent of the interested states may be obtained by

the concert by a process which may be described as the funding or generalization of interests or rights, accompanied by a correlative funding or generalization of power. Turkey felt that she would be injured by the creation of an independent Greece, and hence was led to refuse consent, and to oppose it; and she would have had a right to oppose it, and, probably, would have been able to oppose it successfully if the question had been allowed to remain a Greco-Turkish question alone. But when it was asserted and recognized that the question of Greek independence, with all that it involved, interested all the Powers and affected their peace and safety and the public peace and justice of Europe generally, the way was open to take care of the problem so as to satisfy all interests and demands. Turkish consent could be obtained—that type of consent which emerges from a balancing of alternatives in all such situations—by bringing forward considerations which would set the Turkish loss in one direction off against gains in another direction, such as continued support from the Powers which would otherwise be lost. Turkish rights must be considered in conjunction with the rights of the Powers to act in defense of their own peace and safety. Turkish power to deny Greek demands must be weighed in conjunction with the power of the whole concert.[10]

So it is in all cases where a change in the status quo is involved. The case just discussed involved no danger to the existing states except Turkey, apart from the general danger of continued injustice and consequent unrest and war in the Balkans. If the change had involved an expansion of power for one state, such as would have been considered a threat to neighboring states, the same method of generalization of rights and power could be employed to take care of the situation. Thus, assuming that the concert

[10] The Greco-Turkish case is best discussed in Holland, 4-13. The consent of Turkey was obtained, ostensibly, in 1829, by military action, war *pleno jure*, by Russia (Holland, 11); this action must be considered, however, in connection with the activities of France and Britain in conference with Russia.

had been able to function properly in 1908 when Austria-Hungary annexed Bosnia and Herzegovina, what would have happened? The question would have been recognized to be one in which the rights and interests of all the nations were involved and in whose settlement they therefore had a right to a voice. And if the annexation appeared to be dictated by sound principles of international political relations,—if, for example, it had been based upon the economic interests and the desires of the people of Bosnia and had been recognized and agreed to as such,—the consequent expansion of power for Austria-Hungary would have worn a different aspect. Such an expansion with the consent and approval of the concert would not be the menace which it would be in contrary circumstances. It is arbitrary, artificial, and forced expansions of power which disturb the natural distribution of forces in the state-system and provide incitement and precedents for similar forced expansions in the future, that are dangerous to the peace and safety of other states. A great state based upon natural facts, not upon dynastic imperialism, composed of contented instead of rebellious peoples, is not a menace to its neighbors. Moreover, the concert, functioning as such, would be ample enough and powerful enough to assimilate and take up into its complex constitution the expanded Austria. No such effect could be hoped for if the individual states, or even limited combinations of those states joined in the old type of alliances for mutual defense, were left to face the new Austria depending on their own strength alone. Finally, if the expansion were not dictated by sound principles the concert would be in a position effectively to veto the expansion where individual states or limited alliances would not be—and in the actual conditions of Europe in 1908 were not—so able.[11]

The final form of international combination for preserv-

[11] For description of the Bosnian case as it actually worked itself out see Seymour, 179-182.

ing the equilibrium of power is, therefore, the general international concert; and the final form of the equilibrium itself is at the same time to be found in the generalization of power in this international concert.

The initial step to be taken by the concert in all cases, as has been seen, is discussion or conference, with or without the participation of the state or group involved in the question under examination. The next step is to intervene diplomatically and make recommendations in the premises.[12]

The concert might, however, go on to support its diplomatic intervention by force of arms. This it need not do very frequently. But diplomatic intervention, whether or not carried out by force of arms, if successful, must produce certain results in the realm of politics and law, such as consent to a cession of territory, or the granting of certain rights to certain persons. The next step is to attempt to render these results permanent. For this purpose the members might resort to the device of the guarantee, embodied in a treaty of guarantee or in a clause in the treaty of settlement.[13] Such a treaty defines the rights guaranteed,—for example, rights of jurisdiction, commercial or fishing rights, or dynastic rights and privileges, and the action to be taken for the protection of that guarantee. As in the case of ordinary alliances—for this, in fact, closely resembles an alliance—the execution of the guaranty bond is a delicate and often awkward matter. Much doubt may be raised regarding the obligations of the parties to act under the treaty, and to act singly or in concert; for guarantees may be unilateral or mutual, single or collective, joint or several. Waiving such questions of application, however, the treaty of guarantee, as used by the concert, and embodying as it does a clear right to intervene for its execution in the

[12] For a typical act of intervention and recommendation by the concert see, below, Appendix A, Document No. 13.

[13] On treaties of guarantee see references, below, Appendix B, § 13. For example see, below, Appendix A, Document No. 14.

future, is very nearly the last word in the creation of international control.

If any criticism is to be made of the treaty of guarantee, it is that automatic action for enforcement is not obtainable, and that the enforcement of the guarantee depends upon the interest and willingness of the guarantors to act when the time comes, and not upon any broader basis, such as action by all states. For this reason more definite results may be obtained where it is possible to create by an executed agreement a status which then remains fixed as recognized by all the world. The merit of such a step is that an air of accomplished fact is given to the situation and all the world is made party to the settlement. This is peculiarly true where all states derive certain benefits from the status created.

Among the varieties of status which may be created and guaranteed are, first, territorial possessions and independence. Such a guarantee extends only to existing possessions and the existing degree of independence and does not cover new additions of territory or new rights subsequently acquired. It need not prevent voluntary changes in the existing status. It involves an approval of that status, and, indirectly, it implies a ruling upon the proper bases of territorial jurisdiction in general; and it depends for its success in the end upon the justice of the status guaranteed. Yet even a supremely just status needs recognition and support against isolated parties who may oppose it; territory and independence may need defensive action for their protection in the future, for they may be attacked by outside parties, or even by one of the guarantors themselves. If carried to its logical extreme and applied generally, this method would lead to nothing more—and nothing less—than coöperation by all states for mutual defense, a general international guarantee of existing possessions and independence against violent attack.

Where the status created is of a different type, different,

and more beneficial, results may be expected. Thus the status of territorial neutrality, which is usually created mainly for the purpose of protecting certain states from attack, may be calculated to enlist at least the defensive efforts of those states. Neutralization as applied to strategic areas, such as Switzerland and Belgium, is a form of stabilization which rests upon the real necessities of certain imperiled nations and will enlist their support for its defense.[14]

The most advanced type of status to be guaranteed by the nations,—most advanced because most directly useful and most effective and secure,—is internationalization, or the opening of territory or of certain rights to the use of all nations. Thus the high seas, after being claimed in whole or part by various nations for centuries, are internationalized by common international law and practice, as are the principal international straits. International rivers are being increasingly placed in the same condition by treaty agreements; the same is true for such canals as those at Kiel, Suez, and Panama. The public maritime highways of the world are thus made a symbol of public international authority.[15]

Similarly, colonial territories are being placed in a condition where all states may enjoy equal opportunities therein for investment and trade. How this attempt will work out in the future remains to be seen. But, whether or not it is successful as an application of the principle, it constitutes another effort to establish international control in the field of otherwise free international competitive struggle. In all parts of the world to which this treatment is applied the door is declared open and national monopoly forbidden. In these cases, moreover, the parties benefited by the arrangement are so increasingly numerous, and the

[14] On status in general, and neutralization in particular, see references, below, Appendix B, § 13; for example of neutralization see, below, Appendix A, Document No. 5.

[15] On international waterways see references, below, Appendix B, § 13.

benefit is so real, that a violation or overturn of the status created is less and less likely.

It should be noted, in passing, that in the end neutralization and internationalization come to be one and the same thing. Guaranteed neutrality usually involves a surrender of certain rights of offensive and defensive military action by the guaranteed state and an acceptance of protection from the guarantors, that is, a subjection of that state to a more or less limited international control. Moreover, perfect neutralization is obtained only when all states join in the action; and this is, in effect, internationalization. Where the process of neutralization is applied to uninhabited territories, or to bodies of water, it amounts to opening these areas to free international use, which, again, is internationalization. It may also be mentioned that it has been found useful to neutralize certain territories in the process of bringing them under the control of international administration. The destruction or removal of unilateral national rights over a territory or a water area is almost certain to result in the substitution of affirmative international jurisdiction over it; and as international coöperation develops further and further this type of action will probably be resorted to with increasing frequency.

In recent years the international concert has been, in spite of the increasing employment of all these devices, largely ineffective. The agencies of conference and intervention, guarantee, neutralization, and internationalization, have been of little use in preserving public order and justice in the world. On one hand, there has developed an increasing interest in, and knowledge of, international affairs, and an increasing inclination to accept and promote some form of international concert and control. While the traditional opposition to any general right of intervention, based upon the doctrine of state independence, has been maintained, the idea of the responsibility and authority of

the leading powers for the peace and order of the world has grown stronger and stronger. On the other hand, certain forces have come into operation which have more than equaled this development and nullified its effects. It remains to examine what, in general, are the forces which have defied the best efforts of the concert and all its agencies of international control.

At the center of the resistance is the simple and familiar force of nationalism which has been encountered so frequently in the course of this study, both as a friend and a foe of international organization. National consciousness and the nationalist spirit are still so strong among the newer states, the experience of independence is still so novel for some nations, that there is often little patience with ideas of the common international welfare, or even with notions of permanent if indirect national benefit as against immediate if temporary advantage; and hence there is little desire for international organization. Contrary to common impressions, it is in the smaller and newer states that nationalism is found in its worst forms. A secure and satisfied nationalism is a stable factor in international relations and a good basis for international coöperation, but an insecure and still sensitive nationalism is not.

The excesses of the nationalistic spirit have led to a reaction against it in the minds of many students of world affairs in recent years. That reaction has already been discussed as it has leaned toward cosmopolitanism. They have led also to a supersophistical reaction toward empire as a means of bringing peace and order in a too, too nationalistic world. This reaction likewise has been noted. During recent years both of these reactions have found vigorous expression. Suddenly, with the breaking of the spell which had rested upon Europe since 1870, the force of nationalism has burst forth again—with all of its objectionable features present, it is true, but also with all its promise of stability later. In one sense it was the pressure

of these nationalities demanding liberation from imperial oppression that gave its tone to the period preceding 1914. The pathos of the situation lies in the fact that the great breakdown of that year came largely because of the necessity for that liberation of suppressed nations which by itself would have made such a breakdown unnecessary if it had been achieved earlier.

The operation of the force of nationalism in bringing on the catastrophe of 1914 was indirect. The war did not come as a direct result of rebellion in Poland or Bohemia or Ireland. It came directly as a result of German and Russian and French and British imperialism. Yet the latter, in its Prussian and Austrian embodiments, at least, was, on one hand, the product of an earlier nationalistic development and, on the other, was merely given its current form by those in a position to profit from a use of its power in conflict with newer nationalist movements which they, in turn, sought to stifle. Germanic nationalism had become nationalistic imperialism. The monarchs of Berlin and Vienna were attempting to use nationalism for imperialistic objects, as had Napoleon a century before. Ironical and paradoxical as it may seem, empire was to be built upon the foundation of nationalism.

Closely allied to this development was the movement of commercial imperialism which bulked so large in the same generation. Commercial imperialism may, of course, be discovered in the colonizing movement of the seventeenth century. But with the increase of population at home, the improvement of means of transportation, and the development of the machine processes of manufacture, the demand upon the newer territories of the earth for food, raw materials, and markets became so overmastering as to lead to a great wave of commercial imperialism in the years after 1878, such as is best exemplified in the partition of Africa. An attempt was made at the Berlin Conference in 1884-85 to apply to this movement the methods of con-

cert, and more success was attained than might have been expected,—more, also, than could have been hoped for ten or twenty years later. Yet the best that can be said is that the precarious balance was preserved by a process of partition without much reference to anything but financial profits and national power. The fundamental forces at the bottom of things were left untouched.

Such empire is better, of course, than empire over advanced peoples. It is even possible to talk with sincerity of carrying civilization to the natives, and to arouse the noblest as well as the lowest minds in the cause. Even the laboring class will respond to the idea of coloring further sections of the map red or white or blue, and popular support may readily be secured for a war to carry democratic liberties and the benefits of progress to oppressed and backward peoples. Something of this motive entered into the American war with Spain. A sort of popular or democratic imperialism may be developed, working upon the basis of the democracy of the Revolution, even as nationalistic imperialism utilizes Revolutionary nationalism as its motive power.

Rising still higher in the scale, nationalism turns into pan-nationalism,—pan-Slavism, pan-Germanism and so on. Such movements vary from pan-Germanism, with its admixture of commercialism, militarism, and dynastic imperialism, to Anglo-Saxonism, with its reliance upon sentiment and voluntary coöperation for mutual assistance. Yet all alike, in one degree or another, present difficulties and obstacles to the concert and have retarded international organization in general. They may offer quicker and more certain returns in the way of international coöperation for those nations and peoples participating in them, but in the end they tend to obstruct general international friendship and coöperation.

No mention has here been made of certain types of state expansion which have grown up along with these principal

movements of nationalistic and commercial imperialism, such as the protectorate, the suzerainty, and the sphere of influence; the Monroe Doctrine, and the Japanese policy in the Far East. All such activities have tended in the past to prevent free international coöperation. Concrete evidence of this is found in the fact that it is felt to be necessary to recognize the Monroe Doctrine, the basis of the mildest of these movements, as an exception to the full application of all current programs of world organization. In reviewing the agencies of, and the obstacles to, international organization and international coöperation as they have developed in the past half-century, such devices must be placed in the same class with territorial conquests and imperial domination generally. The Monroe Doctrine escapes from this class in so far as it is merely the proclamation of a policy on the part of the United States to prevent conquest or intervention in Latin America. In so far as it amounts to a claim to a general sphere of interest in those regions, it is on a par with Japanese hegemony in China or British domination in Southern Asia as a hindrance to full and free international coöperation. Even so, we may prefer to maintain the Doctrine and let the world and world harmony go by the board. Let us, however, face the problem squarely and settle it with open eyes.

We have now reviewed the nature and development of international alliances and concerts in modern times, and their more or less ineffective efforts to provide a system of international control. These efforts inevitably suggest the creation of a formal international league or federation, and to that subject we now turn.

CHAPTER XIV

INTERNATIONAL FEDERATION

UP to this point attention has been directed to the nature of the modern state-system, and to six special forms of international organization, namely, diplomacy, treaty-negotiation, international law, arbitration, international administration, and international conferences. Some attention has been given to the relations which exist among different members of this series, as, for example, between treaty-negotiation and international administration. But it has been found that, except by the accidents of history, or by virtue of the way in which they are employed, these practices are not coördinated into any one system of international government. They are, indeed, coördinated and employed by the foreign offices of individual nations as one body of diplomatic practice, capable of serving the national interests. When so used, however, they constitute an arm of national service, not a system of international government. Only by deliberately assuming the world point of view can they be so regarded.

To gather these activities together into one system of international government is, therefore, the first step forward. To do this it is necessary to gather the national states upon which these practices at present rest into one federal system and thereby unify the activities of these states in their relations one with another. This is international organization in the most precise and significant meaning of that phrase. This is the final step in the process of creating international government.

Such a step, however, raises the fundamental question

of the nature of the national state and of the juristic nature of the relations among the national states today. It brings us in touch with the most difficult problem in international organization, namely, the reconciliation of international organization with national sovereignty. To that problem we now turn.[1]

Much effort is being expended today in attempting to evade or circumvent the classical doctrine regarding the sovereignty of the state. These efforts are being put forth, first, by those persons who desire to curb the state in its relations with individual citizens and groups of citizens within the state, and who are impatient with severe theory at any point and feel that all rigid and simple doctrines in political science belie the rich complexity of life. Such are the pluralists in the political philosophy of constitutional government. These efforts are also being made by people who desire to curb the state in its relations with other states, and who believe that the classical doctrine is untenable in view of actual practice and the facts of contemporary world relations. Such are the internationalists and the pacifists of all types, emotional or scientific, practical or theoretical.

It is doubtful whether all this expenditure of energy is entirely justified. The classical doctrine of state sovereignty must either be met directly and those who hold it satisfied by direct replies, or the theory must be simply ignored. If it is mentioned at all in relation to international federation, it must be given an adequate hearing; to mention it only to evade the issue is worse than to ignore it entirely.

It is plain, moreover, that the issue cannot safely be ignored. For practical political reasons this is impossible in view of the fact that those in power in all the leading states of the world adhere to the orthodox theory and are

[1] On juristic theory of international federation see literature cited, below, Appendix B, § 14.

supported in their position by the peoples of those states. In the immediate future, at least, the idea of national sovereignty will not be scrapped and must be met by anyone who proposes to create an international federation. Among European states at the present time the need for such a federation is so great, and is felt so keenly, and the influence of abstract forms of political theory in everyday governmental life is so weakened by the practice of parliamentary government, that not much is said or heard regarding state sovereignty as an obstacle to international organization. In Asia and Africa, and Latin America likewise, the issue is not sharply raised. But in the United States the issue is sharply raised and must be met, whether the reasons for raising it have been sincere or insincere, flowing from partisan politics or from patriotic solicitude for the national welfare. Moreover, the issue, so long as it is not definitely settled, might be raised by politicians elsewhere whenever the tactics of the diplomatic battle demanded it.

Evasion is the less justifiable when the path of direct attack seems plain. It does not appear to be at all impossible to reconcile the concepts of international federation, international federal government, world government, world state, super-state—making the concept as strong as possible—with the concept of state sovereignty, as long as we keep scrupulously in mind the exact steps in the process of creating such an international federation or world state.

It will be profitable to begin by reverting to the most elementary stages in the development of international organization, the stages of personal diplomacy and the negotiation of treaties. In those early phases two or more states, none of which owe any degree of allegiance one to another or to any state or body of states, enter into a practice of discussing matters of common interest through the medium of personal agents. Disputes are settled and arrangements made for the future by voluntary agreements

recorded in more or less formal diplomatic documents, the most formal of which is the treaty proper. Such agreements derive their authority from the voluntary participation of the two or more states entering into them.

These elementary proceedings are not felt to constitute a violation of state sovereignty, as is shown by the fact that they are entered into continually by states which at the same time do not concede any loss of sovereignty and are not regarded by others as having suffered such loss. And rightly so. The action of making a diplomatic agreement or concluding a treaty is sometimes described as the acceptance of a self-imposed limitation upon sovereignty. No state may dictate the terms of a settlement or a treaty to another, and consent alone can create a binding diplomatic agreement. The treaty is, therefore, certainly not more than a self-imposed limitation. It is, indeed, only partially that. It is at least as much a positive action of sovereignty in asserting a demand and securing recognition of it. If the act be regarded as a unit, it must be considered an act of self-expression or self-direction as much as an act of self-limitation. The very common rule that only independent sovereign states may conclude treaties may be mentioned in partial confirmation of the tacit acceptance of this position in international law.

The case of the state "compelled" to accept a treaty "by force" has already been discussed. Here, as in all similar situations in human affairs where it is said that we do not wish to do a certain thing but that we must, what we really mean is that we would not wish to do a certain thing if things were not as they are, but that, things being as they are, we do, after all, prefer to sign on the dotted line. We have a choice which any reasonable person, living under the common conditions of human life, would, indeed, decide in only one way, but his decision would be needed to make the choice; in proportion as conditions have varied

from the normal the decision also must vary. The freedom of consent is there in ample degree to satisfy the doctrine of sovereignty.

When the treaty has been concluded, however, and after it has continued in operation for some time, the situation appears, superficially, to have changed. When a state is held to performance of a treaty obligation incurred twenty or thirty years before, it appears—to that state, and to some presumably disinterested students of the matter—that state sovereignty has been lost.

To such a conclusion there are several replies.

First, as in the initial negotiation of the treaty, so here, it is to be noted that all states come to stand, in the course of events, in precisely this position, and yet their public representatives do not consider that they have lost their sovereignty, nor are they considered by the public officials of other states to have suffered such impairment. This certainly proves that such a conclusion is not warranted in the minds of the high priests of state sovereignty themselves.

Again, it is to the source and creation of the current obligation that we must look, not to its incidence. The obligation flows, and can only flow, from the original act of consent of the state; it can be traced to no other state or body of states. This, by itself, is sufficient to satisfy the doctrine of sovereignty. The state may appear to be bound to act against its present will; if so, it is a case of one act of the state's own will, made at a previous point in time, overriding a possible later act of will, and the doctrine of sovereignty certainly does not pretend to bar such a process within the area of operations of the will of a single state.

Third, it is not even accurate to say that a state is bound against its present will. What happens is that the state acts upon the dictates of a general policy, rather than those of a specific present desire. It wills to act to uphold the sanctity of treaties, rather than to express a policy

of commercial discriminations. Or it acts upon the will to preserve the friendship of the cosignatory party, or the will to secure advantages corresponding to the concessions rendered, or upon some similar ground. Again, it is one act of the state's own will overriding another; but both are acts of will of the same state.

Finally, although this is not essential to the validity of our conclusion, the state is not bound by its original act of consent except in so far as the conditions which led to that original consent persist and thereby justify the assumption that that act of consent is continued. In so far as conditions change and render the arrangement unjust, there arises a right of denunciation for the state suffering from the effect of the alteration of circumstances, apart from any explicit provision in the treaty for denunciation upon notice. Such action may precipitate a discussion of the question of fact as to whether this principle of *rebus non sic stantibus* is really applicable, that is, whether conditions have, in point of fact, so changed as to render denunciation permissible, but that does not affect the validity of the principle. Indeed, the principle is so firmly established that the effect is rather to weaken unduly the obligation of treaties; there certainly is no room for a contention that sovereignty is lost by the conclusion of a binding treaty.

Suppose, however, that conditions have not changed, yet one of the states party to the treaty desires to denounce the treaty, and, not acting upon any higher will of this or any previous period (such as a provision in the treaty for denunciation on notice, or a new agreement to supersede the treaty in question), denounces the treaty or proclaims that national safety compels it to disregard its obligations under the treaty. What is to be said in such circumstances?

The fact is that the state in question is within its rights in refusing to be bound by the treaty. It is liable to make adequate amends for not carrying out its pledge, but it is

not compelled to carry out that pledge in such circumstances. The liability for compensation is in the nature of an equitable adjustment for benefits received and certainly provides little ground for a claim that sovereignty has been lost by the state liable.

The state whose rights under the treaty have been denied is in a different position. Without action and without consent on its part, its rights are denied respect. The important point, however, is that they are not destroyed. In many cases this may even be admitted by the state refusing to carry out the terms of the treaty, or, at all events, not explicitly denied; the principal point of the recalcitrant state in the situation now under discussion is that, although it is under certain legal obligations, it cannot safely perform them. If it did not, at least by inference, admit the validity of the obligations, there would be no cause for taking the position described. In any event, the rights which are unsatisfied remain intact, and if they cannot at present be enforced, this is due to a deficiency of international government, not of legal right. It is not sovereignty and legal rights, but courts and executives for the enforcement of those rights, that are inadequate.

If, now, we turn to the third and succeeding stages in the development of international organization these conclusions will be applicable to the end.

From diplomatic settlements and treaties at large customary or common international law was steadily developed by the states of Western Europe in the years after 1648, and this law has been extended to America, Asia, and Africa in more recent times. This common international law is held to be binding upon the individual state. Is this not a loss of sovereignty?

Once more the test of usage is to be applied. The states, or those in a place to speak for them, while recognizing the binding force of common international law, do not admit a loss of sovereignty thereby. Nay, they do not even suggest

that there might be any such result. Sovereignty does not preclude subjection to law. It precludes only subjection to law made by another, to law dictated from an external source, subjection to the will of another.

Such subjection is not present in common international law. That law is based upon the consent of the members of the society of nations as evidenced by the diplomatic records, treaties, arbitral decisions, and so on, which they have left behind. Even national judicial decisions—in cases in prize, admiralty, criminal, civil, and constitutional law—and also national diplomatic and legal instructions and opinions, are valuable as showing the consent or agreement yielded by the states to various rules of the law.

When a rule which has received the specific consent of a certain state is invoked against that state, the case is, therefore, entirely simple; the binding force of the rule is in the prior consent, and no sovereignty is impaired. Suppose, however, that a commonly accepted rule is invoked against a state which has not specifically consented to it or has definitely repudiated it.

In the first alternative, the rule is binding and derives its binding effect from the action of the state in joining the society of nations. The state sought, received, and accepted admission into that international community under the commonly accepted standards of admission. One of these is responsibility under common international law to the other members of the community of nations. The new state is now bound by that law as a result of its own conscious assumption of the obligation covering all the commonly accepted rules of the law.

In the second alternative, the rule is not binding, international law permitting individual states to refuse to be bound by individual rules of the law within the limits set in the immediately preceding paragraph. But the reasoning is the same as in the previous case up to the point where the state in question expressly repudiates the rule. If the

state had simply refused to act in accordance with the rule, while not denying its binding force, nothing would be proved one way or another, as was seen in the case of the treaty whose terms were defied by a signatory party. If, likewise, the state yields "unwilling" obedience to the rule, while denying its legal validity, the case is on a par with that of the treaty obeyed under similar circumstances. If we agree with the state's own contention that the rule is not binding, no problem of loss of sovereignty is, of course, left. If we deny that contention, our denial will be based upon the reasoning of the preceding paragraph, but the liberty of decision of the state on the validity of this particular rule remains intact. If we attend simply to the action of the state alone, it might appear at first that we have "unwilling obedience," a supposedly sovereign state constrained to act against its will. The reality of the matter is that the state does desire, does will, to obey the rule—in order either to keep in line on the general issue of obedience to international law or to avoid retaliation or for other purposes. This is not a "fiction" as it has been called; the fiction is the "unwillingness" which in fact does not prevent the action. Obedience proves consent, if not consent to the rule as binding, at least consent to observe it at the time; action is more decisive evidence than protestation.

It ought not to be overlooked that the idea that a state is "compelled" to do a given thing is susceptible of infinite variation to suit the needs of the moment. In the simplest situation confronting a state, where an opportunity is presented to the state to secure a great advantage at little cost, the diplomats will often say "we were compelled to act quickly," or something of the same sort. The compulsion in such cases is not fanciful. It is just as real as the compulsion bearing upon an individual to protect himself from the rain, a compulsion to act for one's best interests. But it does not derive from any particular outside human source; it derives from the general posture of affairs,

human, political, or natural and non-political, and, more specifically, from the reaction of the individual or state to that situation. The same is true when "we are compelled" becomes an excuse for demanding what is expected to be an unwelcome act, as when a state says: "We are compelled to insist upon satisfaction of our claims." The reality is that we will to do thus and so, and we hope you will appreciate the reasons why and will yield gracefully.

In like manner, the effort to deny a prior act of consent is often real, sincere, and deserving of respect. But it does not affect our argument. A state may wish that it had not become party to a certain prior agreement, and may be unable to get out of it. That means only that acts of will are often the result of poor judgment or ignorance and that, nevertheless, the hands of the clock cannot be turned back. The unwelcome effect and the binding force is in the march of events and in the part in that process played by this state as the result of a decision made some time ago, not in the will of the other state which is now in position to profit by present conditions. The doctrine of sovereignty does not pretend to prevent prior agreements or stay the march of time.

When international arbitration and administration and conference are reached the process becomes still more complicated, yet it is no less clear. Let us state the conclusions briefly for each of these forms of international government in turn.

Where two or more states agree to submit a dispute to arbitration and to abide by the result, the result is binding because of the original agreement.

Where two or more states agree to create an administrative commission and to abide by its actions, in practice the binding force of the subsequent action of the commission derives from the original convention creating the commission and giving it authority.

Where two or more states agree to a conference wherein

decisions shall be taken by majority vote, the binding force of the decisions taken flows indirectly from the original agreement.

In no instance is there any loss of sovereignty. These cases are vivid because of the fact that the representatives of a given state may vote openly for one thing, and the arbitral decision, the administrative ruling, or the settlement actually reached by the conference, may be exactly the opposite. The state is then bound, not in the absence of any expression of will, but, apparently, in spite of a clear expression of will. Yet there is no loss of sovereignty, for the binding force of the decision flows not from any legal authority inhering in the wishes of the majority by virtue of its own existence, but in the agreement originally made to use the device of the majority vote to decide questions in the court, the commission, or the conference. Without such agreement, the majority vote would have no value. Given that agreement, the majority vote takes on a value it would not otherwise have. The clear expression of the present will of this state must be checked up against the equally clear expression in the past of a general will still operative in the present case.

If all this be true, there is no obstacle in national sovereignty to the creation of an international federation with legislative, executive and judicial functions, for that result would be obtained by merely gathering together into one system the various organs or institutions of international government already existing on independent foundations. To effect this integration is, indeed, one principal end for which an international league is desirable today. From this action to the extension of the machinery and the powers of the league to any desired extent by the creation of new organs of government and the delegation of new powers to these new organs or to organs already in existence, is merely a matter of quantitative expansion. So long as the process of expansion and intensification goes on by means

of the original form of action, the consent by all members of the league, the power of the league may be increased indefinitely without violating the sovereignty of any state. By what may be called the doctrine of the original agreement, we may reconcile national sovereignty and the world state. If this appears to reduce sovereignty to a vassal condition, if it appears to amount to the subjugation of sovereignty, the phenomenon is startling only because of a common neglect to observe the things which sovereignty may, and often does, do with or to itself, and because of failure to realize that what we have here is merely a case of sovereign power acting upon itself.

'At this point three supplementary questions will naturally be raised, and all deserve attention. First, have we not committed ourselves to the principle of unanimity, and is that not an almost unsurmountable handicap to effective international federal government? Second, why is this concession necessary? Finally, is the doctrine of original agreement powerful enough to support the creation of a fixed or perpetual union?

The necessity for unanimity lies in the fact that, in their original condition, states stand toward each other in a state of entire independence. In the absence of any agreement among them, no state has any right or jurisdiction over another. There are no natural grounds of superiority or supremacy giving any state the right to lay down the law for another. This condition is often described by saying that all states are equal, and in this sense the principle is sound, and has received universal assent. It may be maintained that there is a common bond of humanity and natural justice connecting the states of the world. It may also be argued that reasons of natural justice imply or demand the supremacy of greater and more advanced nations over lesser and backward ones. It is also true that until the principles of that natural justice are recognized and defined by agreement among the states, it can have no effective con-

tact with human affairs, no binding force upon international relations; and in this process of defining natural justice, and until it is defined, no state has any particular ground for jurisdiction over another.

This means, indeed, that the initial establishment of any international government, and the initial creation of any bonds of authority among the nations, demands unanimous consent, and that any international federation must lack all jurisdiction over the nations which do not participate in its formation. This is unescapable, in the nature of the case, whether it be bad or good. It may also be suggested that too much impatience is at times manifested in this connection by persons who desire to make headway quickly, without being required to secure from all concerned consent for the schemes or actions which they propose. The real trouble is not so much in the unanimity rule as in the inability or unwillingness of the peoples to come to accord on subjects of common interest. In other walks of life much "unanimous consent business" is carried along successfully. Unanimous consent at the initial stage is neither an unreasonable nor an impossible requirement.

Where the need for unanimity is an intolerable burden is in the later operation of international government, in its application to concrete questions. But the necessity for an initial unanimity does not involve a like necessity beyond that point. There is no reason in law or jurisprudence why the members of a group of states should not provide by original agreement for the operation of any organs of the federation which they are in the act of creating by three-fourths votes, two-thirds votes, or simply majority votes. Thereafter the decisions of the league need not be unanimous; yet all members will be bound thereby, and, at the same time, no violation of state sovereignty will take place, because of the continuing effect of the original agreement, which is an integral element in the authority of each subsequent decision.

Suppose, however, that the federal agreement is made for an indefinite period, and that no method is provided for withdrawal from the league or for amendment of its terms. Does not this result in a loss of sovereignty by the member states?

To this there are many replies.

In the first place, it may be observed that many simple treaties have been concluded in the past without any provision for a definite period of operation and without any provisions for withdrawal or denunciation. Yet they have not usually been regarded as involving a loss of sovereignty.

In the second place, we must not forget that such treaties are susceptible of denunciation by the principle of altered circumstances, and there is no juristic reason why that process could not justifiably be applied to a treaty creating a federal league. If the Constitution of the United States had been solely a treaty among states, acting in that capacity, denunciation or secession would have been juristically permissible. It was the fact that the Constitution was not solely a treaty among states, but also a law resting upon the action of the people of the United States as a unit,—in other words, it was the unitary element in the foundation of the Constitution,—which placed that instrument beyond the action of single states.

Third, it is not to be overlooked that, even if there were a loss of sovereignty, it would be a voluntary surrender of sovereignty, not its destruction or violation at the hands of another state or states. Now the doctrine of sovereignty does not insist that all sovereign states which ever come into being shall remain in existence forever. It merely requires that so long as a state exists as such, and desires to continue to exist as such, it shall be free from outside interference. Voluntary surrender of sovereignty is therefore entirely compatible with the doctrine of sovereignty. It has been said that slavery is no less slavery because entered willingly. If we set aside the emotional nuance

surrounding such a declaration, it will appear that the essence of slavery is precisely the element of compulsion, and that where freedom of choice exists in taking up certain duties—indefinite in extent, and, perhaps, running into an indefinite future,—precisely that element of compulsion is lacking. It may also be added that such a voluntary surrender not only escapes the description "violation of sovereignty" at the time. It also makes impossible any violation of sovereignty in the future by bringing about the consolidation of that sovereignty, or, rather, by merging it, in practice, in the common power of the league.

The issue must, however, be met still more directly. Does such an agreement really involve a loss of state sovereignty, irrespective of past opinion, disregarding the rule of *rebus sic stantibus,* and admitting that surrender, not violation, is in question? It does not seem so, for various reasons.

It should always be remembered that the critical stage at which the test must be made is not the resultant situation, but the stage of the original agreement. Why? Because the whole question relates to the origin, source, or basis of authority, and that can be discovered only by going back to the process of creation. Without such a method of analysis, the simplest treaty or diplomatic agreement would be susceptible of being interpreted as a destruction or loss of sovereignty, the simplest contract as slavery. And when such a method is employed, the voluntary character of the original agreement covers and obliterates any apparent compulsion emerging at a later stage—even into a perpetual future.

A most illuminating and vivid, yet very simple, example is to be found in the case of an international agreement, without time limits, not to exercise the treaty power, not to make a certain sort of treaty, such as a treaty of peace. Such agreements are common in the history of international relations. Both of the objectionable elements are

present: permanence, and, apparently, a surrender of a peculiarly essential sovereign power. Yet such agreements have not been regarded as destructive of the sovereignty of the contracting parties or as involving a loss or surrender of that sovereignty.

Furthermore, the unalterable character of the agreement, and not merely the content of the agreement which is made unalterable, is itself the result of the will of the state. The element of irrevocability and permanence, like a specific promise to pay money, derives its juristic reality from the continuing sovereign power of the state which for its own self wrote that element into the agreement. It cannot then result in a loss of that sovereign power, for such a result would deprive the agreement of its own authority upon this particular point. The permanence of the arrangement depends upon the persistence of sovereignty in the states which decree that it shall be permanent.

Finally, the unalterable membership in the union and the unalterable specific terms of union, the duties assumed by the member state, are likewise embodiments of the sovereignty of that state, not acts of surrender. Construe them as such, and all the foundation for their future authority is destroyed. What the state has done is to perform a permanent action of sovereign power, to achieve a perpetual act of sovereignty, as when an individual chooses to become a member of some association. Other states have done the same thing, and these simultaneous acts bring into existence as a joint product a federal league wherein are funded and exercised for the future the united sovereign powers of all the constituent states.

At times it appears that it is precisely this process of practical coöperation which is really opposed by the supporters of the doctrine of state sovereignty; sometimes it seems that the doctrine is used merely to cloak with an ideal moral value a policy of opposition to international coöperation, of national action for immediate and exclusive

national advantage. For this reason it has seemed necessary to argue the case on the issue of national sovereignty. It might occur to some students of the problem that if the advantages and benefits of international organization in the concrete are such as to justify its adoption, then any conflict which is apparent between such a step and the preservation of national sovereignty shows that the latter is a useless, and even harmful, doctrine. As we have seen, however, neither the violation of national sovereignty by others nor the voluntary surrender of sovereignty by the state itself is involved in the creation of a federal union. The original agreement, on the contrary, preserves, during the term of its life, the sovereignty of the state which enters the league.

The repeated proposal of projects for international federation since the dawn of modern times furnishes evidence of a general and persistent conviction that a more comprehensive scheme of international government is needed.[2] The multiplication of such proposals in the nineteenth century and in the opening years of the present century indicates an intensification of that conviction. It is worth while to make an analysis, at this point, of the foundations of that belief and of the purposes of those bringing forward various schemes for international federation.[3]

The basic idea underlying all such plans is the simple and elementary truth that the nation is not, as such, a self-sufficient unit, and that there is a constant and general need for international coöperation in all phases of world affairs. That idea is so simple and so commonplace that it is usually passed over in silence. It deserves, however, to be put in the very forefront of any discussion of the problem of international federation.

More specifically, the cause which led to the elaboration

[2] See note 2 to p. 161, above.

[3] On projects for international federation see literature cited, below, Appendix B, § 14.

of various schemes for international federation was the insufficiency of the existing system of international government. Even if the need for coöperation among the nations be granted, there would be no occasion for devising and publishing a plan for world federation if the historically existent set of institutions and practices had not been inadequate to the needs of the case. The system of international coöperation in the past has been too loose, too disjointed; the world has remained unorganized too long and too widely. The alliances of the sixteenth, seventeenth, and eighteenth centuries, and the system of the balance of power of which they were the embodiment; the Holy Alliance, the Concert of Europe, and even the coöperation of the nations for arbitral and administrative purposes, have been judged and found wanting. By their meager fruits it is known that they have not, and, by their nature it is seen that they cannot, possess the power to provide a wholly satisfactory world government. The alliances of earlier days and the principle of the balance of power did not prevent international relations from breaking down in repeated wars, and they did not provide that state of justice, order, and safety which the world needed. The Holy Alliance constituted a certain slight advance in the right direction, and the Concert of Europe embodied the essential principle which must be acted on if any results are to be had and for some years gave that principle adequate expression in a few rather narrow cases. And the latter part of the past century saw the development of certain organs of government of still greater import. When the situation between Austria and Serbia developed as it did in 1914, however, these steps did not suffice. The critical test of those days in July and August brought out clearly the fact that the existing system of international government was defective and incapable of conducting international relations past such a storm. It is true that the situation was such in 1914 that it may appear unduly ex-

acting to demand a system of international control capable of taking care of such a crisis. And yet, after all, the situation does not appear to have been utterly impossible. A solution or a method of securing a solution was very nearly obtained at one stage of the crisis. And the important point is that, whether or not a solution could have been obtained in that crisis or in any similar crisis, the best, and, indeed, the only practicable method for obtaining that solution was not available. The existing scheme of international government was deficient at the most vital point in that it neither provided in advance for any international conference to take up such a conflict as that which arose between Austria and Serbia, nor offered any sure method of obtaining such a conference. The solution was left to depend completely upon the possibility of securing the consent of the parties to the dispute to an international conference on the question after the dispute had arisen and when the atmosphere was of precisely that character to leave the parties least inclined to compromise and conciliation. The proposals for international federation which appeared in 1915 and 1916 reflect this revelation of a condition of international anarchy.

On the other hand, the serious student of the problem of world government realizes that this condition of anarchy can be cured only by taking into consideration the conditions which have produced it. The simplest solution which might suggest itself is the concept of the world state. Yet, except in so far as the proposed world state should be organized in a federal form, such a plan would be fantastic. The nations are too new, too young, too vigorous, people are too firmly attached to their national states to be willing to see them swallowed up in a unified world state. If nationalism is so powerful as to present an obstacle to the simpler forms of international coöperation, how much more of an obstacle does it present, not only to cosmopolitanism, as has been seen, but, *a fortiori*, to the establish-

ment of a unified and centralized world state! Federation is the only practicable form of world political organization. Even that may not be practicable. Certain it is that nothing higher in the scale of state forms would be practicable. Mr. Wells is impatient with a world organization which retains as its foundation the national state-system. Such a position, it must be said, with all due respect, is sheer nonsense, in so far as it is sincere. To scorn international federation and cry after a unified world state is to deny support to an attainable improvement over the present anarchy, and waste it upon an unattainable ideal.

This, then, is the case for international federation: the nation is insufficient by itself and some system of international coöperation is needed; the previously existing system of international government is inadequate to the needs of the case; a unified world state is impossible. The conclusion is obvious.

Moreover, we have the benefit of much actual experience in the practice of international federation. It is possible to review the record of international federation in the past and learn therefrom not only its practicality but its essential prerequisites, its weaknesses and its potentialities for service, and this by itself is a great advantage for this form of political organization.[4]

The most elementary antecedent condition of affairs for the formation of a federal union is found, of course, where several independent states exist side by side. The question then arises whether or not a federal union shall be created. This question is to be answered in the affirmative only where the mass of interests common to all the states is so great as to demand common organs of government to take care of them. Particular interests must remain in the hands of the local states. The burden of proof is upon anyone proposing federal union, an obligation to show that a central government is needed in addition to the local govern-

[4] On interstate federation see literature cited, below, Appendix B, § 14.

ments, a central government beyond any coöperative efforts which may be made by concurrent state action, by alliances, or by any form of association short of federal government.

There are no objective mechanical means of measuring this mass of common interest. It is possible for the student to compute the amount of commerce which goes on among the states of the group in question, to record the amount of interstate travel and communication in existence among them, and to picture the degree to which a cosmopolitan or interstate life has developed. When that is done some light will, indeed, have been thrown upon the advisability of creating a federal union. The final decision, however, depends upon the judgment of advantage and disadvantage in the minds of those who live in the various states. After all, it is impossible to anticipate exactly the net result of convenience and inconvenience which will flow from creating or failing to create a federal union. Those who are to live under the union must decide, more or less at a venture, as to its probable utility.

Not uncommonly, the decision is made in a fashion far less precise than this. Where a condition of cosmopolitanism has begun to develop among the members of a group of states the simpler forms of interstate association—diplomacy, treaty practice, alliances—will already have made their appearance. The question then presents itself in a familiar form, namely, whether or not the loose forms of association existing shall be converted into a federal union. More frequently still the degree of association increases imperceptibly until federation is reached unconsciously.

The problem then becomes a purely scientific one, namely, to discover whether or not federalism has actually made its appearance. To a certain extent this is wholly a problem of terminology, but it is of a degree of importance not usual in problems of terminology. After all, federalism is the decisive first stage in the organization of a single state and deserves to be marked out carefully as it occurs.

The most useful test which can be employed to discover the existence of a federal union—most useful partially because of its ease of application—is the test of established organs of government. Where there is no established common organ of government there is no federal union of any degree, as in the case of the alliance. Where there is a common organ of government, no matter how limited its power, there exists a federal union for the purposes defined by the powers entrusted to the common governmental body. Thus the international administrative union exercising governmental power appears to be a federal state to the extent of the substantive jurisdiction entrusted to its care.

A second test, which serves to mark the passage from a simpler form of federation to federation proper, from confederation to federation itself, is the test of the incidence and source of governmental power. If the authority of the established organ of government falls only upon the states which are members of the union in their official capacity the union has not passed far from the level of the alliance. When the common organs of government operate directly upon the individual members of the states of the union without action by the individual states as such, the last stage of federal development has been reached. So long as the states remain in existence and the authority of the central government rests upon their consent—as revealed by the character of the process in force for amending the federal constitution—the federal character of the union remains. If the central government should, in addition to exercising its power directly upon the people of the union as a whole, draw its power directly from the people of the entire union, irrespective of state lines, the federal character of the union gives way to that of the unified state.

The reassuring thing about all this is that the steps described are all optional, in so far as any steps in human life are optional. All powers enjoyed by a federal government are delegated to it from the members of the union.

That is not accidental, nor is it peculiar to one federal system or another. It is necessarily true in the nature of the case. In the beginning there is no central government. It must be created and it must be endowed with life and power. Hence the expansion and intensification of its powers are dependent upon action, upon tacit acquiescence at the very least, by the members of the union. Even if the members should at once by constitutional grant confer upon the central government all power in so many words, such a step would still remain an action of delegation and therefore subject to revision or revocation.

Once a federal union has been created by constitutional action, these questions of revision and revocation, of constitutional amendment and withdrawal from membership, become the most critical phases of the problem. The degree of permanence of the union depends, apparently, on a denial of the right of withdrawal. So long as a right of withdrawal upon notice is allowed, the life of the union is potentially limited to the extent of the notice period. The powers enjoyed by the central government are potentially subject to destruction by the action of constitutional revision. A permanent and firmly established federal union should have, apparently, a constitution not subject to amendment and a membership not subject to diminution by withdrawal.

A little reflection, however, will serve to qualify those conclusions. It is, it must be admitted, of great importance in the creation of a federal union to have the processes of constitutional change and of withdrawal clearly defined and not left to interpretation and implication. The United States suffered her greatest misfortune mainly through the failure of the fathers to take up and settle explicitly in the text of her fundamental law the vital question of secession. The right should be definitely denied or affirmed and the conditions under which it may be exercised should be explicitly stated. This is very far from saying that, in the

interests of permanence, such a right should be denied. To deny such a right is to risk the appearance of converting the federal government from servant into master, as far as the individual state is concerned, albeit a master voluntarily accepted in the first instance. To deny the possibility of constitutional revision appears to convert the government from servant into master for all the members of the union. This may not be wholly disastrous, if the original action in creating the federal union and in defining the nature of the government was supremely wise. But it imposes upon the federal state and government the burden of not only the current difficulties of state practice at any one time but the cumulative difficulties of all time, seeing that it is impossible to cure a fault when once that fault arises, or to escape from its consequences. Besides, where withdrawal is impossible, where even revision in coöperation with other member states is impossible, it is rather hazardous to rely upon the original act of consent as evidence of the voluntary character of the union. The states of the union in such case appear to become not much more than provinces in a state whose power they cannot escape.

Beyond these fundamental problems of structure, however, rise the more practical questions of governmental action from day to day, the question of the distribution of powers. Assuming that the member states retain their discretion in granting or withholding powers from the federal government, the problem of sovereignty is amply cared for. But the various questions of utility and convenience which demand settlement are not to be avoided in any way.

The principle to be followed is as simple as its application is difficult. Such powers are to be given to the central government as will enable it to care for those interests which led originally to the formation of the union. Such matters as the regulation of interstate commerce should thus naturally go to the central government. The remaining

subjects—those which do not affirmatively call for regulation from the center—naturally remain where they were in the first place.

It is easy to render this problem of distribution difficult by assuming that it is necessary or desirable to traverse the whole field of governmental power and to decide deliberately in advance upon each item of power, as to whether it should go to the central government or the states. In practice this is not what happens, nor is it necessary or natural. What does happen is that certain powers or subjects cry aloud for transfer to the central jurisdiction, others suggest such a transfer, but merit further study, while still others are by tacit consent allowed to remain within the local jurisdiction. As in the original delegation of power in the abstract, so in the definition of jurisdiction in the concrete, the burden of argument is on him who suggests that a certain power be conferred upon the central government.

That burden will be heavy or light, as the circumstances of the case change with time. The advisability of conferring a given power on the central government changes from decade to decade. In a sense, this development through history is the sum and substance of the problem of the distribution of powers. There seems to be a general tendency, as time passes,—as population increases in each state and in the union, as communication becomes more active and extensive,—for more items of government and power to deserve to be transferred to the central government. The process of centralization seems to be general, continuous, and persistent. History records no example of a federal union in which this process has not manifested itself, or of a given power once entrusted, on reasonable grounds, to the central government which has been returned to the local government.

As may easily be imagined, the definition of jurisdiction cannot be so clear that disputes over jurisdiction between

the central government and the local governments will not arise. Hence the urgent necessity of providing some institution or some method for settling such disputes. In view of the fact that, as time passes, the central government is led constantly to aggrandize itself at the expense of the local governments, this is especially necessary. A body of some sort to decide upon conflicts of authority is indispensable unless disputes regarding jurisdiction are to be threshed out in the field of usage and practice at the risk of great excitement and violent disturbances.

Granted that the federal system is created on due cause, that the power conferred upon the central government is of the proper amount, and that the problems of revision, of withdrawal, and of conflicts are duly cared for, federalism is, considered as a mechanical device, the highest form of state organization. It is more flexible to local impulses and needs than a unitary form of organization, and it offers the means of greater power than is possible in a unitary state, unless the latter is to become so huge as to become unmanageable. The federal system reconciles local variety and general uniformity. It harmonizes central government and local individuality, power and freedom, unity and multiplicity. It provides the means of marshaling the powers of many states without imperial conquest. It performs in the sphere of interstate relations the great synthesis of authority and liberty which is the heart of the problem of government.

This is not to deny that difficulties are involved. Federalism is a complicated and delicate political form, where it is not positively cumbersome and awkward. A federal state moves slowly and may be disconcerted where a unitary state would be confident. The larger the federation the greater these difficulties. In a competition of wits and strength the unitary state may easily have the best of it at the start and in all the tight places.

This implies, of course, that the unitary state would be

more effective as a state, and, judging by absolute standards, this must be admitted at once. The unitary state, where it is feasible, the unitary state in its proper place, is more effective than the federal union. The important thing for us is that international conditions are not ripe for the unitary state. We thus come back to the original proposition. If all variety and local feeling were to vanish, the centralized or unitary state would be in perfect place. With things as they are, it is not only impossible but highly undesirable. Federalism is the only available form of political organization for the world state in our day.

It is not surprising, therefore, that students who have attempted to devise plans for world government in the past have generally adopted the federal form on which to build their plans. Since the thirteenth century, at least, various schemes have been brought forward for leagues and associations of nations, in more or less conscious emulation of the leagues of classical Greece. These schemes may now be briefly examined.

It would be worse than useless, however, to review here the details of the plans of Podiébrad, Crucé, Franklin, Ladd, and others.[5] In their details these various plans betray the idiosyncrasies of their authors and are based on generous but impractical hopes rather than sound statesmanship and they are deceptive in what they imply regarding the conditions of the problem. Moreover, no single plan is of decisive importance, inasmuch as no one of these various plans has ever been adopted as such by the states. The chief value which these schemes have today for the student of international organization is the light which they shed, in their main outlines, upon the development of the idea of world government since the Renaissance.

These plans have commonly been based upon one or more of four rather distinct foundations, namely, selfish national advantage, historical development in international

[5] On classic projects see literature cited, below, Appendix B, § 14.

relations, previous plans of the same sort, and abstract justice. These foundation principles may best be examined in the reverse of the order as named.

Every would-be architect of world government naturally professes to aim at justice and, through justice, peace; and in a large measure every reformer who has suggested a plan for international federation really has tried to serve these ends. However, when the ends of justice and peace are sought directly the result is likely to be unfortunate. The ideal of peace by itself induces on the part of its possessor a quietism and a willingness to accept almost any settlement for the sake of peace. The ideal of justice, on the other hand, taken by itself, leads to a meddlesome dissatisfaction with all things as they are, which is as bad on its side as is quietism on the other. In the end, plans which attempt to serve these abstract ideals directly are incoherent and unstable.

The simplest method which can be adopted for the correction of such errors is the comparison of plans which other students have worked out in previous ages. In recent years a great deal has been done in collecting, analyzing and collating the classic projects for international federation worked out in the past. A most valuable form of such activity is found in the practice of scrutinizing the plans for international courts and conferences which have previously been proposed or adopted when the occasion arises for creating a new court or conference. Thus, the creation of the Hague Court of Arbitration in 1899 and the revision of the plan in 1907 were both based upon a study of prior courts of arbitration and the working of such courts, including the Hague Court itself between 1899 and 1907, and both Great Britain and the United States, in preparing for the Peace Conference of 1919 collected much data on international negotiation, administration, and conference in the past.

The action last described carries us over into the second

method of drawing up such plans, namely, building the new edifice of international government not upon paper plans, but upon the actual historical development of international federation in the past. Such a method might seem to provide no first step in the process, and to make success depend upon something having already been done in the desired direction. When it is recalled, however, that international federation must grow out of spontaneous international coöperation of a simpler sort, this limitation becomes less important, a source of strength, not weakness, and in this late day the objection to confining the process of drafting an international constitution to the reorganization and improvement of institutions which have proved valuable in the past is slight. The results have such a high degree of reliability, in comparison with schemes not based on actual experience, that this method is the only one to be preferred. The development of the Commission of Inquiry in 1899 and 1907 is a cardinal example of this sort of activity. The best of the private plans which have been put forward in the past, as that of St. Pierre, have, likewise, taken careful account of actual historical development.

To connect the proposed plan too closely with actual political life, however, is to fall again into error. Several plans for international federation proposed in the past have amounted to not much more than schemes for the aggrandizement of the power and prestige of the nation in which they have originated. Such was the—not improperly named—Great Design attributed to Henry IV. It is, of course, not to be assumed that a given plan for international federation is necessarily bad because it peculiarly satisfies the interests of a given nation. No nation will accept such a plan unless it does serve the national interest. The only requirement which can be made is that the national interest which is served shall be a non-competitive interest, one which can be satisfied without injury to other states. But when a plan for international organization is put forth

directly with the calculation that it will serve the national interest, the probabilities are that the plan will not be of great value from the point of view of other states and of the common international welfare.

Beyond the nature of the motives for its formulation, however, the value of any plan for international federation depends also upon the exact provisions which are written into the proposed international constitution. These will presumably reflect one or more of the different foundations upon which the plan may be based. But, after all, it is in the text of the plan that the decisive virtue lies. Here also the projects put forward in the past have varied considerably.

The earlier projects were very simple and highly unified. Later plans have been more comprehensive and more analytical. Recent proposals cover, as any feasible proposal must cover, institutions for the making of law, for its administration, and for its interpretation in case of doubt. Conferences, commissions, and courts are essential in any international government. Earlier projects not only contained no separate provisions for such bodies, but ignored the distinction between the different varieties of work to be done by a world government. With the growing understanding of the process of government in general since the seventeenth century plans for international government have similarly improved in quality.

There is still some temptation to visualize world government in terms of some particular form of institutional organization. Thus, a few years ago arbitration or judicial settlement seemed to be the sum and substance of international reform and an international court the equivalent of international government. At another time "the world in alliance" or an international police was regarded as the essence of international coöperation. In recent years international administrative unions and bureaus were taken as international governing bodies *par excellence*. Later still international conference seemed to be most important.

It cannot be too strongly affirmed that any adequate international association must include organs of all types, constituent and legislative, administrative, and judicial. The most recent projects for international federation respond favorably to this test.

Finally, all recent plans have recognized the need for control in operation and for adaptation as times and circumstances change. Earlier plans pretended to be panaceas to be adopted by the world intact and left as originally framed. In some cases the precious scheme was to be imposed upon the world by autocrats and maintained in place by their authority. Modern plans do not pretend to be infallible and are subject to amendment. They are, in the first place, to be adopted by voluntary action by the states of the world. They are, further, to be operated by responsible officials; their virtue is to depend on such operation rather than upon any magic quality of the scheme as adopted; and they are to be open to constant revision.

Needless to say, this last view is of great importance. Combined with the other changes in approach just described it has brought the proposal for international federation out of the realms of religion and speculative theory into practical politics. International federation is to be built up gradually, on the basis of what has gone before, to meet the actual needs of this cosmopolitan world, by the voluntary coöperation of the states in the paths of conference, administration, and arbitration, subject always to revision and control as the times require.

CHAPTER XV

THE PROBLEM OF PEACE AND ITS RELATION TO INTERNATIONAL ORGANIZATION

IT has not been a very long time since any person who confessed to an interest in the problems of international organization was in grave danger of being regarded as a pacifist and lumped indiscriminately in a group with those who demanded peace at any price. International organization was regarded as a proposed reform, designed to eliminate war and bring peace to the world, and it was presumably to be studied, if at all, because of this potential service. Now as we have seen, international organization is not merely a reform to be accomplished in the future but an established phase of actual international relations, and is entitled to attention as a part of present political reality on a par with national, state or provincial, and local or municipal government. And as a program or method of action it has great value apart from the preservation of peace; in a thoroughly peaceful world much organized international coöperation would still be necessary. It is, nevertheless, closely related to the creation and maintenance of world peace also, and we must now examine the precise nature of that "peace," which is so much discussed and so little understood, and its relation to international government.[1]

Peace may be conceived entirely as a negative thing, as the condition which exists when there is no war. Even this simple description, however, requires some analysis, for "war" also is a concept not commonly analyzed and de-

[1] On peace movements see literature cited, below, Appendix B, § 15.

fined with precision. War may be defined as general military action by an organized group of people, ordinarily forming a state, undertaken for the purpose of vindicating what it believes to be its public rights or interests against another state or other states. Direct action of a limited sort —retorsion, reprisals—may be undertaken for the defense of certain limited rights without bringing on a state of war in the full sense of the term. Military action may be undertaken by certain individuals or groups for private rights without the result of creating a state of public war. Finally, if joint military action is taken by several states not for the purpose merely of protecting their own rights directly but also common international law or the general peace, we have something which does not deserve to be regarded as "war" in the usual sense of the term; no claim is made that such action is taken for "altruistic" reasons, nor is it necessary for the conclusion, so long as the interests defended be public international interests.

Peace, then, while excluding international war proper, does not necessarily exclude all military action. The occurrence of sporadic outbursts of individual violence, of piratical marauding or civil rioting, does not disturb the peace from an international viewpoint. Likewise, the military action of an international organization for the enforcement of international law would not amount to a breach of the peace. On the contrary, such action would in reality constitute a step taken for the maintenance of ultimate peace. At the same time it is obvious that such action resembles war in a physical sense and must be kept at a minimum if physical peace is desired.

Let us see how this comes to be. If the absence of international war would mean peace, then, obviously, peace might conceivably be brought about by each nation voluntarily abstaining from the use of military action to vindicate its rights, preferring peace to justice. Such a peace of weakness or resignation deserves much of the scorn heaped

upon it. The peace of supine surrender to injustice has no claim to respect.

A nation, like an individual, may, of course, calculate that the inconvenience and expense of enforcing its rights will be greater than the values to be obtained by that step, and decide to refrain from action. This may go the length of deciding that war is, in general, a method of action so terrible and expensive that no values which can be obtained through its use can conceivably compensate for the suffering and cost which it entails, and a decision even to comply with all demands made upon it which cannot be warded off by diplomacy. To make war would then be rashness and folly. That is not what is in mind here. The undesirable thing is an attitude in making the foregoing calculation which gives undue weight to inconvenience and expense and trouble, which unduly fears the harsh realities of conflict and undervalues the interests of right and justice.

We encounter at this point the vast polemical literature for and against war, describing it as useful, beneficial, and inevitable, or the opposite. That war is inevitable so long as certain conditions of mind and certain international political conditions persist is certain. The former are, however, changing notably in recent times; the latter, as we now see, may soon be changed radically in certain particulars. As for the utility of war, that also must be considered not by itself but in relation to the alternatives available, in particular the alternatives in international procedure about to be described.

Granting, then, that the effect produced by a general willingness on the part of the nations to obtain peace by sacrificing their rights would be demoralizing, how is the enforcement of those rights to be reconciled with the maintenance of peace? Granting, further, as we must grant, that, even if peace by inaction were desirable, the nations are actually unwilling to surrender their rights generally for the sake of peace, how may the same problem be solved?

There is presented here a task of political engineering deserving serious study. Peace cannot be attained by aspiration merely, by crying "let us have peace." The peace movement has been injured by nothing else as much as by the spread of a concept of peace typified by a milk-white dove bearing inanely before it a silly twig of olive leaves. Contrary to the old adage, it only takes one state to make war but it takes two, three—all—to keep the peace. It must be attained by international organization for the definition, administration, and, perhaps, the enforcement of the rights of individual states so as to relieve them of the necessity of self-help in this regard. Peace must be attained indirectly, and international organization may be regarded as the means to the end.

With this in mind, peace becomes not a weak condition of inaction and dissolution, but a condition where the adequate power of the community maintains the common law and common justice, and public order reigns. The peace of the court room is the peace to be sought and, if possible, obtained by international government. These general principles remain, however, to be worked out in detail, and it is most convenient to make the beginning in connection with the international conferences discussed in a preceding chapter.

It has been seen that war may be terminated by a simple cessation of hostilities or by treaty. It was noted that the former method left matters in an inconvenient state of uncertainty. More important here is the fact that it leaves open many questions likely to lead to a renewal of war. For that reason the method of concluding war by treaty is of much greater value for preserving the peace, in that it provides for the mutual satisfaction of claims outstanding between the parties.

When this task is undertaken the peace conference is led, first of all, to revert to the causes which originally brought on the war. The discussion of international rela-

tions must be resumed where the discussion, and where those relations, speaking generally, were broken off by the event of war.

The most natural question suggested by this obvious but commonly neglected fact is the question why, if this be so, the discussion was broken off originally, and what assistance has been derived from the intervening war in the settlement of the issues at stake. The reply is extremely complicated and varies with the nature of the issues.

In general terms, it may be said that diplomatic discussions are broken off and military action begun in such cases because of a failure on the part of the disputants to come to agreement, or, more specifically, the failure of one party to secure from the other a satisfactory degree of compliance with its demands by the use of diplomatic argument. But what is that "argument" the failure of which brings war? It is the presentation of alternatives from which the other state will, it is claimed, suffer as a result of refusing the demands of its neighbor. Those argumentative alternatives may be of many forms, such as warnings of the loss of reputation or the loss of favor in the eyes of the state making the demand, and of other states, resulting indirectly in material loss; physical attack by the state making the demand (or by others, or both), with the object of seizing the object of the demand, if that be feasible, or other things to be held for exchange; or with the object of securing power over the state resisting the demand—over its property, territory, people, and government—in order to demand satisfaction as the price of continued free existence. And, the arguments being unconvincing, the action threatened is taken in fact. So far as war does not come about merely amid excitement and confusion, this is the rational theory of the event.

It will be noted, however, that the value of war in the settlement of the current dispute is as remote from view as ever. When we examine the case again we find that what

the first state has done is to take action having no bearing at all upon the merits of the issue in dispute. So far as that state is victorious in war, it secures satisfaction for its demands without reference to the merits of the issue; the issue is therefore not "settled" in any rational sense, but remains in dispute in the minds of the parties; for the second party has yielded, not from conviction on the merits of the issue, but as a price of continued enjoyment of some of the goods of life. If the second party is victorious the same result follows: the original demand is refused, with as little reference to the merits as in the preceding case. Now if the war should be a drawn battle, the only recourse is to resume negotiations where they were dropped, for no new factors have entered the situation at all. Where, as most often happens, there is a partial victory for one party, the situation is a mixture of cases one, two, and three, but in none of these cases does the war facilitate in any way the solution of the dispute on the merits.

It is partly for this reason that peace conferences, held at the conclusion of war, are of little value for the cause of international peace and justice. The atmosphere and temper of the time is, of course, bad. But more important is the fact that such conferences are based upon the *status quo* at the time. They treat the disputes between the parties by reference to the perhaps temporary preponderance of military force of one power at the time, not by reference to the permanent conditions of power between, and the relative needs of, the two states. The result may easily be the reverse of what it should be in the interests of the common welfare, of justice, and, therefore, of permanence. They produce artificial solutions capable of being maintained only by the constant use of military force. They do not deal with the issue as it stood on the merits at the outbreak of war.

It is obvious, therefore, that the critical point, the point upon which attention must be focused in an effort to find a

method of really solving international disputes, is the point where negotiations were broken off. New issues arise during the war, partly connected with the conduct of the war and partly independent of it. But when these issues come to be discussed in the peace conference it is similarly true that the subsequent conduct of the war has no more bearing upon the merits of those issues than upon the original issues. In attempting to deal with the problem of war or national action by military force to vindicate national rights we must revert to the nature of those rights or demands, or, in familiar terms, the causes of war.

The causes of war are, of course, too complicated for complete analysis here. The search for peace by the elimination of the causes of war must be a hopeless task. But in seeking peace by other means the nature of the causes of war is not unimportant. They may be described as falling under one or the other of two heads, either violations of legal rights or actions not covered by international law at all.[2] The former may take the form of maltreatment of citizens abroad, violation of territorial sovereignty, and many other actions. The latter are still more varied, consisting in commercial rivalry, political rivalry, and what not. The conclusions significant for our purpose flow from the twofold classification itself, not from the detailed description of the two classes.

What are the outstanding features of these two forms of the causes of war? The first is the failure to define legally the interests included in the latter group of causes, thus leaving great discretion to the individual state in its decision regarding supposed violations of its alleged "rights." It is a testimony to the respect for law among the nations that the "rights" demanded are invariably portrayed as legal rights wherever possible, but this effort is not in most cases very successful. The second is the freedom left to individual states to decide whether their legal

[2] On causes of war see literature cited, below, Appendix B, § 15.

rights have been violated. The third is a failure to provide the state with any means of enforcing even its legal rights except self-help in carrying out the law and securing justice according to its own opinion. It is to these features of the situation that international government must be applied if it is to accomplish anything for the cause of peace.

In accordance with this conclusion, the conferences held in time of peace with the purpose of preventing war turn first to the definition of the rights of the states participating in them. Such conferences have a greater chance of success than conferences at the end of war because the temper of the time is better, the alignment of the forces in the scene is normal, and the common interest may conceivably be kept in view. National advantage is here sought through the common advantage, benefit is now sought not at once but in the long run, and all attention is directed to the origin of disputes, not to the results thereof, as is not true in conferences in time of war. By treaty agreements the rights of the parties regarding territory, commercial privileges, and all the interests at stake in the situation, are defined. The next step which needs to be taken is the provision of machinery for adjudication upon those rights, in the form of arbitration. The third step would be to provide for enforcement by the community of nations participating in the plan, in place of enforcement by the individual state.

Historically, something, but not a great deal, has been done on the first point, in formally defining international rights. For the most part, international law has been allowed to grow up by itself, and the task of recording and codifying it has been left to private scholars. Only in the last fifty years have official conferences for the statement of the law met with any frequency, and these have dealt principally with the conduct of war. By far the greater part of the law of normal intercourse, covering the period when war is not being carried on, yet in which it originates, is left untouched. The reason for this, as well as the reason

for the same action by private scholars in recording first the common international law of war, is that the law has been set down, not so much deliberately with the object of effecting a world government and preventing war in the future, as with the object of recording retrospectively the methods of making war, of avoiding disputes concerning these methods, and, if possible, of ameliorating these methods. At present, the great need for an effort to set forth the law of international relations in complete and official form is being realized.

Provisions for the adjudication of disputed rights have also been made in the past, as the history of arbitration shows, and the steps taken in this direction, although not very well coördinated before the end of the last century, have been more numerous and consistent than those taken for the definition of the law. This is attributable to the fact that it has seemed simpler to reconcile such a proceeding with the idea of state independence than the declaration of law binding for the future, and to the greater intrinsic difficulty of the latter task. It is intrinsically difficult to find legal formulas capable of doing justice to all parties, and a law which works injustice is worse than a political bargain which does not. This is the fundamental human obstacle to the development of international law, the lack of such knowledge of international relations as would enable us to write fairly and completely the law of those relations.[3] But the movement for the judicial settlement of international legal disputes is now well on its feet.

The last step to be taken in providing for peaceful world government is to provide for community enforcement of international rights, and not much has been done in this direction in the past. A state could look only to its own right

[3] See Prince von Bülow's remark: "Germany has not found any formula that will meet the great diversity which characterizes the geographical, the economic, the military, and the political positions of the various countries," in reference to the proposals at The Hague in 1907 for obligatory arbitration, made in an address in the Reichstag, 30 April, 1907.

arm for the enforcement of its rights under international law; to such an extent was this true that the normal attitude to be taken by third states in the face of a dispute between two others was that of neutrality. The reason for this is that joint action demands a degree of international organization not deemed practicable or desirable, in view of the doctrine of state sovereignty and independence. We now encounter new proposals leading in this direction which promise greater results. This will form the subject of the remaining chapters of this book.

For if community enforcement of international rights is to be established, such action must be provided through the creation of an international federation of some type. The states of the world, working as individuals, might, and indeed have, generated a rather extensive system of common international law. The states of the world, acting by twos and threes, might, and have, elaborated a rather extensive body of treaty law. They could, and did, develop the practice of arbitration very far in the same simple manner, by bilateral agreements. But community enforcement could come only by multi-party combinations, and in its full sense only by a combination of substantially all of the members of the society of nations. Moreover, the processes of stating and adjudicating international rights, while they could be carried on in an elementary way without such a general organization, would gain greatly in the breadth and stability of their foundation and in their influence upon international life by being performed under the auspices of a general international league.

For this there are highly specific reasons, revealed by the history of international relations in all modern times. Special and temporary conferences and acts of adjudication must be replaced with general and continuous conferences and courts.

Special conferences are defective in two ways. They deal only with one or more limited topics, whereas the

actual state of affairs demands attention to a considerable range of questions at once. In modern times specific problems in international relations, affecting two states immediately, are found, upon examination, to ramify into many collateral questions and to affect many nations at once. Special conferences of two states to deal with limited questions therefore become increasingly inadequate.[4]

In the same manner, temporary conferences, called on the spur of the moment, are inadequate. The process of international life is continuous; the process of international government must be equally continuous to be effective. Disputes arise constantly, and if no conference is in session it is difficult to convene one. Moreover, even if a conference is in session it will have been called for some other purpose and will not, as things now stand, possess any jurisdiction over the new dispute. A new conference, or a new grant of authority to the old one, would be necessary in any case. And just that task of securing a conference after the dispute has arisen is the most difficult task of the peacemaker in diplomacy.

The position is the same regarding arbitration. It is difficult to secure agreement to arbitrate after the dispute has arisen, because of the state of feelings aroused, because the disadvantage of losing seems more vivid when the concrete case has emerged, and because at least one party probably has reason to be mistrustful of the outcome. It is more difficult to get agreement to arbitrate in the future all cases as they arise, or all cases of a certain type. Likewise, it has been more difficult still to secure agreement to a standing conference which shall have jurisdiction over all questions arising in the future or over all questions

[4] When it was proposed to call a conference on the limitation of naval armaments in Washington in 1921, attended by the United States, Great Britain, France, Italy, and Japan, it was discovered that Pacific problems and land armaments would also have to be taken up and perhaps the status of the League of Nations, and that Portugal, Belgium, the Netherlands, and perhaps other powers, must needs be invited.

of a certain type. This is caused by the desire to preserve the sovereign independence of the state in point of principle, by the amount of the concrete loss which might be sustained in the future by defeat in the deliberations of the conference, and also by the fact that the risk of defeat seems great in advance. But in both cases the difficulty of securing consent in advance to conferences and courts has resulted in a more fundamental sense from the fact that the question has been studied entirely with reference to specific disputes, actual or potential. When the general desirability of conference and adjudication in place of war, from sheer practical considerations of profit and loss, is realized, as it is coming to be realized today, the demand arises for arrangements prior to the appearance of the dispute, to avoid delay and possible collapse at the time of the crisis, —in other words, for continuous courts and conferences.

It is obvious that such defects can be cured and such remedies provided only by some general and permanent international organization. At whatever point the problem of international government is opened for examination, the indications all point in one direction, toward the creation of a permanent world-wide federation of states for the performance of the minimum services of definition, adjudication, and enforcement of national rights in international relations. In no other way can law and order, peace and justice, be secured.

At this point a question may be raised which refers back to an earlier stage of the discussion and again forward to the idea of the enforcement of international rights. Stated very simply, the question runs thus: if war is the result of the use of armaments by nations, would not the elimination of armaments, would not disarmament, pure and simple, bring peace? Stated more subtly, it is asked whether, seeing that great armaments lead to an excessive boldness and to excessive demands on the part of the nations possessing them, a limitation of armaments would not be bene-

ficial all round. This view is usually combined with the theoretical attack upon war as such, bitterly criticizing its alleged utility, and representing its cost and its sorrow at their maximum. The literature of the peace movement deals, not so much with the practical methods of political engineering which may be taken to reduce the chances of war, as with the beauty of peace and the ugliness of war. A reproduction of the picture "The Spirit of '76" is placed beside a photograph of the mutilated and gangrened face and jaws of a wounded soldier and the title "The Glory of War" is placed under the two. To such an attitude the reply is direct: peace will not come and war will not disappear by wishing it so, by dwelling on the beauty of peace and the horror of war. More effective steps must be taken than mere denunciation and aspiration.

The second question is, would disarmament or limitation of armament be effective in the desired direction? Suppose that the nations were to abandon all military armaments at a stroke, would the result be peace? The result would, on the contrary, be the outbreak of piracy at sea and disorders on the land on the part of anti-social individuals and groups with which the community would be impotent to deal. So long as this sort of violence is latent in society, some degree of armament for the protection of the peaceful and orderly individual members of society is essential. Moreover, disarmament would be most difficult to carry out in precisely the cases of those most likely to misuse the arms which they were able to retain. This applies among individuals in society. It also applies among the nations. Disarmament would be most difficult to obtain from imperialistic powers. The result is that any attempt at disarmament must hamper the better elements in international society in dealing with the worse elements. The nations loving peace and justice would thus abandon all possible means of upholding law and order in the world. Furthermore, it is simply impossible at the present time to secure a general

consent to disarmament, and this means that disarmament, if undertaken at all, would have to be undertaken by those individual nations most attached to the ideal of peace, with the result just described.

Even these more enlightened nations are not, however, willing to take such a step. This, perhaps, is attributable in part to their sense of responsibility for the maintenance of peace and order in the world. It results, more specifically, from their unwillingness to put themselves at the mercy of the more designing ones, together with the absence of any conviction that war must necessarily be more costly than any injuries received by compliance with demands made upon them by others, and this brings us to the reason for the general unwillingness to disarm. That reason is found in the negative conviction just mentioned and in the fact that national rights are still ill-defined, that no sure method of adjudication upon those rights except self-adjudication is available, and no method of enforcement but self-enforcement. We are back to the deficiencies of international government as the chief cause of huge armaments. The only method available for producing a state of mind in the nations such that they will be willing to disarm is to provide them with a system for securing definition, application, and enforcement of their rights without arms. It need not be pointed out again that this can only be done by a general international organization for the purpose.

If we return to the proposal for a mere limitation of armaments, the same conclusions apply, with even greater cogency. The amount of reduction possible would depend upon the forces needed to maintain peace and order on the seas and in civil society. The amount of reduction for each power would have to be carefully calculated in order to prevent many undesirable possibilities. Those states most willing to accept limitations would be precisely the ones which should not be asked or allowed to take such action. The states upon which the most severe limitations should

be placed are the ones which it would be most difficult to persuade to accept any limitations at all. Finally, these facts are all accentuated because the deficiency of international government is felt, not in defining the maximum size of forces needed to preserve domestic peace, a matter in which the peaceful nation needs powers as great as any, but in deciding upon the possibility of any curtailment at all, just the point where the peaceful nation has the weakest case.

What is probably the greatest difficulty, however, would arise after it is agreed to accept some limitation of armaments. How great shall the reduction be? Shall it be the same for all states? How shall it be enforced? If the reduction is to be the same in all cases it must be less than the size of the armament of that one of the present powers whose armament is smallest; otherwise some state will be left without any forces for preserving domestic peace. In a general agreement for the limitation of armaments intended to include all nations this procedure would, of course, be ridiculous in its application to the Great Powers —another evidence of the unwholesome effect on international relations of the existence of inequality among the nations. Evidently, reductions must be unequal or the action must be confined to the Great Powers. But it is often the smaller powers with armaments excessive for their size, with less sense of responsibility, which precipitate international conflict; they are, moreover, among the states in position to gain most by the saving incident to limitation of armaments. Hence it appears that the proposed reductions may have to be unequal, a thing hard to present in an acceptable light to those powers now in a position of relative supremacy regarding their armed strength.

The whole matter is, moreover, very difficult to reduce to exact figures, and, of course, it must be reduced to exact figures, for after a certain stage general considerations are of absolutely no use. Probably the only sure basis for

computing the armaments needed by individual powers is the force needed to maintain domestic law and order. Even here the relative state of society in one nation and another makes the adoption of a uniform standard impossible, though the experience of the past and the judgment of those responsible for the performance of the task are substantial foundations to build on. All of this assumes—an assumption justified with difficulty in view of the facts—that a reliable unit of computation can be found. Perhaps a complex unit can be devised, a unit made up from the number of persons in the armed forces of a state, the number and caliber of arms in stock, the amount of ammunition on hand, the number and tonnage of vessels in commission, and other factors.

It is obviously impossible to settle such questions here. It is not difficult, however, to discover the truth that the very complexity of the problem makes a certain method of procedure inevitable. Some sort of a conference is needed to secure the primary adoption of any plan, as joint action is essential in the nature of the case. Careful conference is necessary for the selection of the particular plan to be utilized, and for the construction or selection of a unit of computation to be employed. Finally, joint administration and enforcement are needed if the plan is to be carried out successfully. Inevitable ambiguities which will develop in the process of execution must be interpreted, attempts at evasion must be detected, and the whole matter must be watched over from the very beginning. If the administrative experience of national governments in similar situations is any guide, partial limitation of armaments would need such supervision even more than complete disarmament because it would be more complicated and easier to evade. Moreover, the work would never be entirely completed and such supervision would have to be maintained permanently. If any changes were to be made in the ratios of reduction, if any further progress in limitation of armaments were desirable

and feasible, they could only be had by the same process of conference and coöperation which was necessary at first. And it does not need to be repeated that for the limitation, as for the abandonment, of armaments, a definition of national rights is essential to prepare the ground, and that such a result can only be had by conference. Moreover, when we reflect that some joint administration of international rights would, on the one hand, be necessary to secure any consent to a limitation of national armaments for national use, and that it might, on the other hand, mean military coöperation for this purpose, it is not wholly fanciful to say that, when worked out in actual practice, national disarmament really becomes a pooling of armaments, or the internationalization of armaments.

It may appear that the subject has been argued over much. If so, it will be useful to note, on one side, that peace is desired by the peoples today as never before, that disarmament is demanded as never before in modern times, and, on the other hand, that nationalism and resistance to international supervision were never more pronounced, in spite of external appearances to the contrary. The situation is one of the great internal conflicts of history: the desire for international peace against the assertion of national power. The conflict is real, and a choice must be made; either common peace or individual power may be enjoyed, not both.

The discussion of the proposals for disarmament has, however, thrown the emphasis where it does not belong. The principal conclusion to be drawn in this chapter has been stated already, namely, that permanent peace is, in its essence, and depends for its existence upon, the definition and satisfaction of national rights through common international action by the creation of an international organization to perform the functions of legislation, adjudication, administration, and enforcement on behalf of all members of the society of nations. That such a step would

also be essential for the successful working of any plan for partial disarmament is collateral evidence of the soundness of this conclusion. If space permitted it would be simple to demonstrate that the attempt made so earnestly during modern times to mitigate the severity of war and restrict its incidence was largely unsuccessful because it needed for its success precisely the method of procedure described for the effective limitation of armaments and was deprived of that procedure. That movement sometimes received the scorn of the pacifists who declared that war could not be tamed but must be destroyed. This resulted partly from their desire to accomplish the greater good and partly from a reluctance to take the procedural steps necessary to the end in view. This reluctance, further, was dictated somewhat by temperament, but also by an unwillingness to be mixed up in international politics which was quite innocent and understandable in many ways but wholly irreconcilable with the end in view. Nothing is more ridiculously inept than the combination of pacifism or opposition to war and national armaments, on one side, and a refusal to participate in organized international coöperation on the other. And, while international peace and order probably will come as a result both of the negative movement for disarmament and peace and the affirmative movement to prevent the outbreak of war by settling international disputes likely to lead to war, it will certainly not come solely from the efforts to secure disarmament or restrict war on the part of those who dwell on the beauties of peace and the horror of war without provision for practical conference and coöperation for that end.

A word may be added concerning the probable success of the peace movement in our times. The organization of international enforcement of national rights and international protection of national security, suggested in this chapter and in a preceding chapter as being logically necessary to the maintenance of international peace and order,

seems at present a hopeless task. The maintenance of peace consequently seems to hang upon the appearance of a conviction that war must be so costly to victor and vanquished alike that it cannot be compensated for by any benefits which could possibly be attained by resort to its use. When this view comes to be held by the nations war will become obsolete as a result, quite apart from the program of procedure discussed above. The costs of war, in the broadest sense, are so high in our day that such a conviction is gaining ground rapidly. Education designed to mitigate the misunderstandings among men and nations would consume more time than is available for saving the international civilization of the world from the danger of destruction by war. But education designed to bring home to men the costs of war may do much to stimulate the development just referred to. Coupled with the development of organized international coöperation for the regulation of official international business this movement may be decisive. Prophecy is hazardous, and undue optimism weak, but the twilight of the gods of war may already have arrived.

PART II

THE LEAGUE OF NATIONS

CHAPTER XVI

THE CONSTITUTIONAL LAWS OF THE LEAGUE

THE nature of the action taken at the Peace Conference of Paris in 1919 for the creation of a League of Nations was determined by several divergent, if not conflicting, national aims. As has been pointed out, such projects commonly reflect either an idealistic desire for abstract justice, an effort to obtain national advantages under a cloak of international reform, or more general historical development among the family of nations at large. The League of Nations was no exception to this rule. President Wilson and General Smuts, while defending the interests of the United States and South Africa, especially their interests in the maintenance of world peace, were also, and for this very reason, engaged in serving certain general ideals of international coöperation laudable in themselves. Clemenceau, in so far as he supported the program of a League at all, did so to secure protection for France. And beyond these motives and the suggestion of conflict between them lay a more comprehensive aim, shared by all the belligerents, namely, to supplant the inadequate machinery for regulating international relations which had failed in 1914 with a world government capable of insuring that such a thing should not happen again. It was the failure of the Concert of Europe in 1914 that created a demand for the creation of a League of Nations in 1919.

If we examine the Covenant of the League of Nations as adopted in 1919 we shall find that it corresponds rather indifferently to the purposes of its authors, and that it is related in a rather haphazard way to the historical background on which it must be assumed to have been based.

President Wilson undoubtedly intended to construct a League which should constitute a general concert of the nations in the room of the old balance of power as that balance had existed from 1907 to 1914. This the League, as created in 1919, did not do. The power was concentrated in the hands of the Allied and Associated Powers to the exclusion of Germany, Austria, Russia, and other states not trusted by the Allies. This was natural and desirable, things being as they were in 1919; it would have been altogether too hazardous to have attempted to base such coöperation at that time upon German and Bolshevik participation. Political organization and government must normally be the creation of the dominant group, whether in the nations themselves or among the nations. The result none the less constituted a divergence from the ideal of the concert of power. The League of 1919 did not accurately reflect the ideal of a concert, did not even embody the idea of a balance, but rather the idea of a monopoly, of international power. That means that the League, as created in 1919, necessarily constituted little more than a cloak for the victors of 1918, and was so regarded by Germany, Russia, and all excluded powers.[1] The recent entry of Germany into the League marks a large beginning in the correction of this state of affairs, but only a beginning.[2]

That the League as created did not embody a balance of power was, of course, in keeping with Wilson's desire. In so far as it embodied some degree of a concert among those nations who were admitted to membership, it met his ideal still further. But the exclusion of certain states deprived this last fact of full significance, and since 1919 a balance, or conflict, or, perhaps, several conflicts of power have sprung up within the League itself. This is bound to happen,- -especially when the excluded states are admitted,—

[1] "Comments by German Delegation on Conditions of Peace," Part I, Sec. ii, (3), in *International Conciliation*, No. 143, 1215 (October, 1919).

[2] See, below, Chapter XXIV.

and it is desirable that it should happen. It will mitigate or destroy any monopoly of power by certain members, and the general concert will come to rest neither on artificial harmony nor on monopoly partnership, but upon a painstaking and careful harmonization of interests.

This conclusion may suggest the thought that the League should not have been set up in 1919 at all, but rather in a time of peace, a time when fierce international rivalry and the domination of the victors would not be present to distort the results. In the sense that a better League could have been created in 1907 than was created in 1919, this is probably sound, assuming that any League at all could have been created in 1907, and in the sense that, if created in 1930, the League would be better in form than one created in 1919. The difficulty with such a suggestion is that any attempt to create a League in 1907 would have met with defeat, inasmuch as the same opposition which defeated the proposals for compulsory arbitration at The Hague would have been used to defeat any plan for a League. Moreover, the effect of the war on public opinion was such in 1919 as to make a League peculiarly desirable at that time—although that effect has so worn off as to make difficult the full operation of the League since 1919, and to suggest to some observers that another catastrophic war is needed and needed quickly to convince the peoples and governments of the world once and for all of the need for international government. It would have been risky to deny that demand in 1919; it might not exist in the piping times of peace. Moreover, with a general international resettlement in process there was all the more need for a body to sanctify and guarantee the peace created by the treaties.

That work the League might have been given to do, thus making it definitely the embodiment of the power and will of the victors, meeting fully the French desire for satisfaction and protection.[3] This conception of the League like-

[3] House and Seymour, 412-413.

wise failed of complete execution. In a number of points the power and support of the League were not placed beneath the treaty settlement, notably in the case of the reparations. In some cases this was due to the desire of President Wilson to prevent the League from being regarded merely as the sheriff of the victorious Powers. In other cases, significantly enough, it was due to the reluctance of France to entrust her interests in the settlement to the League for enforcement. The result was that for some time after 1919 the Supreme Allied Council, the Reparations Commission, and other similar bodies, continued to function alongside of the League. Failing to constitute a complete concert of power, and failing to restore a balance of power, the League likewise failed to create completely a legal hegemony for the Allies.

The relations between the League and the terms of the treaty settlement are correspondingly ambiguous. On one hand, the League has been hailed as the machinery for revising the terms of that settlement in so far as they need revision.[4] On the other hand, it has been censured as responsible for unsatisfactory or unjust terms which it—presumably—sanctifies and guarantees.[5] Still again, it has been lauded as free and untrammeled by the wickednesses of the settlement, the one pure spot in the work of the Conference.[6]

In truth the League is all three of these things, in varying measure. In so far as it becomes the legal and governmental embodiment of the existing society of nations, the League must recognize and protect the existing status. In so far as it has power it may, happily, remedy defects in that status, and will be held responsible for inaction in the face of such defects. That the League is hampered in such action by the rule of unanimity is part of the general handi-

[4] Scott, *Introduction*, 282; statement of General Smuts in Temperley, III, at 75.

[5] Keynes, 259-260.

[6] Harris 209.

cap of international procedure as we know it; it is a price paid for support which could not be had for a League permitted to operate by less than unanimous consent. The League in its relations to the settlement, as in its membership, embodies a compromise, or a transitory treatment of problems which will have to be dealt with definitely before the League will be on firm ground. The problems and alignments of the war must be superseded, the settlements of the peace must be rendered fair and therefore acceptable and accepted by all parties, before the League can be free to go forward with its own work.

An examination of the final text of the Covenant and a comparison of that Covenant with the tentative draft of 14 February will reveal the main outlines of the League as created in 1919.[7] The League was to be composed originally of the signatories of the treaty containing the Covenant.[8] At the same time, certain friendly or neutral states were invited to accede to the Covenant—not to the whole treaty—and all of these accepted the invitation.[9] Membership in the League was left open to all the states of the world, including, it should be noted, autonomous colonies.[10] Membership was, however, made to depend on election at the hands of the states already Members, and a two-thirds vote is needed in the electing body.[11] Moreover, guarantees of good faith respecting outstanding international obligations might be required as conditions of election, and limitations might be imposed upon the armaments of the new Members.[12]

These provisions reflect an intention to restrict rather severely admission to the League of former enemy states

[7] For text of the Covenant in English and French, with Analytical Index and notes on bibliography, see Potter, *Covenant*. Text in English, below, Appendix A, Document No. 15a.

[8] *Covenant*, below, Appendix A, Document No. 15a, Art. I, Par. 1, and *Annex to Covenant*, part first.

[9] Same, and *Annex*, part second.

[10] *Covenant*, Art. I, Par. 2.

[11] Same.

[12] Same.

and of Russia, including new states made from parts of the territory of the former Russian empire. The required guarantees are never demanded formally, and the limitation of armaments here mentioned logically depends on prior action for disarmament among the existing Members of the League. But election of outsiders has, nevertheless, been made with considerable circumspection.

Members might, it was declared, withdraw on two years notice, provided all outstanding international obligations are fulfilled up to date.[13] The decision upon whether this proviso has been satisfied must, presumably, be left to the remaining members of the League. No provision for withdrawal appeared in the tentative draft; on the other hand, it is worthy of note that in the tentative draft of 14 February the members of the League were described as "signatory parties," while in the Covenant they are called "members," a much more fixed and stable concept.[14] A state might be declared to have forfeited its membership in the League if it violated any article of the Covenant.[15]

The League proper was to act through a Council, an Assembly, a Secretariat, and certain administrative Commissions.[16] The Commissions were created only by authorization.[17]

The most powerful body in the League as created was the Council. This body was to be composed at the start of five Allied Powers of first rank and four friendly powers of second rank, the former holding their seats permanently, the latter until changed by the Assembly.[18] The Council might, with the approval of the Assembly, increase the numbers of both these categories.[19] The Council should meet

[13] *Covenant*, Art. I, Par. 3.

[14] Arts. I, II, III of draft of 14 February, in *Sen. Doc. 46, 66 Cong., 1 Sess.;* Art. III of *Covenant.*

[15] *Covenant*, Art. XVI, Par. 4.

[16] Same, Arts. II, IX, XIV, XXII, XXIV.

[17] Arts. IX, XXII, XXIV.

[18] *Covenant*, Art. IV, Par. 1.

[19] Same, Par. 2 For subsequent changes in the composition of the Council, see, below, Chapter XVII, at p. 308, and Potter, *Covenant*, p. 10.

at least annually; each member of the Council possessed one vote, thus recognizing a principle of political equality after neglecting it in the original act of constructing the Council.[20]

The Assembly of the League was to be composed of representatives of all members of the League, to meet regularly, and to act by votes, where the principle of equality should be observed.[21]

In all voting, except in questions of procedure, decisions must be made by the unanimous consent of those present. Apparently the absentees were bound by the decision of those present.[22]

The Secretariat, under the Secretary-General, was to act as a secretarial and administrative office, and to maintain its bureau at Geneva, Switzerland, which was designated as the seat of the League.[23]

The chief function of both the Council and the Assembly is to be that of discussing current international problems, whether or not these problems have emerged in the form of international conflicts, and to try to suggest methods of settlement. Thus the Council was authorized to devise a new plan for a Court of Justice and submit it to the Members, to devise plans for disarmament and submit them to the Members, and to advise the Members regarding the control of the armament industry.[24] In cases of international disputes the Council is to act as a Commission of Inquiry and a Council of Conciliation.[25] The chief defect in the practice of inquiry, good offices, and mediation in the past was, as we have seen, their intermittent character; the Council is to act as an organ for continuous inquiry, good offices, and mediation. It has power to make its inquiry and recommendations on the motion of one of the dis-

[20] *Covenant*, Art. IV, Pars. 3 and 6.
[21] Same, Art. III, Pars. 1, 2, and 4.
[22] Same, Art. V, Par. 1.
[23] Same, Arts. VI and VII.
[24] Same, Art. VIII, Pars. 2 and 4.
[25] Art. XV.

putants, and its findings and recommendations are to be published. If it so desires the Council may refer the dispute to the Assembly and, in turn, either one of the parties may demand such action. Even where the Council acts to secure coöperation of the Members in coercing a state which has refused to abide by certain articles in the Covenant, it may only "advise" what action is to be taken.[26] It may listen to complaints and may discuss problems and disputes at will; it cannot settle anything. It may recommend executive action by the Members; it cannot itself make and carry into execution any decision or rule.

The point at which the Council comes nearest to the exercise of real discretionary power is to be found in its power to refuse to excuse a Member from an armament limitation which that Member has itself previously adopted.[27] Even here the source of the binding force of the limitation is the prior decision of the state itself. So in several other places, the Members pledge themselves to submit disputes to inquiry, or arbitration, to abide by awards, to respect each other's territorial integrity, to use an embargo of commerce and military force where necessary, against a recalcitrant Member, to reduce their armaments, to exchange data regarding armaments, and to permit the passage of League troops through their territory.[28] But no League body, not even the Council, can itself enforce such pledges.

On the other hand, the Council may make certain decisions of a purely administrative character, and so, indeed, may the Secretary-General himself. Clerical staff appointments may be confirmed, the seat of the League moved, expenses fixed and regulated, and so on.[29] The Secretary-General may likewise summon a meeting of the Council, publish treaties registered with the League, and perform

[26] *Covenant*, Art. X.
[27] Art. VIII, Par. 4.
[28] Arts. VIII, X, XII, XIII, XVI.
[29] Arts. V, VI, VII.

several similar functions.[30] These activities, however, though discretionary, do not normally carry any political consequences and so need little attention.

The Assembly bears still more of the character of a debating society. Given power, like the Council, to take up and discuss any subject of international interest, it has no power at all to act, except in the election of Members of the League, members of the Council, and members of the Secretariat.[31] It may advise the reconsideration of treaties or conditions threatening the peace of the world, but this is about as far as it can go.[32]

With the consent of the nations supporting the existing international administrative bureaus and commissions, the League may take over the forty or fifty international bodies of this type, adding them to the armaments commission, the mandates commission, and various committees which the Council and the Assembly may create for purposes of investigation and report on special topics. International bureaus and commissions to be created in the future are to be placed under the League in like manner.[33]

The position of the administrative bodies just mentioned is somewhat similar to that of the already existing diplomatic and consular systems, the practice of treaty negotiation, the existing network of treaties, the body of common international law, and existing courts of arbitration or treaties providing for the same. All of these standing institutions of international government are to continue to operate as before, more or less in connection with, and more or less independent of, the League, as circumstances determine. Thus the Covenant assumes the continuation intact of the diplomatic system.[34] Treaties inconsistent with the Covenant are, indeed, abrogated, new treaties are not

[30] Arts. XI, XVIII.
[31] *Covenant*, Arts. I, IV, VI.
[32] Art. XIX.
[33] Art. XXIV.
[34] *Covenant*, Art. XIII, Par. 1.

to conflict with it, and all treaties are to be binding only after registry with the League; but, apart from these limitations, the practice of treaty negotiation is to go on as before.[35] One of the objects of the League is to secure obedience to "the understandings of" existing international law.[36] Any existing court of arbitration, including the Hague Court, may be utilized by the parties under the Covenant.[37]

The final text of the Covenant differed at several points, in addition to those already named, from the tentative draft. The provision requiring unanimous agreement except on questions of procedure[38] did not appear in the tentative draft. The provision excluding "domestic" questions from the jurisdiction of the League [39] was new, as was the clause permitting withdrawal on two years notice.[40] The provision declaring that the Covenant does not affect the validity of international engagements, such as treaties of arbitration, or regional understandings like the Monroe Doctrine, for securing the maintenance of peace, was added in the second draft.[41]

Practically all of these changes were made at the behest of the United States, acting as the most vigorous champion of national sovereignty and independence at the same time that we were acting as chief supporter of international coöperation. By itself such a combination of policies is not illogical. But the action as taken was caused primarily by the partisan conflict developing between President Wilson and the Republican party, and did not arise primarily from mere consideration of the merits of the case. What Britain and France could accept without qualms on the subject of sovereignty could hardly have been dangerous for the United States. If the motive was to preserve American isolation, so-called, that is another matter. The only thing

[35] Art. XVIII.
[36] Preamble.
[37] Arts. XII, XIII.
[38] Art. V, Pars. 1 and 2.
[39] Art. XV, Par. 1.
[40] Art. I, Par. 3.
[41] Art. XXI.

to be said in such a case is that in point of fact we are not isolated but tied up very closely with Europe in trade and finance, and, therefore, in potential political interest. It may be added, moreover, that by the Covenant we surrender no single item of discretion; we put ourselves in position to be subjected to no single rule or decision to which we have not specifically consented by our own vote.

No penalties are provided and nothing remotely resembling coercion is provided in the Covenant until we reach the subject of international disputes. Penalties are then prescribed in eight distinct cases where the members disregard promises made in the Covenant. Those promises are the pledges to respect the territorial integrity and political independence of other members, to refrain from war at the outbreak of an international dispute and submit the dispute to inquiry by the Council or to arbitration by a court acceptable to both parties, to refrain from war for three months after the report of the Council or the award of the court, to accept the award of the court, or, at least, not to go to war either to enforce a demand against which the report of the Council is unanimous, the parties to the dispute excepted, or to enforce a demand in opposition to the arbitral award.[42] Penalties are also provided for disregard of the Covenant in general.[43] In the last case forfeiture of membership alone is inflicted as a penalty.[44] In the first case the Council is merely to advise the Members what to do, and that amounts to saying that the Members will do what seems best to them, deriving no specific authority from the Covenant for any coercion they may take, which leaves matters precisely where they were before the Covenant and the famous Article X were concluded. In all other cases the offending Members will have to suffer the severance of commercial and financial intercourse with the other Members, and eventually military coercion if the

[42] *Covenant*, Arts. VIII, X, XII, XIII, XVI.
[43] Art. XVI. [44] Same, Par. 4.

other Members are willing to exercise such power on the advice of the Council. To what end? That the aforesaid pledges may be carried out. Nothing more. At no point is there mediation or arbitration without voluntary action by the state involved. At no point can Council or Court decide on the merits of the dispute, so as to give the decision a binding effect unless the Member has itself voluntarily accepted arbitration. At no point does the League or any body of the League have any authority over the subject matter of the national interests of its Members except such as is given to it at the time by the free consent of those Members.

It may well be said, however, that, in view of this state of affairs, the thing to be feared is not judgment and execution, but the influence or indirect control to be exerted by the League through the Council and the Court, by means of inquiry, report, mediation, and publicity. This is exactly the case. But it reveals the true spirit and the ultimate futility of the opposition to such a body as the League. The real power of the League, as of every political and legal institution, lies in the extent to which it reflects reality and the actual interests and influences of political life, not in the literal terms of the law on which it is based. It will be successful and powerful only in proportion as it reflects such reality; but in so far as it does correspond to the real needs of the time it will control, even beyond the letter of the Covenant. Any League, be the Covenant ever so restricted and limited in its definition of power, will, so long as it effectively creates a central body for inquiry, conference, advice and publicity, govern the world because just such a body and just such a procedure is precisely what the world most needs.

One of the principal tests to be applied to any federal constitution in order to discover its true character relates to the method of amendment. The Covenant, being a treaty

agreement, may only be altered effectively by unanimous consent. It is true that amendments may be adopted by the consent of the Powers whose representatives at the time compose the Council, acting together with a majority of the states possessing members in the Assembly,[45] but it is also provided that dissenting Members shall not be bound by such changes although they shall, if they persist in dissenting from the changes, lose membership in the League.[46] This gives to the Great Powers and the few Powers of Second Rank represented on the Council a powerful veto over all amendments. The smaller powers represented in the Assembly may be compelled to accept amendments in many cases in spite of their national wishes or be content to suffer exclusion from the League. Taking the amendment of the Covenant or constitution of the League as the test of the location of sovereignty or control within the League, it is clear enough that that control lies in the Council or, rather, in the Powers represented in the Council, limited by their ability to secure the concurrence of enough smaller states to control a majority in the Assembly, and by the power of a single Member to escape from the terms of an amendment and from the League itself by persistent defiance of the former.[47]

Such being the Covenant and the League as projected in 1919, a few general conclusions at once emerge. The system created by the Covenant is comprehensive and symmetrical, complete and adequate in range and scope. The historical institutions of international government—diplomacy, treaty-negotiation, and arbitration, including good offices and mediation—are gathered together and carried forward into the future in close coördination one with another and with a new system of conferences and con-

[45] *Covenant*, Art. XXVI, Par. 1. [46] Same, Par. 2.

[47] On amendment of the Covenant see Potter, *Covenant*, and the article by Hudson cited therein, p. 5.

gresses more ample and more comprehensive than anything in existence before. The League is provided with characteristic constituent, legislative, administrative, and judicial organs. It is capable of expansion, and its framework is not unsuited to the development of all varieties of committees and commissions acting under the Secretariat, the Council, and the Assembly.

Admirable in organic structure, the League is, however, in a dubious position as far as its membership and powers are concerned. Its membership still shows the effect of the war and reveals the League as partially a league of victors for perpetuating a position of diplomatic dominance won in battle, rather than a general concert of power for common benefits. So long as this condition of affairs continues, as it must until the legacies of the war are liquidated, and the *détente* with Russia, Turkey, Mexico, and the United States resolved, its outlook and activities must necessarily be partial, if not partisan. This phenomenon is simply one angle of the manner in which war tends to wreck the nascent fabric of international organization. When the problems of the war are settled the League may turn to other things. It is to be hoped that the rather perplexing definition and allotment of powers in the Covenant may then be cleared up. Is the Assembly merely a debating society? To what extent is the Council in control? Is there no more power of compulsion vested in the League than such as rests on political and moral influence? Can the nations be brought to face the conditions of the world more squarely and courageously? Such are the problems left open by the Covenant. The Covenant was devised in a few weeks in 1919. It may be revised through decades of international constitutional history.[48]

At the same time that the League proper was established by the adoption of the Covenant, there was also created an

[48] For further discussion of these problems see the succeeding chapters, especially Chaps. XXII, XXIII, XXIV.

International Labor Organization which was to be "part of the organization of the League."[49]

This organization was founded on a Constitution of its own which was placed at the end of the Treaty of Versailles and other treaties of 1919-1920, as the Covenant had been placed at the beginning of those documents.

The reasons for the creation of a separate International Labor Organization are to be found in the powerful influence exercised by labor at the Peace Conference, and the leadership of the American labor chief, Mr. Samuel Gompers. The result was the creation of a secondary league of nations with its own General Conference, Governing Body, and International Labor Office, corresponding to the Assembly, Council, and Secretariat of the League proper.[50]

The Constitution of the Labor Organization is both longer and more detailed than the Covenant of the League. It contains numerous provisions declarative of the principles which must guide the nations in the treatment of labor,[51] and the normal provisions dealing with the organization and procedure of the Labor Organization.[52] It is subdivided into Sections, Chapters, and Articles, whereas the Covenant consists merely of independent Articles.

The outstanding feature of the Constitution of the Labor Organization, as contrasted with the Covenant, is its greater precision where precision would be expected, namely in regard to procedure in the conduct of business. It contains more declarations of principle than the Covenant, and the principles set forth have a more enthusiastic and humanitarian ring in them, but its provisions dealing with the conduct of business are more definite and leave less to be worked out in the future.[53]

At the same time it is more conservative, in the sense

[49] *Labor Constitution*, below, Appendix A, Document No. 15b, Art. 392.
[50] For further discussion see, below, Chap. XIX, pp. 338-354.
[51] *Labor Constitution*, Preamble and Art. 427.
[52] Arts. 387-399, 400-420.
[53] Compare *Covenant*, Art. XVIII with *Labor Constitution*, Art. 405.

that it contains fewer provisions for radical experiments in international coöperation, such as a Mandates System and international enforcement by military action. It is much more commonplace except in the central idea of an international labor organization and a world labor parliament with representation by groups or interests.[54]

Finally, the Labor Constitution contains a number of provisions making cross-references to the League and implying that the latter body is, if not superior to the Labor Organization, at least the central headquarters to which even the Labor Organization is bound to refer from time to time.[55] Add to this that in a number of other provisions there is evident similarity between Covenant provisions and arrangements made for the conduct of work in the Labor Organization,[56] and we have added light upon the constitutional relations between the two bodies. It may be added that the Labor Constitution also contains references to the Permanent Court of International Justice.[57]

Certain transitory provisions relate to the management of Labor Organization business in the interval preceding the full establishment and operation of the League and the Court and even of the Labor Organization itself.[58] There are also provisions for amending the Labor Constitution independently of any amendment of the Covenant or any revision of the Treaty of Versailles.[59] And there is an interesting provision for interpretation of the Constitution by the League Court, a provision for which there is, curiously, no equivalent in the Covenant.[60]

The Permanent Court of International Justice, otherwise known as the World Court, or, as it might fairly be called, the League Court, was likewise not created in 1919.

[54] The rather radical provisions for a Commission of Inquiry (*Labor Constitution*, Art. 412) has proven to be of no importance.

[55] *Labor Constitution*, Arts. 387, 391, 392, 398, 399, 405, 406, etc.

[56] Arts. 395, 410, etc.

[57] Arts. 415-420.

[58] Arts. 424-426.

[59] Art. 422.

[60] Art. 423.

Advocates of international judicial settlement were not, as were labor leaders, influential at the Peace Conference. And what the world needed most, it appeared, was some machinery for conference, conciliation, and coercion, for the maintenance of law and order.

The Covenant did contain a provision looking to the establishment of such a court, however,[61] and the Statute of the Court was drafted by a Commission of Jurists, acting at the invitation of the Council of the League, in the Summer of 1920.[62] The Statute was accepted in 1921 by a sufficient number of nations to render it effective, and went into operation in January of the following year with the first meeting of the Court.

The Statute is shorter than either the Labor Constitution or the League Covenant. It contains virtually no declarations of general principles. It is organized, internally, more simply than the Labor Constitution, though more elaborately than the Covenant. It contains a larger number of Articles than either, fewer omnibus Articles, and is, in general, more skilfully drafted and arranged, as was to be expected under all the circumstances.

Needless to say, the Statute is a more highly unified document. There was only one organ to be created here, instead of three or more, as in the other two cases. On the other hand, that organ being a court, and being intended to wield not merely powers of discussion and recommendation, but a power of decision, it must be defined and prescribed with much greater care and precision than even the International Labor Organization. Of all three of the constitutional laws of the League, therefore, the Statute of the Permanent Court of International Justice is the most orderly and the most exact in form and content.

As would be expected, the Statute contains provisions

[61] *Covenant*, Art. XIV.

[62] League of Nations, *Acts and Documents concerning the Organization of the Permanent Court of International Justice.*

relating to the organization of the Court and procedure in submitting cases before that body.[63] It also contains a critical chapter dealing with the jurisdiction of the Court,[64] a topic not of great importance in regard to League or Labor Organization, and dealt with in the Statute in much more precise terms. This chapter, as well as other provisions in the Statute, reflects the operation of considerations and contentions which date back not only to the time of the establishment of the League and the drafting of the Covenant, but also to the practice of international judicial settlement in pre-League days and even in Medieval and Ancient times.

The Statute does, however, lack two provisions, the absence of which may cause difficulty.

It lacks, as does the Covenant, any provision regarding its own interpretation, and this is all the more curious in a document dealing with judicial settlement under statute. The Court is certain, however, to exercise primary power in this direction, as it has, indeed, already done, in framing its rules of procedure and in dealing with cases coming before it.

Finally, the Statute lacks any provision regarding amendment. This has already been noted in discussions in meetings of Members of League and Court, and the only possible result is to render necessary unanimous consent of the Members of the Court for adoption of any changes in the Statute; a very inconvenient situation.

In conclusion we may note that the Statute contains numerous references across to the Covenant,[65] the League,[66] the Labor Organization [67] and its Constitution,[68] as well as to other portions of the treaties of 1919-1920.[69] In other words, the whole body of law and organization which goes to make up the League system is drawn together and inter-

[63] *Statute*, below, Appendix A, Document No. 5c., Arts. 2-33, 39-64.
[64] Arts. 34-38.
[65] *Statute*, Arts. 1, 36, etc.
[66] Arts. 3, 5, etc.
[67] Art. 26, Pars. 4 and 5.
[68] Art. 26, Pars. 1 and 4.
[69] Arts. 26, 27.

woven in the Court Statute as nowhere else. Not in the earliest, but in the latest, of the constitutional laws of the League do we find the most complete unification of those laws.

Even here the unification is far from complete or systematic, and we may take leave of this introductory review of the League system by noting that there exists here an opportunity for some comprehensive revision and unification of League constitutions in the future. Such a task would be extremely difficult. The League and the Labor Organization and the Court, while they may seem to have been created out of hand at the time, actually came into existence by distinct historic acts, and to attempt now artificially to synthesize them beyond the point to which they have been welded together already would be hazardous. To write the whole Statute into some portion of the Covenant would seriously distort that document, as would any attempt to write the Labor Organization Constitution into it; besides, must League and Labor Organization both persist in their present form? This leads us to a closer study of the structure and activities of these bodies, and to this we now turn.

CHAPTER XVII

THE STRUCTURE OF THE LEAGUE OF NATIONS

THE League of Nations [1] is a loose federation of between fifty and sixty Member States. These states have come to be Members of the League by originally signing and ratifying the Treaty of Versailles, including Part I of that treaty, the Covenant (constitution) of the League, or another one of the treaties of 1919-1920 containing the Covenant, by acceding to the Covenant upon invitation under the terms of Article I of that document, or by election by the Assembly of the League in accordance with the same Article. Twenty-nine states entered the League by the first method, thirteen by the second, and fourteen by the third.[2] Costa Rica withdrew from the League on 1 January, 1927, anl Brazil and Spain have given notice of withdrawal in 1928.

There are outside of the League some ten or more states of varying degrees of importance, apart from numbers of petty territorial units of some degree of independence but of no political weight such as Andorra, Leichtenstein, San Marino, Nepal, and others. Colonial units with no political independence are represented in the League by their metropolitan governments. The absence from the League membership of Russia and the United States reduces the League to something less than that non-partisan and completely international status which it was originally intended to have. Nevertheless it should be remembered that certain

[1] The materials on which the two following chapters are based are to be found in the *Official Journal* of the League, especially the number for January, 1927 (8th year, No. 1).

[2] Potter, *Covenant*, pp. 6-8.

states not Members of the League are continuously cooperating with the League even to the extent of appointing, upon invitation from the League, permanent and official members of committees or commissions thereof.

The seat of the League is located in Geneva, Switzerland, where are situated the headquarters of all of the organs of the League except the Court.

The representative body of the League is the Assembly.[3] This body consists of not more than three representatives of each Member State, chosen by the latter by any method by them deemed suitable (they are uniformly chosen by executive appointment). The delegates of each Member State cast but one vote, however. The Assembly usually consists of somewhat over one hundred persons, men and women, not counting substitutes, advisers, or clerical assistants. The Assembly as a plenary body is organized under a President and twelve Vice Presidents, the President of the Council of the League constituting the Temporary President of the Assembly at the opening of the session and until the permanent sessional President and Vice Presidents are chosen. The President and Vice Presidents constitute the General Committee for supervising the conduct of business by the Assembly. The Assembly for its secretarial work utilizes the services of the Permanent Secretariat of the League.

The Assembly is subdivided into six standing committees and numbers of special committees. The standing committees consist of one member from each state represented in the Assembly, are presided over by six of the Vice Presidents, and deal with the following subjects, respectively: First Committee, Constitutional Questions; Second, Technical Organizations; Third, Armaments; Fourth, Budget and Administration; Fifth, Social Problems; Sixth, Political Questions. Each standing committee

[3] On the structure of the Assembly see *Official Journal*, Special Supplements (annual records of the Assembly).

is subdivided by the Assembly or subdivides itself into numbers of subcommittees from time to time as the need arises. In addition to the standing committees the Assembly possesses numbers of special sessional committees on credentials, agenda, and other matters.

The executive organ of the League is the Council.[4] The Council consists of one delegate from each of the Member States entitled to be represented on the Council. These include five permanent members on the Council from five Great Powers, including Germany, and nine rotating members of the Council, that is, states elected annually by the Assembly from among the other Members of the League. States Members of the Council appoint their delegates in that body by their own methods. Other States Members of the League are invited to send delegates to sit with the Council from time to time when questions concerning them are under consideration.

The Council is presided over by a President who is chosen in rotation from among the delegates of the States represented on the Council when the Council meets in Geneva or in a state not represented on the Council; when the Council meets elsewhere the delegate of the Power in whose territory the meeting is held, that power being represented on the Council, presides.

The Council names a Reporter from among its members for each subject on its agenda, and creates many special committees or commissions composed of its own members, or of persons from outside its own ranks, from time to time. The Secretary-General of the League acts as Secretary for the Council, and, together with the President of the Council, constitutes a link between successive meetings of the same for the naming of Reporters or committees, the calling of special sessions of the Council or the Assembly or transacting any other business.

The administrative branch of the League consists of

[4] On the Council see *Official Journal*, Eighth Year, Nos. 2, 4, etc.

the Permanent Secretariat and affiliated organizations, with headquarters in Geneva.[5]

At the head of the Secretariat is the Secretary-General, assisted by the Deputy Secretary-General and three Under Secretaries-General, each with assistants, secretaries and typists. These units number in all some thirty persons, chiefly of British and French nationality, the Secretary-General being British, the Deputy French, one Under-Secretary German, one Italian, and one Japanese. Two Under-Secretaries have charge of two Sections of the Secretariat, the Political Section and the International Associations Section, and the third is in charge of the Internal Administration Office. These offices and Sections, together with the Information Section and the Legal Section, each with its own Director and staff, and the Treasurer's Office, including the Financial Director, make up the Division of General Direction.[6]

The Secretariat below these offices of general supervision contains seven other Sections, and a number of other units called services, offices, or branches.

The eleven Sections of the Secretariat, including those already named, are known by the following designations: Political; Information; Legal; Economic and Financial; Transit; Administrative Commissions and Minorities Questions; Mandates; Disarmament; Social Questions; Health; and International Associations. These Sections vary in size from the Transit and Mandates Sections of six or seven persons each to the Information and Economic and Financial Sections of forty or fifty persons each.

Each of these Sections is under a Director and includes a number of Members of Section (expert staff), secretaries, and typists or other employees. Of the Directors of Sections four are British, and one each Danish, French, Ger-

[5] On the structure of the Secretariat see *Official Journal*, 8th Year, No. 1, 76.

[6] Officially the Division of "General Organization."

man, Italian, Japanese, Norwegian, and Spanish. The total personnel of the Sections amounts to about two hundred men and women, of whom about seventy-five are of staff rank.

The seven Sections not included in the Division of General Direction are grouped into a Division of Special Organizations in company with the Latin-American Bureau, the London Office, and the Paris Office of the Secretariat.

In addition to the Sections the Secretariat includes fifteen units grouped into a Division of Internal Services. These units include the office of the Chief of Internal Services, a Supplies and Contracts office, a Personnel Office, Accounting Branch, Internal Control Office, Editorial and Publications Department (editorial, printing, publishing, indexing sections), Drafting Committee, Interpreters and Translators Department (French, English, and Miscellaneous sections), Library, Documents Registry, Central Services ("pool of shorthand typists," duplicating and multigraphing service, distribution branch), Miscellaneous Services (verbatim reporting service, medical adviser, nurse), Telephone Service, Postal Service, and House Staff.

The total personnel of the permanent branches of the Secretariat amounts to over five hundred men and women, of whom about one hundred and twenty-five are of staff rank and the remainder employees. The terms of appointment and treatment (discipline, pay, hours) of these persons are fixed by the Assembly. All are appointed by the Secretary-General with approval by the Council. Members of staff are appointed for terms of twenty-one years with review of the appointment at the end of each seven year period. Subordinate members are appointed for twenty-eight years with similar provisions for review. The persons in service are divided among over forty nationalities, with over one-fourth of these British, and about one-fifth French and French Swiss each (the Swiss being chiefly in the mechanical types of work).

Affiliated with the Secretariat are nine Technical Organizations and Advisory Committees whose forms of organization and relations to the Secretariat vary somewhat in detail.

There are three Technical Organizations, namely, the Economic and Financial Organization, the Transit and Communications Organization, and the International Health Organization. All of these organizations possess standing committees made up of official or unofficial persons from Member States or states outside the League, and hold general conferences from time to time, thus resembling the League as a whole with its Council and Assembly. They rely on the Economic and Financial, Transit, and Health Sections of the Secretariat, with which they are closely affiliated, for continuous administrative and secretarial assistance.

The Economics and Finance Organization has two standing committees of persons chosen by the Council of the League without regard to national representation or official position, but for expert ability only, one dealing with Economic matters and one with Financial questions, with many subcommittees on Unfair Competition, Bills of Exchange, Double Taxation, Statistics and other questions. The Transit Organization has an Advisory and Technical Committee named by Member States; the Health Organization a Health Committee of from sixteen to twenty members appointed in part by the Council of the League and an Advisory Committee chosen by the International Office of Public Hygiene created in 1907.

The permanent Advisory Committees are six in number, and deal with Military, Naval, and Air Questions, Mandates, Opium, Traffic in Women and Children, Child Welfare, and Intellectual Coöperation. The first two are authorized and required by Articles IX and XXII of the Covenant, respectively, the remaining four exist chiefly as a result of action by the Assembly. They, like the Technical

Organizations, are made up of official and unofficial persons from both Member and non-Member States.

The Commission on Military, Naval and Air Questions is divided into three Subcommittees, each made up of one representative from each Member State on the Council of the League and appointed by them; the officers who serve as a secretariat for the Commission also serve in the Disarmament Section of the Secretariat. The Permanent Mandates Commission is made up of ten persons named chiefly from non-mandatory states by the Council of the League. The Opium Advisory Committee is composed of delegates from the twelve states most interested in this question, including the United States, and three assessors, one American, named by the Council. The Advisory Committee on the Traffic in Women and Children includes nine delegates of as many Member States and five members named by the Council from other welfare societies, including the International Bureau for the Suppression of the Traffic in Women and Children, formed in 1904. There has also been created a distinct Committee on Child Welfare. The International Committee on Intellectual Cooperation is made up of twelve persons appointed by the Council, including an American; its secretariat is part of the International Bureaus Section of the Secretariat of the League and acts also as an International University Information Office.

Finally, there are created from time to time by the Council special temporary committees to deal with such subjects as Boundary Surveys, Withdrawal of Troops, Repatriation of Prisoners, Refugee Relief, Juristic Problems, and various forms of Inquiry. These committees rely upon the Secretariat for aid and for the duration of their existence are closely integrated with the Secretariat of the League as here described.

The International Labor Organization created by Part XIII of the Treaty of Versailles and other treaties signed

in 1919-1920 is an integral "part of the organization of the League."[7] Membership in the League automatically carries with it membership in the Labor Organization.

The permanent framework of this organization consists of a General Conference, a Governing Body, and an International Labor Office.

The General Conference consists of four delegates from each Member State, of whom two are Government delegates, one a representative of the employers in his State, and one a representative of the workers. The delegates vote individually on all matters presented for vote in the Conference. Delegates are permitted to avail themselves of Advisers who may speak and vote in their stead in the Conference. The Conference is subdivided into Commissions corresponding to subjects on the agenda for the session, such as Unemployment, Women's Employment, Weekly Day of Rest, and so on. There are ordinarily over two hundred men and women in attendance upon a meeting of the Conference, one-half of these being delegates and one-half Advisers. There are, beside these persons, scores of secretaries and clerks.

The Governing Board of the Labor Organization consists of twenty-four persons, of whom twelve are Government delegates, six employer delegates, and six workers' representatives. The members of the two last-named groups are chosen by the Conference delegates representing the employers and the workers, respectively. Of the twelve Government delegates eight are chosen by the eight Member States of chief importance industrially, namely, Belgium, Canada, France, Germany, Great Britain, Italy, Japan, and Switzerland, and four by four other Member States selected for this purpose by the Government delegates in the Conference. All members of the Governing body hold office for three years. The Body elects its own chair-

[7] On the structure of the International Labor Organization see *Official Journal*, Eighth Year, No. 1 (January, 1927), 92.

man and creates its own committees from among its own members.

The permanent bureau of the Labor Organization is the International Labor Office. The staff of this bureau consists of a Director appointed by the Governing Body and subject to its control, and his subordinates chosen by him. The Office, as established at Geneva, is part of the League and closely affiliated with the Secretariat of the League, but independent in policy and administration. Beneath the Director (French) are a Deputy-Director (British) and about three hundred and fifty persons, men and women, of over thirty nationalities, of whom about one-half are persons of staff rank. The whole personnel is divided among the following branches: Directorate (Director, Deputy, secretaries, office keeper, press; 17 persons); Administrative Section (typing, documents, accounts, personnel, house; 110 persons); Editorial and Translating (41 persons); Diplomatic Division (General Conference, Labor Conventions and Migration and Legal Services; 44 persons); Research Division (Statistics and Labor Conditions, Labor Legislation and Jurisprudence, Unemployment, Agriculture, Industrial Health and Safety, Social Insurance; 72 persons); and Intelligence and Liaison Division (Correspondents with Employers', Workers' and Coöperative Societies, Library, National Intelligence—Latin America, Western and Eastern European units; 49 persons). Among the three hundred and fifty persons in the Office nearly one-fourth are of British nationality, about one-fourth French, and slightly over one-fourth Swiss, chiefly French Swiss, and chiefly in the lower ranks. Chiefs of Section are French, British, Belgian (Flemish), Spanish, Austrian, German, Italian, Hungarian, Canadian, and Dutch. The Office maintains branches in Paris, London, Berlin, Rome, Tokyo and Washington.

The International Labor Organization is also provided with machinery for the establishment of a Commission of

Enquiry for use in specific controversial situations to be described later. A standing panel of names consists of nominations made to the number of three each by the Member States, one national nominee to represent employers, one the workers, and one the general public. The Governing Body has the power to scrutinize these nominations and, by a two-thirds vote, reject any nominee not qualified to serve on the panel. From this panel a Commission of Enquiry is created by the Secretary-General of the League of Nations by the selection of three persons, one from each of the three classes in the panel. He may not select any person nominated by any state party to the dispute which is to be the subject matter of the activities of the Commission. One of the members of the Commission is designated by the Secretary to act as President.

The Labor Organization as a whole, therefore, resembles the League as a whole in general structure. The number of persons involved is just about as large, if not larger, the form of organization almost the same.

The Permanent Court of International Justice must also be considered as a part of the structure of the League.[8] The membership of the Court or of the organization maintaining the Court is independent of League membership, but the Statute (constitution) of the Court was drafted by a commission of jurists called by and acting under League auspices, as a result of the terms of Article XIV of the Covenant, and it was then passed upon by the Council and Assembly of the League and ratified and put into effect by the Member States. The membership includes some fifty states members of the League.

The Court is composed of eleven judges and four deputy judges, elected, regardless of nationality, for terms of nine years by the Council and Assembly of the League

[8] On the structure of the Permanent Court of International Justice see the *Statute* of the Court itself.

as already described. The persons chosen are jurists rather than diplomats, and represent all the great legal systems of the world. The Court has a President and Vice President and a Registrar of its own choosing and is divided into three special chambers, one each for Summary Procedure (three judges), Labor Questions, and Transit and Communications (five judges each). Under the Registrar exists a staff of about twenty persons, secretaries, reporters, interpreters, typists, translators, proofreaders, and messengers.

Very elaborate provisions are included in the Statute of the Court regarding not only the nomination and election of judges but also the tenure of office, reëlection, filling of vacancies, retirement, competence to sit in particular cases, and so on. Provision is made for the election of technical assessors to sit with the Court in cases relating to Labor sections of the Treaty of Versailles; likewise for the election of assessors in cases relating to Transit and Communications. In these cases panels of assessors are to be named by the Governing Body of the International Labor Organization or the Member States and the final selection of assessors for particular cases chosen by the Court itself. Finally, provisions are included in the Statute insuring salaries and service grants for the judges, traveling expenses, and payment of the Registrar. Control over these matters, perhaps within limitations set by the Statute, rests in the hands of the Assembly and the expense of the Court is borne by the League of Nations out of the general budget of the League.

An analysis of the budget of the League, especially an analysis of the salary items in that budget, reveals much regarding the general structure of the League, and will pave the way for a study of League activities.[9]

The total expenses for operating the League during a

[9] On the budget of the League see *Official Journal*, Eighth Year, No. 1 (January, 1927), 2.

calendar year amount to about $4,500,000, or something over that sum.

Of this amount over $2,000,000, or one-half, goes to the Secretariat and affiliated organizations and the Council and Assembly taken together; over a million to the Secretariat, just about a million to the affiliated organizations (Technical Organizations and Advisory Committees outside the Secretariat), and only about $200,000 for expenses of the meetings of the Assembly and Council. On the other hand, of the sum for expenses of Assembly and Council very little goes for salaries and then only for salaries of extra employees, while of the million or more spent by the Secretariat over two-thirds goes for salaries alone.

Among the subdivisions of the Secretariat and the affiliated organizations the Economic and Financial Organization ($250,000) and the Health Organization ($200,000) are the heaviest spenders, although all the organizations, permanent and temporary, engaged in studying the armaments problem nearly equal ($200,000) the expenditure of the Economic and Financial Organization. Other separate items are relatively small (Mandates ($50,000, Transit $70,000, Social Questions $50,000, and so on).

About one and one-half million dollars are spent by the Labor Organization each year, or considerably more than is spent by the Secretariat itself, and this in spite of the larger personnel of the latter. Moreover, of this only about $80,000 goes for expenses of Conference sessions, while over a full million is spent for salaries, in contrast to the two-thirds of a million spent by the Secretariat with its one-third larger personnel. The explanation of these facts is to be found, of course, in the larger number of staff members in the Labor Office, a number nearly one-half again as great as in the Secretariat. It may be interesting to note that the publication expenses of the Labor Office are also a good deal larger than those of the General Secretariat.

The Permanent Court of International Justice expends only about $400,000 in the year. Of this about $350,000 goes for salaries and similar allowances and only about $50,000 for other expenses.

It may be added that all branches of the League spend certain amounts each year on capital investment, the Secretariat, or the Secretariat, Council, and Assembly together, spending most and the Court least. The Labor Organization has its own new building in Geneva, the Court has the Peace Palace at The Hague; new quarters for Secretariat, Council, and Assembly are now being built in Geneva. It is also true that the different branches take in certain relatively small sums of money from the sale of publications, interest on funds on deposit, profit on exchange on funds transferred (often more than balanced by loss on exchange), and other sources, such as a Rockefeller contribution to the epidemiological and other work of the Health Organization. This leads to the question of the sources of support for the League as a whole.

The League expenses are met from funds contributed by the Member States in proportions fixed by the Assembly in accordance with the terms of Article VI of the Covenant, as amended. In view of the preponderance of British persons in the offices of the Secretariat, it is interesting to note, first, that Great Britain contributes most heavily of all Member States, her share being about one-tenth of the whole, or $450,000 in the $4,500,000 budget. France and Germany follow, each with a somewhat smaller contribution, something under one-twelfth of the whole, or about $350,000. These contributions are based, it should be said, on ability to pay rather than on benefits received, and are calculated upon a scale of ten hundred and fifteen units. By that scale Great Britain must contribute one hundred and five units and France and Germany seventy-nine each. Other Member States are listed thus: Italy and Japan, sixty each; India, fifty-six; China, forty-six; Spain, forty; Canada,

thirty-five; Poland, thirty-two; Argentina, Brazil, and Czechoslovakia, twenty-nine each; Australia, twenty-seven; Netherlands, twenty-three; Roumania, twenty-two; Jugoslavia, twenty; Sweden and Belgium, eighteen; Switzerland, seventeen; South Africa, fifteen; Chile, fourteen; Denmark, twelve; Finland, Ireland, and New Zealand, ten; Cuba, Norway, Peru, and Siam, nine. Other states follow, down to thirteen states responsible for only one or two units (about $4,500 or $9,000) each.

To the organization of the League itself should be added two groups of international bodies now dependent upon it or incorporated into its organic structure.

Of these the first includes the Governing Commission for the Saar Basin and the High Commissioner for Danzig. The former is a body composed of five persons named by the Council of the League. The Commission now has a President, a representative from the Saar Basin, and three other members (Belgian, Czechoslovak, French). This Commission is distinctly dependent upon the League, which has complete power of government in the Basin with its great wealth, its dense towns and cities and its half a million population. The district is notable as the only territory governed by the League of Nations. A Parliamentary Assembly and an Advisory Council have also been created in the Basin and with the local gendarmerie, also created by the Council, they complete this outlying governmental arm of the League. The Council also names a High Commissioner for Danzig who stands as the local representative of the permanent protection and guaranty of the Free City under the authority of the League.

The second group of outlying organizations includes international bureaus created by action independent of the League but now "placed under the direction of the League" in accord with Article XXIV of the Covenant. There are several such bureaus which have thus been incorporated in the structure of the League, including among others the

International Hydrographic Bureau, created in 1919, the International Association for the Promotion of Child Welfare, created in 1921, and the International Commission for Air Navigation, created in 1922. The organization named last was established under a convention signed in 1919 and was by that agreement intended from the first to be placed under the direction of the League. The work of the Child Welfare Association has been taken over to be performed by the Secretariat itself, with the coöperation of the Governments, private societies, and individuals of the Association as originally constituted. The Hydrographic Bureau was placed under the League in 1921 at its own request; the United States is a member of the Bureau.

The organs above described, involving some two thousand persons, constitute the framework of the League of Nations. Having regard only to Council, Assembly, and Secretariat, the structure is fairly compact, simple and symmetrical. Taking into account the Technical Organizations, Advisory Committees, Labor Organization, the Court, and the outlying organizations just described, the structure is extensive, complex and irregular. It corresponds rather to the needs of the international situation than to any ideal scheme of government framed in 1919 or at any other time.

CHAPTER XVIII

ACTIVITIES OF THE LEAGUE OF NATIONS

IT would be unprofitable to examine the activities of the different organs of the League of Nations one by one in the order in which their structural organization was described in the preceding chapter.[1] The activities of the League or of the system of the League, including all its affiliated organizations, should be studied as a unit. And, in the second place, the form of action should be studied as well as the quality and the specific nature of the subject matter of the action, together with the results of the action both in point of form and of substance.

One thing which should never be forgotten in studying the action or inaction of the League of Nations, a conclusion which must be obvious from the foregoing analysis of the structure of the League, is the fact that the League is, at least in all ordinary matters, nothing more than the aggregate of its Member States. It is, in these respects, not only not a superstate in the sense that it has no power of dictating to the Member States; it is not a state at all. It is an international coöperative society, an Interstate, if that term may be used. What the League does or does not do, can or cannot do, in either the legal or the political sense, depends chiefly on what the Member States can do; explanation of inaction by the League in serious crises is most frequently to be found in inability of the Member States to get together politically, a cause quite apart from the League as such, and for which it deserves no blame. The

[1] On League activities in general see the *Official Journal* of the League, *passim*.

League is merely a piece of machinery providing the Members facilities for applying their coöperative efforts if they can muster the unity of spirit to coöperate. It likewise deserves no credit for solutions of difficulties which the Members reach through its use except in that it constitutes a valuable piece of mechanism for that purpose. It has no judgment and authority of its own.

In the strictly administrative work, on the other hand, the legal discretion of the Secretariat and likewise the practicable possibilities of the situation are greater.[2] Once being created and authorized at least by implication to do anything not calculated to engage the responsibility of the Member States, the Secretariat has been able to achieve an existence distinct from that of the Member States or their Governments as the Council and Assembly cannot.

When we come to the Court, on the other hand, the situation changes again. The Court has a position of its own more clearly distinct not only from the Member States but also from the League itself than that of the Council, the Assembly, or even the Secretariat. From that viewpoint the work of the Court is certainly not merely the work of the Members. But the Court has no such field of action consigned to its hands in advance as has the Secretariat; it must wait for assignments of work at the discretion of the League or even at the discretion of the Members. As a result, the independent power of disposing of matters referred to it, which it exercises after a reference has been made, is overshadowed by its utter dependence upon the League or the Members for any subject matters on which to exercise its powers.

The Assembly, as is to be expected, is entirely absorbed in the political work of the League. What the League shall or shall not, should or should not, do, particularly the latter, is what concerns the Assembly, rather than the doing

[2] For further discussions of the activities of the organs of the League see the chapters immediately following.

of it. In a broad sense the Assembly is thus the policy-forming branch of the League. No problem of international relations, political or economic, appears too profound for it to entertain. After all, there is no higher Court of appeal to which matters of policy may be referred except the Members, and such reference takes the question to some extent out of the hands of the League as an organized body and places it in the hands of the elementary constituent units of international society. Questions of law may be referred to the Court; tasks in the application of principle or of policy, which determines the final success or failure in operation of general law and policy, including that delicate process of conciliation for the settlement of international disputes without breach of the peace, may be referred to the Council. But deciding upon the content of principle and international constitutional law within the field of operation of the League, this is the prerogative of the Assembly.

The Assembly thus attempts to guide not only the League as a whole, but the various departments of the League as well.

The Secretariat very naturally is considered subject to control by the Assembly within the broad limits set by the Covenant. It is there required to act as Secretariat at all meetings of the Assembly; this places the two bodies in a characteristic relation to one another. The other specific constitutional powers and duties of the Secretariat aside—the Assembly could hardly interfere with the action of the Secretariat in summoning special meetings of the Council or registering treaties under Articles XI and XVIII of the Covenant—the Assembly directs and reviews the general work of the Secretariat at discretion. This is all the more natural inasmuch as the vast bulk of the actual work of the Secretariat falls beyond the puny mechanical tasks assigned to it by the Covenant.

The Assembly even pretends to guide the Council in its work. It is the body first named in the Covenant; "The

action of the League under this Covenant shall be effected through the instrumentality of an Assembly and of a Council, with a permanent Secretariat," says Article II. It is the larger body, representative of all Members of the League, not merely of a few. The attribution of power to the two bodies in the Covenant implies that the Assembly is the principal organ of government in the League, the Council a subordinate ministerial body. And, again, the manner in which the powers of the Council are stated in the Covenant does not prevent and even assists the Assembly in maintaining this attitude. For the powers of the Council, while stated much more elaborately and decisively than those of the Secretariat, are stated so frequently in the form of recommendations to be made by the Council as to present no effective bar to the intervention of the Member States as they appear in the Assembly.

The Assembly has developed its position perceptibly since the beginning of the active life of the League. The Covenant and the original plans for inaugurating League activities contemplated a first meeting by the Assembly and frequent meetings thereafter; the Assembly was to meet "at stated intervals," the Council "at least once a year." Actually, however, the persons in charge of affairs in the first year of the life of the League permitted ten months to go by without a meeting of the Assembly. In the meantime the Council, meeting ten times, secured a decided handicap in the possible race for control of the League. In later years the Assembly has gradually reversed that position until it has become in fact the dominant body, standing toward the Council somewhat as an annual legislature to the Council as a ministry. The small states in the Assembly not represented in the Council are not averse to this result. And the final disposition by the Council of some of the more important issues left open by the World War has reduced the dramatic value of the work of the Council and turned attention to general and fundamental

problems with regard to which the Assembly has greater authority.

The Council seems to have begun to admit this supremacy on the part of the Assembly. On one or two occasions —in connection with mandates in 1920—the Council fought back at the Assembly. But in other cases—in submitting to it the proposed Statute of the Court and the annual budget—the Council has deferred to the Assembly where not compelled to do so by the Covenant. That phenomenon is more and more common. Resenting assertions of power by the Assembly at first, the Council has come to pass responsibility on to the Assembly or rely upon the latter for support, just as publicity in regard to Council proceedings, once resisted, is now sought in support and protection of the actions taken.

Except for its interest, somewhat ineffective of results, in various points in the proposed Statute of the Court, manifest at the time when the Statute was being debated, the Assembly bears few relations to that body. It is not the Assembly which in practice asks for advisory opinions from the Court. About the only point of contact left is to be found in the control of the Assembly over the budget, including the Court budget, and League revenues. Just how far the Assembly could go in controlling the expenses of the Court, in view of its general position of authority under the Covenant and the specific inhibitions of the Statute, is a matter of speculation. It does not appear that the latter could deprive the Assembly of powers granted by the Covenant.

This question of revenue and budget provides perhaps the best test to determine the relative authority of the Assembly and other League bodies. In practice the Assembly is presented with and reviews and passes upon the annual budget of the League, with its appropriation of funds to all departments, including the Labor Organization. Control of the purse strings is supposed to convey

control of life itself, in matters governmental; the Assembly would thus appear to be securely in the saddle. But this Assembly approval is not required by the Covenant and the Assembly has no means of collecting revenue even when given complete power to levy contributions under Article VI of the Covenant as amended. So long as there is no radical revolt at the authority of the Assembly in this matter it promises to enjoy a paramount position; a radical revolt would find little power and even few or no legal provisions supporting the power of the Assembly over League finances.

The result of the assumption by the Assembly of the policy-forming function has been a broadening of the field of attention of the Assembly until in truth that field covers "any matter within the sphere of action of the League or affecting the peace of the world"; one wonders whether the first two words of that clause are not sufficient in themselves. The names of the standing committees of the Assembly as already given indicate the subject matters of its most important activities. Other committees have dealt with the personnel, organization, and work of the Secretariat, the establishment of the Court, the admission of new members, and economic coercion; so far as these questions are still current they are dealt with by the existing committees. The Assembly has given a great deal of attention to the question of publicity in the meetings of the Council and of its own committees, with the result that all meetings of all bodies are now either held in public or immediately reported verbatim. The Assembly has taken its work in electing judges of the Court and members of the Council with great seriousness, as is fitting. It has given similar consideration in electing new members of the League, while feeling the pressure of political views more strongly here than elsewhere. It has passed upon repeated proposals for amendments to the Covenant with liberality; gladly allowing the final decision to the ratifying Member States, in

accord with Article XXVI of that document. It manifests great anxiety for the effective success of the campaigns for economic and financial, social and sanitary progress of Europe and the world. It encourages private international efforts for humanitarian and intellectual service. And, finally, it continues to wrestle with that knot of tangled problems of national armaments and national security, proposals for international guarantees and disarmament, which lie at the core of the problem of international government.

The Assembly contents itself, in the main, with passing resolutions on all these matters. On some matters concerning the internal organization and operation of the League, as in electing new members, it has a decisive voice. On most matters it only has views and wishes. It does not pass statutes. It does not even draft and sign treaties for reference to the Members for ratification. Therefore such force as its decisions have is due to genuine agreement among the Members, growing deference from the Council and Secretariat, the force of public opinion, and the operation of considerations of reason and justice or mutual benefit in the minds of those affected. The demonstration, in this connection, of how much can be accomplished by noncoercive government or voluntary coöperation is somewhat amazing.

When we turn to the Council we have to deal with a somewhat different body. The Council is the executive organ of the League. Its power over the formation of policy is not equal to that of the Assembly nor is it as slight as that of the Secretariat. The work of the Council is pitched on a plane higher than that of the mere administration of policy but somewhat below that of a constituent or legislative body. At the same time it is the Council which in many cases, often the most difficult cases, is charged with the burden of attempting to make the policy of the League effective in actual disputes among the na-

tions. And it is the Council which commonly speaks for the League to the Members or to the world at large.

The more precise competence of the Council is reflected in the more emphatic statement of its power in the Covenant. Indeed, except for the blanket grant of power to the Assembly already noted, the grants of power to the Council are the clearest and most comprehensive in the Covenant.

A reference to the agendas of the Council will further indicate the quality of the work of that body as well as actual items in the program of that body. The Council meets regularly every three months. The average number of items on an agenda is over fifty. Agendas at first were very long; later they became shorter, but as the work of the League expands they are still longer than in the beginning.

Most prominent among the items on the agendas of the Council are the political disputes among Member States such as the Memel and Vilna questions, the Corfu dispute, Upper Silesia, and similar cases. Without necessarily calling into operation the provisions of the Covenant, Articles X-XVI, exactly as they are written, the Council attempts to secure a peaceful and sound adjustment of such disputes among the parties. This is in one direction the most critical and indispensable work of the Council.

There are, second, many items on Council agendas similar to certain items on Assembly agendas, items which might be described as constitutional matters. Thus the Council receives the League budget before that document goes to the Assembly, and criticizes or alters it before submitting it to that body. It appoints members of Commissions authorized by the Covenant or other agreements, including Boards and Commissions and even Conferences called into being as a result of its own decisions. It carries out the wishes of the Assembly in matters of this kind. Its President convenes the annual meeting of the Assembly.

Closely connected with these activities are the activities

of the Council in supervising the government of the Saar Basin and of Danzig, in securing observance of the terms of treaties for the protection of minorities, the settlement of boundaries and the transfer of territories from one state to another as the result of plebiscites in accordance with terms of the treaties of 1919-1920 and other agreements. Many of the disputes first referred to above have arisen in direct connection with questions of this class.

The Council, of course, is presumably as much interested, or nearly as much interested, in the economic and social aspects of international relations as is the Assembly. The problem of communications and transit appears frequently on its agenda; the traffic in women and children likewise. What is more important is the fact that the Council does not content itself with expressing a wish concerning these matters; it may and does call into conference those interested in and holding control over the matter in discussion with a view to getting agreement and action as soon as may be. The more frequent meetings of the Council enable it to follow up and push along activities of this type as the Assembly cannot do. Just what form its actions may take will appear later.

Many purely humanitarian questions appear on the programs of the Council. Such is the typhus question, the repatriation of prisoners, relief of refugees, and similar matters. Again the province of the Council seems to be that of actually doing what the Assembly has to content itself by declaring it thinks ought to be done. To the items already named in this group should be added the protection of children, protection of Jewish populations, and many other similar items.

Several questions have turned up for action by the Council which seem to fall quite outside of any authority given to it by the Covenant. Such is the problem of financial reconstruction in Austria and Hungary, the question of the acceptance of new responsibilities by the League at

the request of Member States, relations with the Red Cross Societies, and the legal status (nationality) of inhabitants of mandated territories. In point of fact many matters are continually arising which are covered by the terms of the Covenant only very indirectly or by implication. If the League, and with it the Council, survives at all, the expansion of the field of action of the latter is bound to go on because of many factors in current world affairs among which the absence of any prohibition upon such expansion in the Covenant, the increasing interdependence of national interests in actual fact, and the luxury of having at last an international organization to which to turn for assistance and regulation in such matters, are not the least important.

No more than mention need be made of the work of the Council in regard to mandates, the employment of economic force under Article XVI of the Covenant, the registration of treaties and decisions taken in connection with the Labor Organization. All of these matters are enjoined by the Covenant or other portions of the treaties of 1919-1920 so as to leave no need for more elaborate statement here.

The question of the form of action taken by the Council on all these manifold matters remains. And the reply which must be given is somewhat complicated. In the first place, the Council has just about as little power of dictation as the Assembly; again we see a vast amount of business being done with no power residing in any quarter to compel those engaged in the business to go on with it. In the second place, however, the Council does not content itself with resolutions or wishes as does the Assembly; the resolution of a representative body may have weight, but an executive body attempting to operate by that method would be a laughing stock. And it is just as well to have this recorded, for, in view of certain other facts soon to

be noted there is some considerable temptation for the Council to fall back and attempt this very thing.

What then may the Council do? It may attempt to secure voluntary action by the parties in interest, seeing that it cannot coerce them, and this not by bare resolutions of exhortation but by what now becomes quasi-administrative action in bringing the parties together for discussion and agreement, or in doing something for or in the name of the parties which they ought to be doing themselves. As must be obvious, this type of action is arduous, tedious, and cumbersome, and it raises the temptation to attempt to deal with matters either by fiat or exhortation, the latter weak in obvious appearance and the former weak here because of deficiency of authority.

A further result of this situation appears in the unescapable temptation confronting the Council to call into being ever more and more numerous conferences and commissions, either independent of, inclosed in, or attached to, the Secretariat. It cannot brusquely command obedience, it cannot go itself to investigate and adjust matters on the spot, it cannot as a Council even investigate a given problem. Hence the constant creation and re-creation of commissions and conferences. Principles of general authority being weak, specific organs of adjustment have to be employed in all distinct cases.

The extent to which the Council must depend upon the Secretariat may be inferred from what has just been said. The Secretary-General and his staff not only act in the secretarial capacity at Council meetings but in reality do much of the work involved in carrying out the views and purposes of the Council. As a matter of fact, the coöperation is so close that it would be more accurate at this point to think of the whole structure of Council and Secretariat and affiliated organizations—Health Organization and Economic and Financial Organization and Advisory Committee

on Communications and Transit, and so on—as one system. Just as the affiliated bodies interlock with Sections of the Secretariat so the Council and Secretariat join hands in various lines of work. So far as one controls the other in principle it is undoubtedly the Council which is supreme; but coöperation and not conflict is the tone of the relation between the two.

The detailed activities of the Secretariat and affiliated organizations may well be inferred from the description of their structure and nomenclature. Commissions on Armaments deal with that subject, the Advisory Committee on Opium deals with the opium traffic, and so on. Meetings are held irregularly but frequently. Statistics are collected and compiled and printed and circulated. The subordinate offices of the Secretariat are engaged in activities such as those familiar in any governmental department. Purely clerical work, statistical work, research, correspondence, accounting, drafting, translating, editing, filing—all these are common forms of governmental administrative technique; and call for no more elaborate description.

It is in what may be called the field work or the non-clerical work that the peculiarities and characteristics of the work of the various administrative branches are revealed. Thus the Health Organization collects epidemiological data in all parts of the world and also facilitates the interchange of public health personnel among the nations for study and research purposes. The Transit Organization, partly at the instigation of the International Chamber of Commerce, has been consulting the Papacy and the Œcumenical Patriarch concerning the relation between proposed calendar reform and religious dogma. The Mandates Commission queries mandatory powers in great detail concerning their conduct of administration in the territories assigned to them and scrutinizes the annual reports on these matters with a view to reporting irregularities to the Council and Assembly of the League. The

Committee on Intellectual Coöperation is publishing bibliographical indexes, organizing library coöperation, abstract services, and exchange of books and periodicals. And the affiliated bureaus—the Hydrographic Bureau and others—are carrying on their normal work.

The work of the Permanent Court of International Justice is of a type to be understood without detailed description. The Court meets annually, in June, with extraordinary sessions in the Winter as needed. An examination of the text of the Statute and Rules of Procedure of the Court will reveal all pertinent details concerning the procedure of the Court. The cases coming before the Court concern the interpretation of treaties, territorial jurisdiction, competence of the International Labor Organization, nationality, and all ordinary problems of international law plus numerous constitutional questions growing out of the organization of the League itself. The cases involve all types of states, including Great Britain, France, Italy, Japan, Germany, Poland, The Netherlands and others. The Court, of course, renders a binding award from which there is no appeal, but with some provision for revision by the Court itself. Provisions looking to the enforcement of the award in case it should be disputed are to be found in the Covenant.

The relation between the Court and the League in point of structure has already been described; from that point of view the Court is as much a "part of the organization of the League" as is the Labor Organization, or more. In point of function there are two things to be noted.

In the first place, the Court is absolutely free from League influence or control. The judges are made independent by a long tenure and assurances against any reduction of salaries. And none of the criticisms of the Court heard in political discussions have involved any charges of League influence in the operations of the Court; in one notable case the Court refused to render an advisory opin-

ion at the request of the Council even at the expense of the despised Bolsheviki.

In the second place, the action of requesting advisory opinions should be understood. Most of the questions submitted to the Court are submitted by the League in this manner. This is attributable to a number of causes. It is attributable to the fact that so many of the states which might submit cases to the Court are members of the League that their disputes inevitably arise first in the Council or Assembly of the League in any case. Unless there appear to be some distortion of the opinions of the Court by this mode of reference—and it should be remembered that these cases may be argued as fully as cases coming to the Court by other paths—an effect not yet observable, one can but rejoice at the invention of a happy compromise between the difficulty of submission by mutual agreement and the more radical proposal for obligatory arbitration.

A full description of the activities of the International Labor Organization would occupy more space than is available for that purpose. It would involve a great deal of repetition, moreover, for the work of the International Labor Office, as distinct from the whole Labor Organization, resembles very closely the work of the Secretariat of the League. In so far as the Labor Office differs from the Secretariat it resembles the Council; indeed, in its handling of international labor disputes either by direct conciliation on its own part, by reference to the Court or to the Council of the League, or through a Commission of Inquiry, the Labor Office rises to the rank of the Council in the League and tends to overshadow the Governing Body which meets less frequently than its cotype, the Council, and for briefer sessions.

The great difference between the work of the Labor Organization and that of the League as a whole is seen when we note the work of the General Conference. By the terms of its own constitution (Article CCCCV of the Treaty

of Versailles), the Conference may take two forms of action. It may make recommendations to Member States and it may conclude draft treaties for ratification by Member States. In practice the Conference has produced some twenty-five draft conventions and some thirty recommendations. Ratification of these draft conventions has been tardy in many states; a familiar phenomenon in such situations. But the significant thing is the activity of the Conference especially when contrasted with the Assembly of the League. There no draft treaties are signed and the legislative note so prominent in Labor Conference sessions is absent. Why this should be so is partly a matter of conjecture. Perhaps the narrower field of interest of the Conference makes for more effective work. Perhaps the more definite and technical subject matter lends itself to treaty-making more readily than do international political relations. Certainly the need for labor conventions has been greater. And there are signs that the Assembly may turn to this form of activity, over and beyond amendments to the Covenant, in the not too far distant future, while the legislative activity of the Labor Conference declines.

The subject matters of the draft conventions and recommendations may easily be imagined. They include hours of work, unemployment, employment of women, child labor, night work, agricultural labor, industrial disease, and similar topics. The provisions inserted in the conventions are concrete and detailed and pretend to the finality of a code.

Perhaps no better idea could be had, in conclusion, of the activities of the League and its various organs than that which is to be obtained from a review of the publications of the League.

The fundamental publication of the League is the *Official Journal,* which contains the minutes of the meetings of the Council and Assembly, including a record of their decisions. It also contains many other reports and documents received or despatched by the Secretariat. Numbers

of the *Official Journal* appear monthly, in annual volumes. Special supplements are issued from time to time containing indexes, documents relating to a particular topic, minutes of the meetings of, and resolutions adopted by, the Assembly.

The current work of the League is described and analyzed briefly by departments and topics every month in the *Monthly Summary.*

Closely related to these publications by the Secretariat is the *Treaty Series,* containing the texts of all treaties registered with the Secretariat, in four volumes each year. Treaties are printed in the original text and either French or English translation.

Finally, bridging the gap from Council and Secretariat to Assembly, is the annual *Report to the Assembly* on the work of the Secretariat, the work of the Council, "and measures taken to execute the decisions of the Assembly," by the Secretary-General.

Of the publications relating to the Permanent Court of International Justice, the League itself issued three volumes relating to the establishment of the Court. The proceedings of the Court are issued apart from the main body of League publications and include a *Collection of Judgments,* a *Collection of Advisory Opinions,* and a series of volumes containing *Acts and Documents relating to the Organization of the Court.*

The International Labor Organization, particularly the Labor Office, issues a series of publications of great volume. These include the *International Labor Review,* monthly; a weekly *Official Bulletin;* a *Legislative Series* containing labor laws of all countries; an annual *International Labor Directory;* a series of *Documents of the International Labor Conference(s);* and many *Special Reports* and *Studies* on dozens of special topics.

Finally, the Sections of the Secretariat and the affiliated organizations issue many publications and documents con-

cerning their work. These include publications and documents concerning the question of armaments; on social and humanitarian questions; health—including the valuable *Epidemiological Intelligence;* economics and finance, including the very valuable *Monthly Bulletin of Statistics;* and the administration of the Saar Basin and the Free City of Danzig. These publications are made available through sales agents in all countries; sales of League publications are greater in the United States than in any other country.

CHAPTER XIX

THE INTERNATIONAL LABOR ORGANIZATION

THE structure and activities of the International Labor Organization have already been described in general terms.[1] It consists of a General Conference, a Governing Body, and the International Labor Office. It remains here to examine more fully the details of that Organization, in so far as they have taken on a permanent form, and certain questions concerning the operation of the Organization.[2]

The membership of the Labor Organization must ordinarily be identical with that of the League of Nations, although states not Members of the League might hold membership in the Labor Organization—as did Germany prior to election to membership in the League—inasmuch as membership in the League carries with it membership in the Organization.[3] The absence of any states important from the point of view of world labor conditions from membership in the League must pro tanto weaken the Labor Organization, unless those states join that organization in and by itself, an action which they are not likely to take. The establishment by the framers of the constitu-

[1] Above, Chap. XVII, pp. 313-315, and Chap. XVIII, pp. 334-335.

[2] On the Labor Organization in general see Perigord, entire. The present chapter and those that follow are based in the main upon personal observations made by the writer in visits at League headquarters, attendance upon League meetings, and conferences with League officials, including conferences made possible by the generosity of the Carnegie Endowment for International Peace. References are given to writings in which the student may conveniently enlarge upon the treatment given in these pages. Before reading the present chapter the student should reread the *Constitution of the International Labor Organization*.

[3] It is, thus, difficult to tell whether the "Members" referred to in the end of Article CCCCXXII of the Labor Constitution are League Members or Labor Organization "Members."

tional laws of those bodies of this connection between the memberships of the two organizations subjects the Labor Organization in this respect to the influences of a highly political character such as determine the willingness or unwillingness of states to become members of the League.

On the other hand, coöperation between the Labor Organization and states not Members thereof may, and does, do something to ameliorate the effects of such situations. It is probable that the mere absence of certain states, especially the United States and Russia, from membership in the Labor Organization is less important than the fact that in the case of the former both employers and employees have maintained cordial relations with the Organization, while the dominant groups in Russia have been consistently hostile toward it. Why this is so as a general proposition will appear more clearly when we examine the activities of the General Conference. In the meantime some notice is necessary of certain fundamental divergences between the International Labor Organization and the Communist International and other somewhat less radical labor organizations which still hold views which forbid them to accept very heartily the Labor Organization as either their patron or servant.

The International Labor Organization rests on the principle of voluntary and organized coöperation between labor and capital under governmental auspices. It assumes that a fair division of their share of the product of industry may be attained in discussion and voluntary agreement. In so far, therefore, as labor or labor leaders go upon the basis of a tactic of uncompromising conflict with capital, of class warfare, they can both logically and practically have nothing in common with the International Labor Organization. All this applies to Russia and the Communist International particularly. But it also applies to the American and other labor movements in so far as American labor refuses to seek its goal through governmental action and

insists upon obtaining its advantages solely through bargaining and the power to strike. The Labor Organization represents a more mature procedure in labor relief than either the Russian or the American method.

The General Conference of the Labor Organization is supposed to be composed, it will be remembered, of Governmental, employer, and employee delegates from all Member States. In point of fact the Conference in reality is both something less and something more than this. It is not uncommon for different Member States to fail to send any delegates at all to Conference meetings. It is still more common for Member States to send only Governmental delegates. Such phenomena call for serious notice and explanation.

These phenomena are attributable in the first case to a decline in interest in labor reform since 1919, caused, further, by growth of reactionary social and political sentiments in various countries, and in several countries by a decrease in the urgency of the need for relief. They are attributable in part to the fact that here, as in purely political matters, there are, after all, relatively few states which really count in the conduct of international relations and which therefore care to take part fully in such activities. But the second phenomenon is attributable more particularly to the fact that not only are labor and the employers very backward in a great many countries in organizing for promotion of their interests but also to the fact that they are willing and eager to have Government act for them. This particular phenomenon throws an interesting light upon the soundness of the ideas which, in 1919, led to the creation of the International Labor Organization itself as distinct from the League of Nations, and to the provision for labor and employer delegates in the General Conference of the Labor Organization. It suggests that the Assembly of the League might as well perform the work of the General Conference, and that the "pluralist" fad of

1919 produced some rather expensive and useless results. It is reënforced by the fact that when only worker or labor delegates alone are present from any one country they may not vote (thus leaving the Governmental delegates in control), and by the free use of advisers on labor and industrial problems by the Governmental delegates.

The Governing Body is somewhat obscure to the public eye. Yet it possesses, probably, more constitutional power and influence in the Labor Organization than any other organ. To begin with, it contains persons representing the Governments of the "eight states of chief industrial importance," elected specifically on that ground and conscious of their position as such. In the second place, it meets quietly and with relative frequency—quarterly—and it has a distinct advantage over the General Conference on both points. Finally, it has a large measure of power to control not merely the activities of the General Conference in their formal aspects but also the whole activity of the Labor Office. If the Governing Board is not as prominent in the Labor Organization as is the Council in the League this is attributable to the fact that there arise in the "International" Labor Organization few of those characteristic problems of international adjustment, few problems of international relations properly so-called, which provide the Council of the League with its chief claim to importance and attention.

As might be expected, there are differences of opinion concerning the identity of the states of chief industrial importance. Upon a dispute arising over this matter in 1920 an attempt was made to settle the question objectively, and this led to one of the rare and interesting experiments at the ranking of states. Industrial production, industrial population, motive power, and railway mileage were among the standards employed. As a result of these discussions India displaced Switzerland on the Board. A little later Canada took the seat at first reserved for the United States,

the British Empire—in its widest sense—thus being represented by three permanent members. When among worker and employer delegates on the Board are found other delegates from South Africa, Canada, and Great Britain herself, new light is thrown on the problem of British Empire representation in the League Council.

The Governing Board in principle prepares the agenda for the Conference, and, after the Conference is over, watches over execution of the decisions of the Member States, and appoints the Director of the International Labor Office whose function it is to watch over this activity on behalf of the Governing Board, and, on its behalf also, to prepare for the next Conference. The Director and the Labor Office, therefore, constitute the original and also the final links in the chain which is supposed to reach from the need for international action on labor problems to the application of that action, when taken, to the needy situation.

It is impossible, on the other hand, to overlook the fact that the position of the Director is peculiar in its strategic value for doing much which might not be accomplished along the line of theory just stated. While in principle subject to control by the Governing Board, the Director must, in the nature of the situation, have opportunities for the exercise of judgment and control, and even of initiative and influence, which count for more than the decisions of the Board or the actions of the General Conference itself. In the selection of personnel and the direction of work in the Labor Office this would, probably, be expected by any student of administrative science. But the dynamic Director is able also to deal with labor and employer organizations in various Member States and even with the Governments of those states in such manner as to promote the ends of the whole Labor Organization. This is made more certain by the organization of the Labor Office itself.

Thus among the divisions of the Labor Office there are as many groups devoted to promotion of action in execu-

tion of the purposes of the Labor Organization as there are groups devoted to internal administration and the collection of information and preparation for Conference meetings taken together. No coercive power is possessed or exercised by the Director or his subordinates in this direction, nor could this be so, nor, indeed, is it necessary. The fact remains that the Diplomatic Division and the Liaison Division, not to mention the Press Service and the Editorial Section, of the Labor Office, certainly exercise as much influence upon the course of action in labor matters in Member States as do the Sections of the Secretariat of the League in political matters, and far more than do the Governing Board and General Conference in the Labor Organization or than the Sections of the Secretariat when compared with the Council and Assembly in the League.

Certain other comparisons may profitably be made between the Labor Office and the Secretariat of the League. The structure of the Labor Office is somewhat simpler than that of the Secretariat; its subdivisions are somewhat less numerous and there are far fewer—almost none—of the "affiliated organizations" which make the structure of the Secretariat such a complex piece of machinery. This is attributable mainly to the relatively greater unity and simplicity of the field of action of the Labor Office, and in so far forth is no mark of superior administrative talent in the Labor Office, but it results in greater coherence and effective effort in that body.

Other differences are more subtle, more, perhaps, a matter of personal impression and judgment, but it is believed that they are substantial and important nevertheless. Thus it appears that the personnel of the Labor Office represents a higher standard of competence than the personnel of the Secretariat, especially in the middle grades. Certainly there appears to be a greater degree of serious and intent concentration in the work carried on in the rooms of the Labor Office. There is much less ceremonialism,

less diplomatic style and etiquette noticeable—fewer spats and monocles—. At the same time there are more women employees, or at least more women in trusted positions, in the Labor Office. The sum of it all is that there is less of the highly political atmosphere of the League—even the Secretariat—present in the Labor Office, and more earnest if unspectacular concentration on highly technical work. One might feel that this work is more real and more vitally important to humanity than the material of high politics. Or one might remain unshaken in the conviction that affairs of state, concerning whole peoples and not merely labor and the employers, are of broader and deeper significance than any class interests can ever be. He will not fail, on whichever side he personally may find himself, to perceive that the Labor Office and the Secretariat differ notably in tone and even in method.

This difference approaches rivalry and even hostility at certain times and in certain quarters. To the Labor Office the Secretariat is a potential rival for League funds and for attention and prestige, and vice versa. The relatively greater interest manifested by the lay public and by the general press in political news aggravates this feeling on the part of Labor people. In so far as the activities of the Secretariat encourage concentration of attention by Member States on political concerns, on considerations of sovereignty and diplomatic power and rivalry, the work of the Labor Office is made more difficult. International conflict, which might be stimulated almost as much as it is allayed by some of the activities of the Secretariat, is fatal to progress in international labor reform. That the Labor Organization budget is controlled by the Assembly of the League and a Commission of Control which is primarily a part of the Secretariat does not alleviate this general situation. And when certain matters—minorities, territorial administration, mandates—are under consideration at the Secretariat, the presence of labor problems within the body

of those larger problems leads to acute and jealous sensitiveness in the Labor Office. Coöperation between Labor Office and Secretariat there is, in large measure, and the feelings of the Labor Office personnel toward the Secretariat are matched by some feeling in that quarter that the subject matter and the activity of the Labor Office are on a distinctly lower and less important and worthy plane of existence than those of the League. But the situation remains and does not deserve to be left out of account as it has been too commonly hitherto.

If we again turn to the theory upon which the Labor Organization operates we shall conclude that it is to the actions of the General Conference that we must logically look in order to discover the creative results of the activity of the Organization. In the conventions and recommendations adopted by that body and their effect on the treatment of labor in Member States we should logically find the true measure of accomplishment of the Organization.

The Director and other personnel of the Labor Office are accustomed to deprecate to some extent the concentration of attention upon this point and the employment of this measure of the achievements of the Labor Organization. They point out that many principles regarding the treatment of labor were written into the Covenant of the League and the Constitution of the Labor Organization itself, and that these declarations provide the Labor Office with bases upon which to proceed in attempting to obtain fair treatment for labor in Member States in the manner already described. They assert that the Labor Organization, and especially the Labor Office, is limited in its efforts to work through the adoption and execution of international conventions by the indifference or opposition of Member States, for which they themselves are not responsible, and by lack of any conclusive power of coercion possessed by them. Their exhortations and suggestions, even the vast amount of information collected, edited, and published by

the research divisions of the Labor Office may, it is argued, have greater influence than any effort to secure adoption and enforcement of the Conference conventions. They further appeal to the fact that there has not been time enough yet for revolutionary accomplishments in this direction, in view, especially, of the disturbed economic conditions which have existed almost everywhere in the post-war period.

All of these allegations in mitigation of judgment, if they may be so described, are in large part true. The one mentioned last might mean that no judgment at all should be passed upon the effectiveness of the Labor Organization yet. The first involves a method of measurement hardly susceptible of employment except after a prolonged and elaborate observation of the activities of the Labor Office and labor treatment in Member States, if, indeed, it would then be possible to allot responsibility for results to that agency alone. But the conclusion that the results attained through Conference action and its enforcement have been unsatisfactory seems to remain, allowing only for the fact that ultimate responsibility must rest with the Member States and that the Labor Office possesses little coercive power, two particulars in which Labor Organization does not differ from other international governing bodies.

The fact of the matter is that the Labor Conference conventions and recommendations are not promptly ratified or applied. Statistics indicating this fact have been published from time to time by the Labor Office itself.[4] Not only does the Office make no attempt to conceal the facts, but it employs them in its effort to secure action by the Member States.

Fluctuations in the activities of the Conference both explain this situation, in part, and expand its significance. Thus the number of conventions and recommendations adopted in the earlier years—1919, 1920, 1921—was great

[4] International Labor Office, *The Progress of Ratifications*, June, 1927.

because of the fact that much new ground existed and called for treatment; after the first urgent and obvious steps had been taken there was naturally a decline in activity. But the decline resulted largely from a realization that the conventions were not being ratified and were accumulating in an embarrassing manner. And while the making of conventions and recommendations was resumed later, the subjects treated began to escape from the field of labor proper and run over into the field of social relations at large, such as sports, amusements, and education. Later Conferences have also taken to resuming discussion of projects broached at earlier Conferences and finally adopting conventions not acted upon at the earlier meeting.

The reasons for this state of affairs, on the other hand, are very complex.

The advanced nations, those which, in the main, dominate Conference and Governing Board alike, already possess, on their statute books, much of the legislation demanded by the convention; it was the fact that this was the case that led them, in the General Conference, to advocate the adoption of international conventions which would bring the other countries up to their standard, and thus relieve them of competition from the countries with lower standards. But this means that ratifications are to be desired chiefly from backward countries, by definition slow in measures of progress and in the formalities of official business. Their delegates may have voted in the General Conference all the more readily for knowing of the opportunity for reconsideration and delay at a later stage. This may fairly be suggested in spite of the fact that many ratifications have eventually been made by these same backward states.

The explanation goes deeper. The recommendations for legislation adopted by the Conference and many of the conventions demand more than mere ratification. One of the worst effects of the whole situation here under dis-

cussion is seen in the general encouragement it may give to states to withhold or at least delay indefinitely ratification of treaties which they have once signed. But that is not the whole of it. The matters treated in the conventions—let alone the recommendations—are not matters for mere international action proper. They are matters for concurrent national action, and that is in form and in political reality a vastly different thing. It requires action by legislatures in national states; the executive may sign or vote for recommendations in the Conference but he cannot pass legislation to carry them out. He may be—as he is—required to submit the recommendation or the convention to his legislature, but he is not going to press for ratification unless he can also obtain legislation for enforcement, and he is not going to press for legislation for execution of recommendations or conventions if it will jeopardize his political position. This posture of affairs is not nearly as acute in the case of ordinary treaties which merely demand ratification or touch less seriously upon the domestic social and political situation.

There are not, it may be added, any indications that the Conference is hurried into consideration of or action upon items out of undue zeal; it is not "too much legislation," as we are acquainted with that phenomenon elsewhere, that causes the difficulty discussed above. The agenda of the Conference is prepared with care by the Governing Board. Topics may, it is true, be suggested for inclusion by labor and employer organizations in Member States, but any Government may demand exclusion of a given topic and it will take a two-thirds vote to retain that topic on the list—in a body heavily weighted with Governmental and employer delegates.

The enforcement of national labor legislation which has been adopted under a ratified convention—or the enforcement of the convention, as it might be described—is another difficult task confronting the Labor Office. If securing

ratification and legislation by way of application of the conventions and recommendations is difficult, to secure thoroughgoing enforcement of the legislation is doubly so. Reports from Member States, required by the Constitution, are of some value in this direction. Complaints to the Labor Office by one Member against another, referred to the Governing Body, and investigated by a Commission of Inquiry, and thus made the legitimate basis of economic retaliation by the injured Member, likewise provided in the Constitution, offer, on paper at least, another help. But the weaknesses of these sanctions are manifest, apart entirely from the fact that they rest not in the hands of the Labor Organization as a unit, or the central Labor Office, but in the hands of individual Member States. Appeals to the Permanent Court of International Justice are permitted, and much delay is inevitable. Means of effective enforcement they are not.

As it lacks formal sanctions, therefore, with which to compel Member States to live up to their pledges, the Labor Organization or the Labor Office must rely upon publicity, quasi-diplomatic representations, and such other less formal political—as contrasted with legal—means as it may find at its disposal. In the larger view of it, this probably means that the Labor Organization is a victim of the fact that coercive international enforcement of international law is at present an impracticable thing. It may be, also, that as much may be accomplished in the field of labor problems by that peculiar type of enforcement which is quasi-voluntary and quasi-coercive in character as has been found possible in other fields. But at least it means that the Labor Office must carry on its work in this connection subject to limitations which are none the less important because they are familiar.

In the course of their complaints and countercomplaints regarding the operation of the International Labor Organization the representatives of labor and of the employers

call to light many phases of the nature of the Organization which may profitably be noted in completing this survey. These phases must naturally take the form of tendencies or latent tendencies to which the Organization is potentially subject. In a few cases they take the form of developments which have actually appeared in being.

The Labor Organization is inevitably cast in the rôle of a special agent of labor. General national social welfare it may, perhaps, promote indirectly, and general international welfare likewise, but it is none the less primarily a labor organization. Hence the participation of the employers and even of the Governments must be tinged with a somewhat indifferent or hostile note. This being the case it must labor under difficulties in the matter of loyalty and support which do not afflict the general national representative body or the Assembly of the League.

On the other hand, labor is not sufficiently strong to animate and direct the operation of the Organization in its own interests, or to secure adequate support for the activities of the Organization in the Member States. It is not the employers' representatives who are always absent from national delegations. Labor by no means controls the choice of Governmental delegates, and these are frequently anti-labor in their views. And at home labor cannot be sure to secure legislation in execution of the conventions and recommendations. The weakness of the Labor Organization may be very largely attributed to the weakness of organized labor itself.

At the same time labor demands that the Labor Organization function effectively, that is, that it conclude, and secure the execution of, international conventions and national legislation needed to give labor what it demands. It accuses the Organization of ineffectiveness and the Governments of dishonesty, and threatens to go red if its demands are not met. It seems to expect the Organization as a whole, composed in three or four parts of non-labor ele-

ments, and the Labor Office, similarly supported, to wage a one hundred per cent. pro-labor battle.

This may account in part for the lack of general public interest in and support for the Labor Organization and labor legislation in Member States in pursuance of its conventions and recommendations, as it accounts in part for the instinctive hostility of the employers. In any event the lack of support from general public opinion prevents the Labor Office from assuming the rôle indicated for it by labor as courageously and effectively as it might.

There are, of course, certain obstacles to the effective operation of the Labor Organization which derive from sources quite independent of that Organization itself. There is, for example, the opposition to international regulation of national concerns which is felt in the fields of public health and national armaments as much as in the field of labor questions. This feeling may be on the decline, but it still exists. It is reënforced in the field of labor questions by the opposition generally felt by industrialists to the interference of government in private business under any circumstances. When the big industrialist is at the same time a strong nationalist, as is not infrequently the case, these two influences reënforce one another.

Curiously enough these feelings of hostility would not be assuaged, but would, probably, be accentuated, by transfer of the functions of the Labor Organization to the Assembly of the League, a step which might be calculated to alleviate the hostility of employers to the Labor Organization as a labor organization. It would, moreover, bring new hostility to bear upon the League and its Assembly, which is not a result to be borne without adequate compensation. The fact is that national business and international labor regulation are diametrically opposed in both of their respective phases. The Labor Organization has to encounter both the labor-capital and the nationalist-international conflict in its work.

Other difficulties or objections to the operations of the Labor Organization seem essentially temporary and extrinsic to its true nature. The absence of Russia and the United States is perhaps only a temporary phenomenon; at least it forms no part of the normal theory on which the Labor Organization rests. The disturbed conditions of post-war years must obviously yield to normal conditions before many states can contemplate adherence to standards of labor treatment which are based on assumptions of normal national economic life. Perhaps it may be said at the maximum that the General Conference and the Labor Office both have been tempted to forget these facts in their zeal, or that the successful establishment and operation of the Labor Organization under post-war conditions, including therein the temporary defection from organized international co-operation of Russia and the United States, while demanded more than ever because of the needs of the times, must be doubly difficult just on account of those conditions.

The factors just described have their counterparts in more important considerations which must obtain over much longer periods. Thus it may be doubtful whether it is possible to regulate labor conditions in different countries by uniform international standards where the local conditions, social and geophysical, vary as they do; child labor, night work, women's work, and other problems are not identical in their desirability or undesirability from one country and one continent and climatic zone to another. This again is a phenomenon common to all efforts at the construction of international legal norms, but it seems to be more important in such matters as labor treatment than in formal matters such as diplomatic procedure.

This is rendered doubly significant when we remember the way in which the deliberations of the General Conference on labor questions has led that body into considerations of social problems generally. Education in India and marriage laws in Russia might easily become part of the

problem of child labor when considered by the Conference. And if the industrialist and the nationalist—especially the sociological nationalist—objects to the treatment of general social questions by the Labor Organization he may cite variant social and geographical conditions in support of his emotions. It should be added that he can hardly escape the obvious implication that if the League of Nations is to be allowed to act in such matters as public health and social vice the associated labor problems can hardly be avoided in the approach from the other side. The discussion here seems to return to the general question of whether international regulation is to be desired in these matters at all, and to bear in only a secondary manner upon the activity of the Labor Organization in this direction.

When the Labor Organization is charged with attempting to expand its authority until it tends to resemble a superstate, however, and a Socialistic superstate at that, it is time to consider carefully. True, the logical development of the Labor Organization would lead in just that direction; and we may, perhaps, watch in the future for such developments. But the very weaknesses of the Labor Organization today, noted and commented on by all, whether in glee or in sorrow, indicate that such a consummation is nowhere to be found or feared in any near future. It may be suggested at the same time that any marked tendency in such a direction on the part of the Labor Organization would inevitably raise, and raise very sharply, the more immediate question of the relation between the Labor Organization and the League of Nations as an organization of general jurisdiction, a question the answer to which would indirectly determine the answer to be given to the more specific question just raised.

Finally, the inequality of states in fact and their theoretical equality in the General Conference gives rise to comments and criticisms, chiefly from the side of the Governments of the larger states and the employer groups.

Coupled with this consideration is the comment upon the employment of majority voting in the General Conference. The first consideration will be seen to be merely another case of the intrusion into the sphere of the Labor Organization of a problem germane to all fields of international organization. It does not appear that the objections which may be raised on this score are any more cogent here than in other fields of international activity; rather is the opposite true, for a small state may occupy an importance in the field of labor problems which it could not occupy in the field of armaments, for example. The employment of majority voting in the General Conference would, on the other hand, constitute a problem peculiar to the Labor Organization, even though that question were a familiar one, as it is, in international organization in general, if it were not for the fact that here as elsewhere the majority vote is not conclusive but depends for its effect upon signature and ratification of the conventions and execution of the recommendations by the Member States.

In short, there are few problems among all those which are raised in discussions of the nature and value of the International Labor Organization which are not problems of international organization proper, on one hand, or of labor regulation on the other. The central problem regarding the International Labor Organization itself is the justifiability of such an organization distinct from the general League of Nations. Upon that question enough has already been said, perhaps, either directly or by implication. The student of these matters will realize, of course, that the comments upon the Labor Organization here reviewed, including that to which reference has just been made, are by no means conclusive, and should be studied chiefly for what they may suggest by way of better understanding and appreciation of the nature of that Organization and its possible future.

CHAPTER XX

THE PERMANENT COURT OF INTERNATIONAL JUSTICE

THE general outlines of the organization and activities of the Permanent Court of International Justice have already been described.[1] In this chapter we shall study some of the more obscure phases of the nature and position of the Court.[2]

As has already been indicated, the Court is an integral part of the framework of the League system. Not only was the Court anticipated and, by indirection, provided in Article XIV of the Covenant, and the Statute (constitution) of the Court drafted by a Commission of Jurists convoked by the Council of the League in pursuance of the passage in the Covenant to which reference has just been made. When completed the draft Statute was referred by the Commission of Jurists to the Council, by the Council to the Assembly, and by both to the Members of the League for ratification; states not Members of the League may become Member States in the Court only as a result of the invitation of the Members of the League acting in their capacity as Members of the Court. Finally, the judges who compose the Court are elected by the League Council and Assembly acting conjointly, and the budget of the Court, like that of the International Labor Organization, constitutes an integral part of the League budget. Members of the League thus share in support and control of the Court whether or not they have become Members of the Court.

[1] Above, Chap. XVII, pp. 315-316, and Chap. XVIII, pp. 333-334.

[2] On the Court in general see Bustamante, entire. Before reading the present chapter the student should reread the *Statute* of the Court.

On the other hand, the Court sits at The Hague rather than at Geneva, as the result of the prestige which that city had attained in the field of international adjudication and, it appears, also as a result of exaggerated notions concerning the necessity for guarding the independence of the Court. It also carries on its work in complete independence of the views and desires of the political representatives of the Members in League Council and Assembly. The judges are all men of long experience, great independence of judgment, strong character, and a deep sense of self-respect. The last thing which would be tolerated by such judges would be any attempt at even the exercise of influence from Geneva—or from London, Paris, or Rome. One or two of the judges, moreover, are somewhat suspicious of the League as such, and would welcome any opportunity to assert the claims of the judicial, as against the political, branch of the movement for international peace and order.

The Court is not the department of the League to which the Council and Assembly or officials of the League turn for legal advice. The Legal Section of the Secretariat fills this rôle and is kept busy doing so. The rendition of advisory opinions by the Court, already described, could in no sense take the place of or fulfill the purpose of such action. Submission of a question to the Court is a relatively complicated and serious proceeding. It resembles submission by the disputant parties very closely. It differs widely from inquiry to the Legal Section of the Secretariat for legal advice in the course of routine administration. Hence in no way does the rendering of advisory opinions by the Court place it in a position where it would naturally be disposed, as legal advisers not infrequently are, to give advice calculated to strengthen the hands of the administration in power.

Further than this, the removal of judges lies solely in the hands of the Court itself, and the number of judges could be increased and the Court "stuffed" with amenable

judges only by unanimous consent of the Members thereof in amending the Statute. Of course, the Members of the League may conclude agreements one with another which will be binding before the Court in cases between them submitted for its decision, and the Covenant is so binding in the nature of things. But the Court may not be given its law to apply by either the Council or the Assembly of the League as such; only when the Members agree to permit Council or Assembly to adopt decisions or legislation having upon them the force of law will this be possible. Finally, the Statute may be altered not by the League Council or Assembly or both together, but by the Members of the Court, acting as such, and no longer as Members of the League. No governmental system ever boasted a judiciary more completely independent of influence and control of the political departments than the Permanent Court of International Justice of the League of Nations.

When we turn to the question of the enforcement of the decisions of the Court we encounter further interesting phases of the position of the Court in the League.

Under ordinary conditions the problem of enforcing international arbitral or judicial awards is negligible. The parties being willing to submit the case, and promising in advance to accept the award, no enforcement is needed. As long as cases are submitted to the League Court, therefore, by mutual consent, means of enforcement would seem superfluous. The preëxisting disposition of the disputants to obtain a settlement, coupled with the desire not to appear in the eyes of other nations as defying the decision of the Court, must ordinarily be sufficient to induce respect for the award.

In the matter of advisory opinions, where cases are sent to the Court by Council or Assembly vote, perhaps without the vote of the disputants, it might appear that the situation was different. The situation is different, but it differs in more than one particular from the preceding situation. It

is true that submission in this case may be made without the mutual consent of the parties; but on the other hand the opinion is not *ipso facto* binding on the disputants. The advisory opinions of the Court must be given great respect; they have decisive influence; but in form it is only Council or Assembly action on the basis of the advisory opinion which may bring to a close the dispute, and here the acquiescence of the parties is required.

There are, however, it may be recalled, many cases where the Court is given absolute jurisdiction in advance to settle disputes as they arise between Members under treaties signed in 1919-1920 or subsequently. Such treaties are multiplying rapidly. Should not means of enforcement be provided here? In point of fact no such step has been taken. It is possible that sanctions for awards in such cases are available in another quarter, but no means of enforcement for these cases have been provided in so many words in these agreements.

It is when we come to disputes submitted to the Court as part of the procedure for preserving peace as outlined in the Covenant that we find specific means of enforcing decisions of the Court provided. These arrangements are contained in Article XVI of that document, and an inspection of them will reveal at once that they apply again only to cases where the parties, Members of the League, have voluntarily submitted a question to the Court or have submitted a case under a preëxisting treaty of arbitration or under the optional clause of the Protocol of Signature of the Statute of the Permanent Court vesting obligatory jurisdiction in the Court. Needless to say, this would not only not apply to non-Members, but even in regard to League Members its effectiveness would depend upon the willingness of Members other than the disputants to apply sanctions at the behest of the Council. In one rare case the Court is empowered to indicate measures of economic retaliation which may appropriately be taken against a

nation violating international labor law by the injured nation; but this must ever be an infrequent and uncertain proceeding. In sum, there are no very reliable means of international enforcement provided for Court decisions.

Before taking leave of the problem of relations between League and Court we may properly make notice of two points which have at present only a conjectural importance, but which may attain actual importance at some future date. The Court depends for its personnel upon action by the Council and Assembly and for its financial support upon similar action. What if this support should fail?

It has been suggested that another method might be found for the selection of judges of the Court. The international situation which must exist, however, if the League were to disappear, or to refuse to make elections to the Court, must be so very different both from the present situation and from any situation which we can accurately foresee, that it seems idle to speculate upon the contingency in advance. Certainly the probability of this conjectural situation developing into fact is not at present so great as to justify steps being taken in advance in order to provide other arrangements. In view of the history of this problem and the efforts made at its solution, any new system of election must consist largely of a duplication of the present machinery. Such duplication could not be justified so long as it is superfluous. Furthermore, if the League should fall into such a situation that support in elections should fail it is highly improbable that support for the Court could be had from the nations apart from the League. This will appear more clearly in connection with proposals for altering the present arrangements for financial support of the Court.

It has been suggested that the Court should be provided with financial independence by means of an endowment fund created either by the League itself or from private sources. But this program would not possess any value as

a remedy for certain defects alleged to exist in the present situation, unless the fund were to be obtained from non-League sources; lack of financial support from non-League states and from Member states which are remiss in payment of dues would hamper the accumulation of such a fund as much as if not more than it hampers collection of funds for payment of current expenses. And the suggestion that endowment be obtained from private sources seems open to grave question. The private endowment, in part, of public hospitals and libraries and state educational institutions may seem permissible, perhaps, but private endowment of courts of law, intrusted with the task of exercising public authority, would seem to many an anomalous proceeding. It would not, probably, be tolerated by the Members. According to sound principles of social and political science, private interest and influence, operating even indirectly through endowment funds, should be scrupulously kept out of reach of repositories of public authority. If the members of the community—Members of the community of nations, of the Society or League of Nations—desire to retain at least potential control of their judiciary, through the control of the purse, that is their moral and legal right; the judicial function is not so clearly a non-political, scientific function that it can be relieved of that general public control of its resources which alone can compel the judiciary to adhere strictly to the general public interest in their activities. And if the public support should fail it would seem futile and unjustifiable to attempt to remedy public indifference to support for administration of justice by means out of keeping with sound principles of governmental organization and practice.

If we now turn to examine the Court as it stands, as revealed by the record of its life and activity during the first five years of its existence, we shall discover certain traits of character and problems of organization and function not without importance.

To begin with, the Court has not been given a position any more closely integrated with the judicial systems of the nations of the world than that occupied by any preceding international court. It is not given the power to take cases, on appeal, from national courts, as was proposed for the International Prize Court in 1907. It is hardly a part of the organized judiciary power in the world, as has been suggested in one quarter. Until this is the case, as will be indicated later, maximum utilization of the Court can hardly be expected.

By the same token the Court is not available for actions by individuals, or other legal persons recognized by international law, one against another or against their own or foreign states. In one direction this is of little importance. Where injuries to private rights are incurred by the action or inaction of foreign states or their governments it is usually found that the state of which the injured party is a national will have a ground of complaint under public international law which can be utilized in order to satisfy indirectly the just claims of the latter. But in other circumstances the restriction of access to the Court to states must prevent the submission to the Court of many disputes where there is a difference of nationality between the parties, and of many more where there is no difference of nationality between the parties and hence no international dispute in this sense, even indirectly, but where important questions of international law may be involved. It is a matter of choice for the nations, whether they wish to leave matters in this position or not; perhaps the settlement of disputes strictly international as to parties is all that is now desired; but it leaves the Court to operate in that somewhat removed and sublimated sphere of international judicial action wherein courts of arbitration have habitually stood—somewhat unrelated to the actual life of people in the world below.

The Court likewise possesses no criminal jurisdiction.

There exists, of course, no organized international prosecution of offenses against the law of nations which might be compared with the prosecution of criminals in the national state. The distinguishing pragmatic test of a crime being the liability to prosecution by the state, it may thus be said that there are no international crimes, that all offenses under the law of nations are torts against individual members of the international community. Even piracy is prosecuted only by the states individually, and not collectively. In order to provide for international criminal prosecution not only would the law of nations need to be rendered as precise as possible—a need now met more nearly than many suppose, it is true, but still not fully met—but a scale of penalties, much more definite even than that applied by national prize courts in enforcing the rules of international law relating to capture at sea, and of which virtually nothing exists at present, would have to be evolved. Finally, prosecuting authority would have to be conferred upon some international organ or certain international officials. It need only be added that nothing has been done in this direction yet.

Much has been made of the intention to pass from arbitration to judicial settlement proper in the creation of the new Court. In so far as this refers to the method of selecting the judges the student will perceive that no such transition has been made completely. Prospective litigants still participate in the choice of judges; this is unavoidable in any system of an elected judiciary; but the actual parties in dispute also retain rights to select representative judges—if that combination of ideas is permissible—for the case at bar. Regrettable or valuable, this provision leaves present in the structure of the Court a certain minor element of what is normally arbitral procedure.

If by arbitration is meant voluntary submission, on the other hand, the student will perceive that here also arbitral

procedure, as we have known it, persists to an amazing degree. The optional clause of the Protocol of Signature and many treaties signed since 1919 provide for obligatory submission in many special cases—special as to parties or subject matter—but again we are far from having a Court of general obligatory jurisdiction. Good or bad, avoidable or not, the present arrangements exist. It might be added, in mitigation, that where obligatory jurisdiction has been conferred upon the Court it has also been given power to render judgments in default of appearance by one of the parties. It may also be suggested that obligatory jurisdiction is not the most important index of true judicial action, as may appear in a moment, and that provision for such jurisdiction would not of a certainty and of itself result in any great increase in the number of cases submitted to the Court.

Settlement of a case submitted to the court in accordance with accepted law and principles of equity determined by the court appears to be the true sign of judicial action proper, as contrasted with arbitration, where considerations of conflicting national policies, expediency in the narrower sense of the term, the necessity for some settlement no matter what,—all considerations adduced by the parties rather than by the Court,—are likely to control. If we examine the activities of the new Court with this in mind we shall find that its work is truly judicial in character. The caliber—intellectual and moral—of its personnel, its prestige, even its connection with the League of Nations, insure this. But if we compare the work of the new Court with that of the old Hague Court of Arbitration we may not discover any transcendent difference on this score between the two. The defects of the old court were of another character—transient personnel, cumbersome administrative machinery—and these have been remedied in the new Court. But the new Court, while to all intents and purposes all that

could be desired as a judicial body, does not appear in its actual judicial work to be very different from what we have known before.

Two other matters of relatively minor importance may be mentioned at this point. As a result of some discussion, the Statute of the Court contains provisions for dissenting opinions by judges disagreeing with the decision of the Court in particular cases, and also provisions for the creation of special chambers to deal with labor questions and questions of transit and communications referred to the Court under treaties signed in 1919-1920.

The special chambers prove to be superfluous. Cases relating to the topics mentioned are not lacking, but there appears to be no need to take the cases out of the hands of the Court as a whole. Again the fallacy of pluralism is disproved by the event. The unity of the Court is preserved.

The dissenting opinions are not numerous in practice. The judges are able to reach agreement to an extent which could not, perhaps, have been anticipated in view of the habitual dissents in the awards of arbitral tribunals in the past. The unity of the Court here also is impressive. Judges are found voting against their own country, in various cases. The dissent is therefore merely an evidence of disagreement on the part of experts, jurists, all seeking, with the best will, to find the truth; as such it is not especially surprising or alarming. Moreover, even when it is susceptible of being regarded as the expression of nationalistic bias the dissent of one or two judges in eleven is not of decisive importance. After all, men are practical beings, and, the dissent being impotent to alter the result, the majority opinion alone is likely to receive any serious attention. The net result is to accustom governments to submit to something less than unanimous decisions in international procedure.

In concluding our study of the League Court we may well consider certain broader problems arising in the field

of international judicial settlement which are given special bearing and significance in connection with this Court.

Thus the question of the advisability of setting up regional courts in America, Europe, and Asia has been raised, in partial connection with the question of regionalizing League activities in general. The feeling that the League and its Court are predominantly European in composition and outlook plays its part in this suggestion. So also does the feeling that it is difficult to expect states in Asia and America to carry their cases all the way to The Hague for adjudication—a difficulty encountered in the old days of arbitration at The Hague.

Various replies may be, and have been, made, in response to this suggestion. The question of physical distance is clearly subordinate in importance to the desirability of centralized international judicial administration. The crux of the problem lies in this question: is a world court desirable?

Now in so far as the objection to a single world court rests upon the suggestion that there are different systems of international law to be applied in Asia and America and Europe the objection seems groundless. International public law is the same in all parts of the world. Even where local treaty arrangements or even local systems of usage exist, they exist and enjoy authority under the general world-wide principles of international law, and any world court could and would necessarily give them such recognition and force as they were entitled to enjoy thereunder. Any attempt to split the unity of international jurisprudence definitely with continental divisions would be a step backward and a fight against the present and the future.

In so far as the attitude in question derives from political considerations, the same reply must be made, even if that reply appear to be inconclusive to the leaders of national political parties. World-wide organized international coöperation must, in view of the facts of our time,

be regarded as unescapable and necessary. Any temporary hesitation or refusal to accept the plain implication of the facts must be repudiated in a scientific study of the situation, even if such a study may have little immediate effect on practical national politics.

It is, perhaps, possible, on the other hand, to discern for the problem a solution which will conciliate both views of the situation and also accommodate another need too often neglected in study of this problem. It would obviously be necessary, if regional courts were to be created apart from the World Court, to leave that Court in existence to serve as a supreme court of appeal and review; otherwise divergences in the jurisprudence of the regional courts could not be corrected and might do untold harm. Now such a step,—the creation of regional courts under the World Court,—might also serve another purpose. It has been objected that the World Court does not need, and could hardly afford, to have the number of cases submitted to it reduced. With only about sixty or seventy states in the world, it is said, the business of such a court must necessarily be limited. This may be true, in part, but surely the business of the World Court is limited by other factors than this, and there are many cases which might be submitted to that Court which are not in fact so submitted.

In other words, the present situation calls for some further action by way of the organization of international adjudication if that process is to be exploited to its maximum potentialities. And it may be that the creation of regional courts under the World Court constitutes one of the necessary additional steps in that direction. The World Court must be brought down nearer to the nations, nearer to the business with which it is supposed to be occupied. And it may be that creation of regional courts subordinate to the World Court is the way out, granting that arrangements for appeals from national courts to the World Court are still rather difficult to hope for.

Striking confirmation of the suspicion that something is wrong with the present organization of international adjudication is found in the fact that the signing of so many treaties providing for obligatory submission in the years since 1919, and the acceptance of the Optional Clause of the Protocol of Signature of the Statute of the World Court by so many states, have not perceptibly increased the number of cases submitted. Give us obligatory submission, it was urged, and the process of international adjudication will be on its way to full utilization. Yet the effects of the agreements for obligatory submission are so far negligible. No great activity in haling defendants before the Court has been noticeable.

This phenomenon, this negative phenomenon, so to speak, is probably attributable in large part to defects in the system of international law, to the absence of rules of law which would satisfy the alleged injuries to the rights of the potential plaintiffs. It may, indeed, be attributable in part to absence of even alleged injuries; governments are not the universally law-defying and law-violating beings which they are imagined to be by professional critics of national policy and international politics. In so far as it is attributable to these causes we are familiar with its nature and implications, and nothing further needs to be said on the subject here.

But it is attributable mainly, it would seem, to defects in the procedure available for use in or before international courts, including the World Court; to the deficiency of forms of action and standardized forms of pleading which would serve, when employed by the parties in litigation, to split up the controversy or case before the Court into its component points and bring to an issue the questions of international law proper which are in dispute between the parties. The submission of a case to an international court today still resembles too closely the submission of a dispute to an arbitrator at private law, where the whole dispute is

dumped down before the judge, so to speak, to be dealt with as he sees best. If points of law are defined at all it is in the course of the arguments, not in the form of submission. Now this is a phenomenon familiar in all elementary judicial procedure. But it is a state of affairs which, so long as it continues, discourages resort to adjudication by parties fearful of their rights in such an ill-defined proceeding.[3]

The only remedy for such a state of affairs is the gradual development of forms of action and pleading by the Court to suit the needs of the litigants appearing before it, either out of the complaints and pleadings submitted to it by these litigants or out of other legal systems or systems of procedure familiar to all concerned. It is just here that the establishment of regional courts among the nations may be useful. The courts of the United States, when called upon, in the latter part of the eighteenth century and the early part of the nineteenth, to entertain causes between the States of the Union, were confronted with the same need for new forms of action and pleadings to fit the new situation. They borrowed from English private law and equity, and they succeeded in a not too protracted period of time in working out a procedure suitable to the needs of the situation. This they could do the more readily because all parties were familiar with English procedure in law and equity. Such a venture has not been possible in international courts in the past—at all events it has not been undertaken—largely, it is believed, because of the divergence between the parties in concepts of legal procedure, apart from the fact that the submission was in most cases regarded as a submission of the case *in toto* to arbitration rather than settlement by points of law. Inclusion in the personnel of the World Court of judges familiar with the different great legal systems of the world may conceivably, in time, assist

[3] For full discussion see essay by the present writer on the existing status of international adjudication in a forthcoming volume on international arbitration published by the Chicago Council of Foreign Relations.

in the solution of this problem, but what is needed is something more drastic. The creation of regional courts, adjusted by reference to the legal systems of the nations—Anglo-American, Civil Law, Mohammedan law—might remedy the difficulty. Even if the local courts were regional rather than systematic, the chances of developing detailed forms of action and pleading would be greater than in the submission of cases to one great centralized World Court.

Even when, or if, this be accomplished, however, the advisability of limiting the scope of the jurisdiction of the World Court to cases between states remains for consideration. The present restriction, embodied in the Statute, is well known, and the reasons for that restriction, as they appealed to the parties responsible for that restriction, are familiar. Yet it may be doubted whether the restriction will stand the test of scrutiny.

The objectives to be attained in the development of international adjudication are peace and justice. Probably the preservation of peace is to be regarded as the primary objective, and any system adopted would be considered adequate if this object were attained, even if the second aim were inadequately served. The case for expansion of the jurisdiction of the World Court must rest largely on the fact, if it be a fact, that without it international harmony must be left in a precarious predicament.

The fact is that the majority of disputes concerning international rights do not naturally or immediately take the form of interstate disputes. Not to mention prize cases in time of war, it is still true that individuals and corporations are many times more frequently parties to cases involving international rights or rights under international law than are the states themselves. Witness the multitude of cases of private litigation decided by national courts continuously which involve such rights, in comparison with the very few truly inter-national cases. Witness the fact that in the national jurisdiction in the United States cases

between individuals or between individuals and States wherein a "federal question" is involved, or between individuals and the United States, outnumber cases between States, or between States and the United States, by a hundred to one.

The academic contention that only states are properly parties to international law is in part responsible for the attitude which would deny individuals rights before the World Court. That such a highly abstract idea should be given such practical importance is rather deplorable in this day of urgent developments in the real world.

The attitude in question is probably attributable also to a reluctance on the part of the state to permit its nationals to invoke their international rights themselves, and thus apparently make the enjoyment of its rights through them on the part of the state contingent upon their success in that action. Yet in national courts of claims, prize courts, and in the ordinary national courts of foreign states this is being done day in and day out. Only when the question is raised in terms of principle do the states find it necessary to object.

What is more to the point, if peace be the objective aimed at, it is just this obscure, undramatic, and, it may be, more effective satisfaction of international rights in private litigation that can accomplish most for international solidarity, harmony, and peace. Claims by nationals of one country against governments of foreign states are one of the main sources of international friction, especially claims arising out of local injuries to life and property held by aliens. Injuries sustained by failure of the local state to protect alien lives and property are one of the most common causes of international estrangement. If all of these issues could be made a matter of routine adjustment in international courts instead of a matter for adjustment only after elaborate action in the creation of international claims commissions, or even provision for action by the

injured parties before national courts of claims, the cause of international amity and peace would be immensely advanced. By restricting action before the World Court to cases in which states are parties the further development of international adjudication is blocked, and the World Court is kept in that unreal and relatively ineffectual position heretofore occupied by all courts of arbitration, including the old Hague Court itself.

The future of the Permanent Court of International Justice would seem to turn, therefore, not so much upon the perfection of public international law, the provision of adequate sanctions for enforcement of its decisions, or the conclusion of more numerous international agreements for the obligatory submissions of disputes, important as these steps may be especially the first and third. It would seem to turn upon the development of detailed forms of action and pleading for use before the Court which will once and for all take submission of cases to the Court out of that realm of general treatment so characteristic of arbitration, and give to the action of the Court the character of pleadings upon specific issues of law raised in the very form of the action brought. If the creation of regional courts, nearer to the familiar and more mature national courts where such forms of procedure are well developed and are capable of further development for international use, is necessary, that step must be taken. If the integration of the Court with national judicial systems by providing for appeals to the Court from national courts is necessary, that step must be taken. And if opening the door to the bringing of actions by individuals is necessary, that step also must be faced. In short, if the World Court is to be made an effective organ of adjudication for international rights, rights under international law, and the effective promotion of international solidarity, peace, and that justice without which those aims cannot be attained, such steps as are necessary to that end must be taken, radical though they may seem. As a court

for international cases the Court is about all that could be desired. As a court for the powerful promotion of international peace and justice it is very remote, very seriously handicapped, and quite ineffectual.

CHAPTER XXI

THE SECRETARIAT

THE organization and activities of the Secretariat have been described in general terms.[1] It remains here to study this branch of the League with reference to its own special character, its position in the League, and the distinctive quality of its various activities.[2]

The position of relative independence and freedom of action in which the Secretariat was placed in the early days of the League, prior to the meeting of the Assembly and even of the Council,[3] it has never entirely lost. In spite of one or more tentative inquiries from the Assembly and the Council, in spite of discussions in its Commissions and on the floor of the Assembly in plenary session, in spite of the scrutiny incidental to the budget procedure of the League, the Secretariat remains very largely an institution or at least a department to itself. This is not true to any great extent, of course, in the matter of the subjects with which the Secretariat deals. These must naturally be determined by the Covenant, by the actions of Assembly and Council, and by the very character of contemporary international relations. But in its method and procedure, in the forms of action which it takes, in the way in which its members go about their work,—in short, in the tone and temper of its

[1] Above, Chap. XVII, pp. 309-312, and Chap. XVIII, pp. 332-333.

[2] There is no single work on the Secretariat. The student should use the documentary publications of the League in order to observe the activities of the Secretariat. He may consult Williams on the League as a whole, including the Secretariat. He should reread the Covenant before reading the three following chapters.

[3] The Secretariat was set up and began to function in the latter part of 1919 before the Covenant was legally established or the Council had met.

activity,—the Secretariat is able to maintain an integrity and an individuality not possible for the Assembly or the Council.

It may be added that the tone of the activity of the Secretariat seems to be more in harmony with the nature of the League as visualized at its foundation than is that of the Council or Assembly. If international or multinational action, action based on facts and considerations of general international welfare, coöperative action for mutual benefit, are the keynotes of true League action, then it is in the Secretariat that true League spirit is to be found. With its polyglot personnel and its technical subject matter and its correspondingly technical forms of treatment the Secretariat is world-wide in its view and strictly objective in its outlook. And between its internationalistic and its objective mood or modes of approach it is even the latter which predominates from day to day.

These characteristics are reflected in its structure. The Secretariat is organized according to the subject matters with which its subdivisions deal and the forms of action which they take upon the matters submitted to them. Examination of the list of subdivisions of the organization reveals a section devoted to the subject of transit and communications, an office devoted to financial administration, considered as objective problems and modes of action. A list of its subdivisions by title would hardly reveal the fact that this is an international organization. It might be, for the most part, a bureau or an administrative department of the government of a national state or even a municipality; it might be a huge business corporation.

This is not to say that the Secretariat is narrow or shallow in its outlook upon the business with which it deals, or that its mode of treating that business is uniform for all subjects or all circumstances. Quite the contrary is true. There is a maximum of variety in its activities and its modes of treatment. Indeed, as is everywhere true of that

function of government which we call vaguely "administration," the Secretariat serves as residuary legatee for all matters of League business. When the more highly specialized organs of the League have done their part with any matter of League business it is to the Secretariat that the matter returns—"returns," for it has probably originated there—for further and perhaps final treatment. And in the course of that treatment the Secretariat or some of its parts is almost certain to be called upon to perform one or more of the supposedly specialized functions of policy-determination, execution, and even adjudication. The Secretariat is a more or less complete governing institution all by itself.

The common conception of the Secretariat as a department where business is prepared for action by the Council or Assembly and where decisions taken by those bodies are carried out into detailed application is not, indeed, inaccurate. The general governmental character of Secretariat action, as just described, and which is so often overlooked, is not to be thought of as hostile to its function as an agent of the Council and Assembly. Rather the contrary is true, for it is its general competency or capacity for all sorts of tasks that makes it so serviceable in its relations to the higher organs of the League.

This is all reflected in the position and the work of the Secretary-General. Quite apart from the personality of the Secretary-General himself, that official is, in no small degree, director of the League of Nations. Just in proportion as the work of the League becomes great in scope and bulk, and just in proportion as the development of international relations gives to the facts of international life and to technical considerations an ever increasing decisiveness in organized international coöperation, just in that proportion must the person in charge of the machinery of League administration possess greater and greater influence over League action. That this is not perceived or resisted is tribute to the ability and skill of the Secretary-General

and to the power of the facts which make his position what it is.

When we proceed to examine the internal structure and work of the Secretariat and affiliated organizations we find much to confirm what has just been said even if we also find much which superficially may appear to destroy the unity of the institution as above portrayed.

Thus the General Direction Division of the Secretariat, composed of the Secretary-General and the Deputy- and Under-Secretaries-General, together with the Financial Director, serves to coördinate the activities of the numerous branches of the organization and unify them into a coherent whole. The Council and Assembly possess no such effective unifying organ, except in so far as this function is performed for each Assembly by its General Committee and except, indeed, as the activities of the various Assembly and Council meetings are coördinated and unified by the Secretariat itself. When any one who has seen at first hand the tragic waste of energy resulting from lack of coördination in governmental activities stops to estimate accurately the value of the services performed by various branches of the League, he is driven to conclude that it is in the Division of General Direction of the Secretariat that the most important service is being performed for organized and coordinated international coöperation. The Division of General Direction of the Secretariat is the cabinet or directory of the League in a most accurate and decisive sense.

A hardly less definite influence for efficiency is exercised by the Financial Director alone. While the Assembly has the appropriating authority, and controls, as it must, the total amounts available for expenditure by the Secretariat and other organs of the League, it is in the detailed supervision of expenditure in accord with Assembly votes that the most effective financial control is exercised. The accounts given by the Financial Director of his struggles with the various individuals and organs within the League organ-

ization reveal graphically how much is thereby accomplished, not only to keep expenditures to the lines laid down, but incidentally and necessarily to keep the activities of those individuals and organs true to the League program, as laid down in the Covenant and as planned by Assembly, Council, and Secretary-General. This is all apart from the vast mechanical task of accounting performed in the office of the Financial Director.

Finally, the Latin American Bureau, the liaison offices in London and Paris, the field offices of the Information Section in all parts of the world, and the corps of permanent liaison officers maintained in Geneva by various Members, all of whom are in contact daily with the Secretariat, carry this process of unification still further. By them not only are the field agents of the League—really of the Secretariat and affiliated organizations—kept in touch with the General Direction and with the Secretariat as a whole, but also the Members themselves, who might be presumed to act in League matters wholly in Council or Assembly meetings, are kept in constant collaboration with the Secretariat. One is tempted to declare that, whether the Court and Labor Organization could get along alone without the League or not, the Secretariat could, except for appropriations, get along without Council and Assembly meetings.

This suggestion becomes more apparent when we take into consideration the numerous conferences held under Secretariat auspices and the work of the Political Section of the Secretariat. The former are frequently authorized by Council or Assembly action, it is true. But there is nothing to prevent the holding of conferences on the initiative of the Secretariat. Indeed, in all branches of League work, meetings of various sorts are held from time to time under Secretariat auspices which are indistinguishable from international conferences, in the more exacting sense of that term, except in the lack of power which the participants have to bind the Members. Now, as will appear shortly, this

distinction is not of as great importance as an abstract view of the point might indicate. It is the pooling of information and the exchange of views incidental to such meetings which constitute their chief value, and a value which could hardly be enhanced by formal conclusion of a treaty. And in addition to this it should be remembered that even where a conference has been authorized by Council or Assembly it is the Secretariat or some one of its branches which will supervise the preparation for the conference, the conduct of the conference—to some extent—and the eventual carrying out of its decisions. If we include these policy determining meetings in our thought of the Secretariat, it seems all the more true that that body possesses within itself all the essential functions of League action.

The affiliated organizations—the Health Organization, Economic and Financial Organization, and Transit and Communications Organization—all tend in the same direction. Their frequent conferences may be held without Council or Assembly action; indeed, their whole activity is largely autonomous. And so far as it is affiliated with the League at all it is through or in connection with the Secretariat. They are aligned with the Sections of the Secretariat which deal with the several types of subject matters indicated in their names. Contacts between them and Council and Assembly are as frequent as circumstances permit, but their real collaboration goes out to, and comes to them from, the Secretariat.

It might be felt that the Secretariat lacks, however, the powers or facilities of Court and Council for the settlement of international disputes. Again this is formally true, but an examination of the work of the Political and Legal Sections of the Secretariat will compel the student to qualify his views on this important matter also.

The Political Section of the Secretariat is most important of all the Sections. It resembles the department of state

or international affairs in any national governmental organization. It devotes its attention to international relations on the political plane and particularly to international disputes. The director acts at times as no less than an international minister of international relations. Formal international conferences are often necessary to settle a boundary dispute, but it is most frequently the efforts at conciliation put forth by the Director of the Political Section which, by means of a formal conference or without it, achieve the sort of settlement which we are accustomed to expect from the Council of the League. In the hands of an unscrupulous and biased person this position might be prostituted to anti-international aims, it is true, but we are concerned here with the office as a potential organ of constructive international service, and this it is in fullest measure.

We begin to depart from the highly unified picture of Secretariat activity when we enter the Legal Section, although we here obtain further evidence of the completeness of the scope of Secretariat activities. The Legal Section is the solicitor's office, the legal advisory office, of the Secretariat. While the view that the rendering of advisory opinions is inconsistent with and injurious to the nature of the Permanent Court of International Justice has probably been exaggerated, it is probably true at the same time that many of the problems referred to the Court for such opinions could, political considerations aside, be handled competently by the Legal Section of the Secretariat. Awards in arbitration the Legal Section could not give, but all that an Attorney-General or a Law Officer of the Crown can do in the United States or Great Britain, the Legal Section of the Secretariat could do. In view of the necessity for subsequent voluntary acceptance of judgments and opinions of the Court in order to render them effective it may even be suggested that until something more than competent legal

advice is wanted the Legal Section—expanded and strengthened, perhaps—might fill that need as well as an elaborate World Court.

It should be added that the registration of treaties, mainly a mechanical task, is confided to the Legal Section also. At this point the work of the Section approximates that of the Information Section and, while of great importance, calls for little comment.

On the other hand, the Information Section itself deals with the world outside the Secretariat and ranges in its activities all the way from an editorial office to a bureau of propaganda. This is the great publication office of the League. The great flood of the periodical and irregular publications of the League itself issues from this office, although publications of the Court and the Labor Organization issue from the offices of those branches. The bulk of these publications, of course, are strictly formal, technical, and official in character, but the Information Section also issues pamphlets designed to make clear to the lay reader the organization and work of the League, together with news releases on current activities which shade over into the sort of "information" work which is close to restrained and reasonable propaganda. In addition the Information Section maintains accommodations for press representatives who are "covering" the League for newspapers all over the world, and also does what it can to facilitate the visits of tourists and more serious observers of public affairs—Americans and others—to League meetings and League offices.

The remaining eight Sections of the Secretariat may be dealt with together. The nature of their work as to subject matter is indicated by their names. It is here that the determination of the character of the Secretariat by objective subject matter is most pronounced. At least half of these Sections deal with matters not primarily international—Economics and Finance, Transit and Communications,

Health, and Social Problems. In the treatment of these matters, of course, the international outlook and work of the Secretariat are immediately evident. But this is true only in so far as it is necessarily true, and not infrequently the desire to minimize this aspect of the situation is expressed with some sharpness within the ranks of Secretariat personnel. Even in the Sections devoted to Minorities, Mandates, Disarmament, and International Associations, the concentration of attention on subject matter in the Secretariat and the attempted minimization of such considerations as national sovereignty and national interest or national rivalry is quite obvious. That this attempt is not entirely successful is not attributable to the attitude of Secretariat personnel but to the views of Members of the League.

The activities of these Sections might be classified under three headings: scientific, diplomatic, and administrative. Much work of research, collection of data, study, and reporting must be done. Efforts may be put forth, and must be put forth if League aims in these fields are to be obtained, to secure action by Members in accord with preëxisting agreements or in accord with League principles generally accepted by all. The decisions of Members and League bodies—Council, Assembly, affiliated organizations—must be executed. And all three of these types of work involve much mechanical labor of a clerical and even manual grade, such as copying, correspondence, filing, drafting, translating, and editing, which call for no discussion.

The three types of work just mentioned vary considerably from Section to Section. Scientific work is most prominent in the Sections devoted to Economics and Finance, Transit, Health, and Social Problems, although it is by no means absent from any one of the other Sections. It is most important in these fields, because it is here that formal agreements for international action are at a minimum and materials must be provided to induce voluntary coöpera-

tion by the Members and to encourage the making of agreements if possible. It is here that international coöperation must be stimulated by, guided by, and made effective by, collections of factual data rather than coercive law or even moral suasion.

Diplomatic action, in the broader sense, efforts to secure willing action by Members in line with League principles and agreements, is most prominent in the Sections devoted to Administrative Commissions and Minorities, and Mandates, except, of course, in the Political Section, as already described. It might be thought that such efforts must bulk large in the Sections named in the preceding paragraph in view of the relative absence there of formal international agreements on those subjects. And indeed this is true. But in the two Sections now under discussion the need for diplomatic suasion is not removed by the presence of formal agreements. For coercive power to compel performance according to those agreements does not exist, nor power to compel obedience to the Covenant provisions dealing with the same matters; at least it does not repose in the hands of the Secretariat. And it is the Secretariat, or these two Sections, their Directors in conjunction with the Secretary-General, who must do most to secure performance in these fields. In the fields of Health and Transit and Economics and Social Problems there are influential affiliated bodies outside the Secretariat which can be expected to exert some pressure to secure action by Members; here there are none. The Mandates Commission may report on performance or non-performance by Mandatories and the Council and Assembly may emit exhortations and adjurations on this subject and on Minorities protection when they meet, but the day by day efforts to secure performance must be made by the Minorities and Mandates Sections of the Secretariat. The same is true of Administrative Commission work relating to the Saar and Danzig. The Directors of these Sections are, in an obscure way, in action on petitions from

aggrieved inhabitants of minorities territories, mandated territories, and territories under international administration, policemen set to watch the performance by Members of their obligations in these fields. But suasion, not coercion, is their only means of enforcement.

Administrative or executive work is common to all Sections, but is most prominent where prior agreements are lacking but where at the same time little can be done without them by diplomatic effort, or where, on the contrary, the number of current decisions being taken is largest. This analysis brings together two very dissimilar Sections, Disarmament and International Associations. In the former field the subject is still unregulated by international agreement and nothing much can be done, so acute are nationalistic feelings on the matter in their absence to secure national or international action, and where diplomatic action is therefore useless. The collection of data is a very important activity of this Section of course, but this function is of major importance as an action of the Section itself only if some attempts to secure some international action can also be made by the Section, and the work of the Section is therefore in the main confined to carrying out the decisions or the investigations of the Commission on Military, Naval, and Air Questions. In the field of International Associations the work of the Section is dictated mainly by what is being done to place various international bureaus under League supervision and to develop private international association and coöperation as an adjunct to official international action in the League.

The affiliated Technical Organizations (Economics, Health, Transit) have already been mentioned, as have two of the Advisory Committees (Armaments, Mandates). The Advisory Commissions on Opium, Traffic in Women and Children, Child Welfare, and Intellectual Coöperation occupy positions similar to those on Armaments and Mandates. The work of all of these Organizations and Commis-

sions resembles in large part the work of the Sections of the Secretariat. It is here that the suspicion that League organization is somewhat unduly elaborate, that it involves duplication of structure and effort, finds its greatest justification. If the Secretariat contained a Section dealing with labor matters it would undoubtedly be felt that, in view of the existence of the Labor Organization, this was unnecessary. Just so it may be felt that, with the existence of an International Health Organization, a Transit and Communications Organization, and an Economic and Financial Organization, the Sections devoted to these matters in the Secretariat are superfluous. But the fact is that it is necessary to provide Sections in the Secretariat on these matters in order to tie the work of the Technical Organizations up to the central and continuous structure and work of the League. No one would suggest that the existence of the Mandates, Armaments, and other Advisory Committees renders the existence of Mandates and Armaments Sections of the Secretariat superfluous. Indeed, one might, without very great error, turn in an opposite direction and make the same comment here as was made upon the existence of the independent Labor Organization, namely, that with the League Assembly available for conference purposes and the Secretariat for administrative purposes, the existence of these independent Technical Organizations seems somewhat open to question. The only explanation in principle is to be found in the utility of having consultative bodies from whom advice and moral support closely bordering upon legal authority may be obtained by Sections of the Secretariat without referring the matter to the plenary Assembly, which meets so seldom and for such a brief period. This is the function of the Advisory Commissions and the conferences held by the Technical Organizations. At the same time one might still suggest that such administrative work as is done in the Technical Organizations might well be turned over to the Secretariat.

The explanation of this complicated situation in terms of principle, however, is only partly satisfying. The fact is that the Technical Organizations exist in part because the League was viewed, prospectively, at its foundation, too exclusively as a purely political organization. It was this in the main that led to the establishment of the autonomous Labor Organization. Here it led to the establishment of miniature leagues of nations on Economics, Health, and Transit, just as in the past the creation of a Postal Bureau or a Bureau of Weights and Measures was deemed to necessitate the creation, each time, of a complete new international union or federation. In view of some of the crimes which have been committed in individual states and nations against the principles of effective administrative organization, this is not, perhaps, surprising, especially when we remember the highly political character of most international conferences in the past and the highly political atmosphere which surrounded the birth of the League and its Assembly. But it has resulted in an administrative structure in the League—with particular reference to the Labor Organization and the Technical Organizations as they exist alongside of the Secretariat—which is somewhat disturbing, and which may make reorganization in the interest of simplification and efficiency imperative in the future.

In the same way one may doubt the wisdom of attaching to the League Secretariat, under Article XXIV of the Covenant, any large number of the international administrative bureaus first created prior to or outside of the League.[4] This step has so far been taken in a few cases. What is needed, rather, is a transference of the work of such bureaus to League organs. Article XXIV should be used, as it is now being used, as an opportunity to develop, under the League auspices, through the International Associations Section of the Secretariat, which should be renamed appropriately, the whole body of private interna-

[4] Above, Chap. XVII, p. 313.

tional coöperation and cosmopolitan activity so vital as a foundation for the future of the League.

No study of the Secretariat would be complete without consideration of the Library. Technically connected with the internal services of the Secretariat,—buildings, clerical service, archives, and others,—it is intimately connected with the very essence of League method. If the substitution of facts for fancies—real or imagined national interests and policies—as the basis for international relations is one of the cornerstones of League method, then the Library stands very near to the cornerstone of the whole structure. It is here that the store of facts on international relations provided by modern political and social science can be amassed. It is here that the collection of data by the Sections can in large measure be carried out. The Library must be, as it is, not a collection of books primarily, but a collection of primary materials such as maps, compilations of statistics, documents, and similar materials. It provides the raw materials for that information and judgment upon international relations which must guide action in all Sections of the Secretariat, and, indeed, in Council and Assembly as well.

Now this may seem so obvious as to need no emphasis. Yet the existence and development and operation of the Library have not been unimpeded. Antiquated library equipment and methods seem adequate, in comparison with more expensive modern equipment and methods, to many members of Council and Assembly when called upon to pass upon the Library budget. American library methods and personnel seem unduly expensive and irritating to European politicians and diplomats among the League personnel. Perhaps all do not desire to have the facts of international life, which may be embarrassing to exponents of certain national policies from time to time, collected and presented on all occasions. Certainly certain users of the Library have not wished to have all the facts presented to

them in their offices according to a cold Library index and cross reference system whenever a given topic was under discussion, but have preferred to go to the Library, which is inadequately housed for work by users on the floor of the Library itself, and select materials at their discretion. Personalities have undoubtedly played some part in the friction which has existed in connection with the existence and operation of the Library of the League. But more fundamental problems are at issue such as those which have been noticed here. The development of the situation will bear watching.

In conclusion we may return to some of the thoughts expressed at the beginning of this chapter. The Secretariat, with the affiliated organizations, is the backbone of the League. It is the most elaborate and comprehensive branch of the League, and in spite of the real problems to which this very fact gives rise it means much for its importance among other League organs. It is the most stable and firmly organized branch of the League, and the branch which operates most continuously. It is most nearly in tune with true League spirit. It contains, probably, the greatest potentialities for growth and achievement, until such time as the Assembly becomes a true legislative and representative body, as it is not today and cannot become for some time yet. It is in line with the best tradition in international organization in the past—the consular services and the international administrative bureaus; it is in line with the most promising movement in government, national and international, of the present and the future—the application of science to political organization and practice. Probably the Secretariat is dependent upon Council and Assembly for its continued existence and activity, but of the three the loss of the Secretariat would be the most deplorable. It may be suspected that in any collapse of the League it would be the Secretariat for the preservation of which the greatest efforts would and should be made.

CHAPTER XXII

THE ASSEMBLY

IN many ways the Assembly of the League presents at once the most interesting and the most challenging problems for study in the whole list of League organs.[1] The difficulties of observation and interpretation, while not as great as in the case of the Council, are, nevertheless, considerable, and the conclusions to be drawn must necessarily remain open to revision and correction as time goes on.

It is common to regard the Assembly as the great forum of the nations, or at least as the forum or debating ground of the League. It is not uncommon to hear the Assembly referred to as merely a debating society or a safety valve for League Members.

This view is at once too broad and too narrow.

It implies, for one thing, that in the Assembly an opportunity is provided for airing any and all grievances cherished by the Members. Now, while it is true that the Assembly is given the power, under the Covenant, to consider "all matters within the sphere of action of the League or affecting the peace of the world," it is the first part of this statement which is, in practice, of importance. That is to say, the subjects which are debated in the Assembly are those with which the League is actually dealing. With the press of business as great as it is in the short sessions [2] of

[1] The general aspects of Assembly organization and activity are treated above, Chap. XVII, pp. 307-308, and Chap. XVIII, pp. 322-327. There exists no work upon the Assembly itself, but the student may observe the Assembly in operation in the Assembly records, published in the Supplements to the *Official Journal*.

[2] The term "session" is used in this and the following chapter to refer to the aggregate of meetings of the Assembly or Council in any one period, the

the Assembly, this means that there is relatively little opportunity for debate on international relations in general. Members may, indeed, request the inclusion in the agenda of topics in which they are interested, but they neither make many such requests, nor would it be feasible to grant such requests to any great extent. What is more to the point, there are many matters of importance in international relations which the Members do not appear disposed to raise on the floor of the Assembly, either because such matters might be considered taboo as trenching upon the field of domestic questions which should be left to the individual nations for treatment, or because it would lead to no beneficial results and might lead to many difficulties if these matters were raised in Assembly debate. At all events the Assembly is far from providing or being in fact a free forum where any and every sort of question is discussed.

On the other hand, the Assembly is much more than a mere debating society. It accomplishes much real work of a quasi-administrative variety, as will appear later, and if it does not possess or exercise any real legislative power it assuredly does something more than merely debate and adopt resolutions.

For one thing, the Assembly provides for many Members their most intimate contact with the League. Unless they are represented on the Council or have extensive dealings with the Secretariat, it is here that they come into most direct relation with the Council, the Secretariat, even the Labor Organization and the Court, and with one another. They are here able to make themselves seen and heard and felt in general League business as nowhere else. That it is the less privileged Members who are in this position does not, needless to say, diminish their disposition to be heard and felt on the occasion of Assembly meetings.

In the second place, the Assembly appears to possess

term "meeting" to refer to a meeting on a given day or portion of a day in the course of a month's or week's session.

an established position of eminence as a body which neither the Council nor the Secretariat possess, strange as that may appear at first glance. It is true that in League nomenclature each Assembly is a distinct body: the First, or the Fourth, or the Eighth Assembly. But it is always "the Assembly." And while in League nomenclature likewise the Council is always "the Council" and its meetings merely the tenth, thirtieth, or the fortieth meetings, as the case may be, of the Council, the element of decisiveness or importance in the Assembly sessions seems greater. Each session of the Assembly seems more significant than any session of the Council, just because Assembly sessions are few in number. What is more, the composition of the Council—in terms of Members represented thereon—changes, while that of the Assembly is in principle constant. As for the Secretariat, its non-political character, its lack of anything like formal sessions, and its general obscurity, seem to place it at a decided disadvantage in comparison with the Assembly as far as prominence and established position are concerned.

This is to be thought of entirely apart from the formal relations of subordination or superiority among the organs of the League, a question which we shall have to consider in a moment. The peculiar dominance of the Assembly is largely psychological and moral. It is here that the corporate personality of the League is most clear. It is here that the community of feeling among the Members is at its maximum. It is here indeed that international idealism is most vigorously expressed, not in works and tacit assumptions as in the Secretariat, but in principles and aspirations explicitly formulated and declared. The Assembly of the League of Nations is the personification of the international federation in its most vivid and vigorous form.

That delegates from all Members may, on their own request, speak in Assembly meetings serves principally to produce this result. They speak, indeed, to the subject in

debate, but they are able to bring into the consideration of whatever subject may be before the Assembly those ideals of international coöperation and solidarity which underlie the whole League structure. With all due reservations the Assembly's voice may nevertheless be accepted as the voice of the nation as it cannot be heard elsewhere.

There are, however, certain handicaps under which the Assembly labors which undoubtedly diminish its effectiveness. Its sessions are brief and infrequent, its membership, in terms of states represented, somewhat varied and unequal, and its personnel uneven in technical and political capacity.

That the Assembly should extend the period of its session from one month or less to six weeks or two months would seem a rash suggestion to those familiar with the scene in Geneva during Assembly sessions, and to those workers in the Secretariat who are harassed and driven to desperation during those strenuous days. But this very fact should assist in an appreciation of the situation. Because of the brevity of its period of session the Assembly must work at an intense pitch. Committee meetings and personal conferences must be held day and night. Investigations and reports must be carried through on very short notice, no matter how much advance preparation has been made. If Assembly periods were longer this pressure would be reduced, however, not increased. And more careful and leisurely reflection might be promoted. At present the Assembly does not in fact have sufficient time to do its best work.

The great objection to longer Assembly sessions arises from the difficulty which ministers of state or other important personages in Member states would find in remaining away from their posts for several weeks. It is difficult for such persons to attend the entire session of the Assembly as it is. The defect in the present practice may be traced, therefore, to another source, namely, to the fact

that the Assembly meets only once a year. Meeting only once a year the mass of work to be accomplished is too great for the time available, and the time necessary for even moderately effective consideration of that business is greater than can be spared by those most needed for the task. And the intervals between Assembly sessions are too long to permit the Assembly to keep in closest touch with League affairs. Sessions of three weeks or a month held twice in the year should remedy all of these difficulties—say sessions held in March and September, as in 1926, instead of only in September, as is usually the case.

The delegates in the Assembly are seated at desks on the floor of that body in an alphabetical order, beginning with Abyssinia and ending with Venezuela, and this order of seating affirmatively symbolizes the equality of the Members, from the point of view of legal theory, in the Assembly. Negatively that equality is symbolized by the absence of any privileges or priority in membership or office. While we can no longer quote Marshall to the effect that "Russia and Geneva" are equal, we may say that at Geneva Britain and Panama enjoy equal rights in the Assembly of the League of Nations.

In practical political influence, of course, the situation is very different. Among the delegations in the Assembly there are ten or more which hardly count at all. Certain Members are usually without representation entirely; most frequently the absentees are Latin American states. Others are only represented by partial delegations. Others are represented by persons selected from nearby diplomatic or consular staffs rather than being sent out from home capitals. And among the full delegations some ten or fifteen exercise preponderant political influence and power.

This last is as it should be. To attempt to give Panama power in League deliberations equal to that exercised by Great Britain or France, not to mention China or India, would be to attach superstitious value to the fact that the

few people of Panama are organized as a distinct state. Such an attempt would be bound to fail for practical reasons—competitive national power determines national political influence in the League as elsewhere—as would any attempt to give power merely according to population or area. It would, moreover, deprive of some of their power certain Members in the Assembly, such as Belgium and Czechoslovakia, who actually exercise an influence not unfelt by the Members of first rank, and whose position could not be improved by any attempt at formal discrimination. The present situation—formal equality with actual inequality according to actual power and influence—is best for all concerned. It may be added that nowhere else in the League organization is this situation reproduced.

It must be apparent, in addition, that the delegates represent their Governments in the Assembly, rather than speak for themselves individually. It is true that delegates do not always possess detailed instructions on all matters before the Assembly. They are not all of them always in close touch with the home capital. They speak frequently on the basis of personal opinion and feelings. But formally and on all important matters, and in the case of delegates from the leading Members, they speak as delegates. This situation has its merits and its defects. It makes for caution and responsibility; it gives to the utterances of delegates more significance. But it retards rapid action and it reduces the value of the Assembly as a popular representative body. The fact that delegates are appointed by executive departments in charge of foreign affairs in Member states instead of being elected by popular vote enhances this effect.

A further result of all the circumstances surrounding the organization of the Assembly is seen in the unevenness to be observed among the personnel of the delegations. Certain individuals stand out in an Assembly session as powerful leaders; most of the delegates are nonentities. Certain delegates reappear year after year, others never appear

but once. Certain delegates are leaders in the national life at home, others are never heard of outside of the Assembly which they attend—as, indeed, they are not heard of while there. And with the existing inequalities among the Members and the distances of many national capitals from Geneva making the utilization as delegates of persons on the ground more economical for smaller states, this phenomenon seems more striking than it is in national representative bodies, where it is not, indeed, unknown.

The foregoing considerations should not be thought of entirely in terms of equality or inequality among the Members or the delegates. The qualitative variety among the nations represented and the variety of representatives present is as important. In one Assembly sit delegates of Sweden and Liberia, of Japan and Canada, of Chile and Finland. Men and women of all religions, all races, all sorts of manners and customs, all sorts of economic and social and cultural backgrounds compose the Assembly. Widely differing legal philosophies and political traditions are represented, not to mention the widest sort of divergences in temperament and personality. This is natural, and inevitable. It gives color and reality to the Assembly. It does not give it solidarity or uniformity of outlook in spite of the relatively commonplace and even drab appearance of these delegates, all in civilian European dress, as they sit at their desks in the Assembly. And the further the delegates progress from discussion of general ideas in plenary meetings to detailed concrete work in committees, the more these divergences become apparent.

The impression that the Assembly is merely a show-window for the League, however, like the suggestion that it is merely a debating society, is far from accurate. The Assembly works hard and it works carefully, especially in committees. On administrative matters its power is decisive and its study of such problems is correspondingly serious and its voting of real significance.

An examination of the records of the Assembly in plenary session, moreover, will reveal the fact that even here the consideration given to the various questions under discussion is not only serious but even laborious. It might be said that only in a few representative bodies in Europe and America does the level of intelligent and searching debate rise as high as in the Assembly of the League. There is the usual amount of empty oratory. There is, however, much more than an equal amount of solid discussion. The very seriousness of the issues debated has much to do with this. The quality of debate varies widely from time to time, but Assembly discussions even in plenary session are real and effective discussions.

In Committee meetings the work becomes fairly hectic in its intensity. The reasons for this have already been indicated, in part; it is not, moreover, a desirable feature of the situation. When a relatively limited number of delegates must take a leading part in the work of two or more Committees the difficulties are even greater. Finally, it is true that not all of the Committees are equally busy or equally efficient. Nevertheless it may be stated with all accuracy that here, where the pressure produced by brevity of Assembly sessions is most sharply felt, the intensity of effort and the exertion of the delegates in daily work during Assembly sessions are nothing less than phenomenal.

In its administrative work the Assembly is as intent and decisive as Council and Secretariat ever are. In the perfection of its own organization—the election of its President and Vice Presidents, the creation of its Committees—the delegates exercise a real discretion and cast their votes with real decision. Elections, even the election of the twelve Vice Presidents, do not go by courtesy. A delegate of a small state is elected President, and this not by accident. And in its election of non-permanent members of the Council and its election of Judges on the Permanent Court of International Justice the Assembly wields its power with

full consciousness of its importance, and with entire discretion. The same general comment might be made regarding the scrutiny and approval applied by the Assembly to the League budget, and the general supervision exercised by the Assembly over the work of the Council and the Secretariat alike. In these matters, indeed, any doubt concerning the seriousness or the effectiveness of Assembly activity seems entirely gratuitous and disingenuous.

The relations between the Assembly and the other organs of the League in general offer an interesting and significant field of study. The relations between the Assembly on one side and the Labor Organization and the Court of International Justice on the other have already been mentioned, and do not call for extended discussion here. But the relations between the Assembly and the Secretariat, and more particularly between the Assembly and the Council, deserve our best attention.

The Secretariat enjoys a title to its existence distinct from any authorization by the Assembly, of course, in view of the terms of the Covenant. It is not, therefore, as much at the mercy of the Assembly as are many administrative departments in national governmental systems. It is doubtful whether the Assembly could claim any definite power legally to interfere to any great extent in the internal organization and operation of the Secretariat.

Nevertheless the Assembly by virtue of its general position in the League system is able to exercise a supervising control over the Secretariat. It authorizes the expenditure of funds by that body in approving the League budget, and could thus starve the Secretariat into submission if it chose to do so. It is able to apply a careful scrutiny to Secretariat organization and activity at all times. The Secretary-General reports faithfully to the Assembly upon its activities and the "steps taken to carry out the decisions of the Assembly." And the Assembly does not hesitate to give in-

structions to the Secretariat which are, in turn, accepted in the spirit in which they are given, a spirit of blended command and invitation. The total result is the subordination of Secretariat to Assembly in all save what might be called the constitutional functions of the Secretariat, as stated in the Covenant.

In its turn the Secretariat serves the Assembly in a secretarial and administrative capacity both during the Assembly sessions and in the intervals between those sessions. It helps to prepare for Assembly sessions both in the mechanical arrangement so necessary for those sessions and in regard to matters discussed and decided or to be discussed and decided by that body. It prepares the meeting place of the Assembly, arranges for stationery and other supplies and services necessary at Assembly meetings, and the Secretary-General acts as Secretary to the Assembly. It provides information, makes suggestions, and in turn carries out decisions made by the Assembly in response thereto or otherwise. For the period of the Assembly sessions the relationship between the two bodies is very close; for the remainder of the time it is as well developed as it could be under the circumstances.

With regard to the Technical Organizations substantially the same statements may be made. Two of the six Advisory Committees exist by virtue of Covenant provisions, but the other Advisory Committees and the three Technical Organizations all exist largely as a result of Assembly action. In addition the Assembly controls these bodies by the same methods of financial and supervisory control employed toward the Secretariat; the amount of discretion allowed to the Technical Organizations, however, is much greater than that allowed to the Secretariat in all that concerns their own field of subject matter.

Finally, the Assembly authorizes, supports, and to a slight degree directs many of the conferences held with the

aid and collaboration of Secretariat (or affiliated organizations) and Council; it also receives their reports when completed and acts upon them if it sees fit.

Relations between Assembly and Council are more complicated and more difficult to understand or define.

To begin with, those relations are the product of usage rather than of specific stipulation in the Covenant or any other document. Certain provisions of the Covenant give some aid in understanding the relations in question, but very little, and it has seemed best not to attempt any rigid formulation of the respective positions of Council and Assembly except in one or two specific matters which will be noted in due time.

The main outlines of the relations between Council and Assembly may be stated both in affirmative and in negative terms. Both bodies possess certain powers independently one of another. Certain powers are held in common. In certain matters both participate but with different powers. On the other hand the Assembly is not exactly a parliamentary body which controls the Council as though it were a cabinet in a national parliamentary system. Much less is it a lower house of a legislature in relation to the Council as an upper chamber. Least of all are the two bodies totally independent of one another.

In actual fact the Assembly succeeds in influencing the Council to a very great extent. It approves the budget which includes Council expenses. It receives a report on Council activities. In that report again the "steps taken to execute the decisions of the Assembly" are reviewed. And the Assembly does not hesitate to "invite" and "request" the Council to do various things and to pass rather careful judgment upon the work of that body. It is true that the Assembly does not "instruct" the Council or attempt to reverse or even formally condemn what it has done, and it is furthermore true that the making of a report on the work of the Council and the submission of the budget to

the Assembly for its approval appear to be voluntary on the part of the Council, not required by Covenant provisions. But this only means, what is probably more significant than any formal allocation of power would be, that the Assembly by its very nature and moral prestige is able to dominate even the Council in general League business.

At one or two points, indeed, the Assembly possesses and exercises formal legal power over at least the composition of the Council. The size of the Council is ultimately controlled by the consent of the Assembly, the proposals of the Council on this matter being regarded clearly as proposals merely. Likewise the Assembly selects nine of the fourteen members of the Council in any given year. It is, of course, true that these elected members speak for themselves, principally, after they are elected, but the members of the Assembly expect them to maintain in the Council what may be called the Assembly point of view wherever opportunity offers.

There are two qualifications to be made of the foregoing description. The Council is able to make its own views heard in Assembly meetings, and it both shares in the preparation for Assembly sessions and in the execution of Assembly decisions. Various members of the Council are also members of the Assembly, in the natural course of events. Indeed, they are among the members of leading influence in the Assembly. They do not forget the point of view of the Council when they are speaking on the floor of the Assembly.

The Council, in collaboration with the Secretariat, prepares the program of the Assembly and watches over its activity day by day during the session. Finally, the execution of Assembly decisions and requests or recommendations lies mainly in its hands, acting itself or through the Secretariat or agencies specially called into being for that purpose. It would be going too far to aver that the Council and Secretariat run the Assembly; it would be grossly in-

accurate to overlook the fact that they have a very large share in its work.

When we turn to the subject matter of Assembly action we find a wide variation in both the form and the effectiveness of that action.

On certain matters, for example, the Assembly is wellnigh powerless and must leave things largely in the hands of the Council, the Secretariat, other organizations of the League, or the Members themselves. It cannot engage in the practice of arbitration or judicial settlement; that it must leave to the Court. It cannot touch labor questions; these it must leave to the Labor Organization. Even on Mandates, Minorities, and Disarmament, in which it has a very real interest, it can do little itself. It must rely upon the Mandates Commission, the Minorities Section of the Secretariat, or the commissions and conferences dealing with disarmament, respectively, for results in these fields. It can debate and discuss these matters with some moral effect. It can invite, request, and recommend, but it cannot decide, or do, anything of moment in these fields. Finally, in a number of fields such as Economics and Finance, Health, Communications and Transit, and Social Problems, it may exercise more influence than in highly political matters such as Mandates and Disarmament, but again it must turn to the Technical Organizations, the Council and Secretariat, and the Members themselves, for real achievements. In the settlement of international disputes by conciliation, of course, the Assembly is almost as powerless as in arbitration proper, and must leave the work of preserving peace to the Council as it leaves arbitration to the Court. It is rather ironical that in exactly those matters in which its members would naturally be most interested the Assembly is most nearly powerless. As will appear on reflection, this is not as serious as it might at first appear, but it is worth noting.

It is rather when we turn to certain fundamental con-

stitutional problems that the power of the Assembly appears at its maximum. It has not yet attempted to exercise any power it may have in revision of treaties which have become inapplicable or unjust; this activity must probably await the evolution of international coöperation for some time yet to come. And in regard to the problem of sanctions and the preservation of international peace and security, closely connected as it is with the problem of disarmament, the Assembly, while it has labored over the matter repeatedly and faithfully, has not been able to accomplish very much, as will be explained more fully in a later chapter. But in devising amendments to the Covenant and electing new Members to the League, matters of fundamental importance, the Assembly has been as effective as in the kindred matters of electing Judges of the Court and non-permanent members of the Council. It has shown great caution in one case and considerable circumspection in the other, but it has made it clearly evident that it, the Assembly, is master of the situation. So it is in the approval of the budget and in the inspection of the audit of expenditures. The Assembly is most powerful in functions which may be described as the exercise of fundamental powers of organization and reorganization and administration connected with the constitutional structure of the League. Legislative power it has little or none, administrative and executive power of the ordinary variety none, judicial power none. But in the exercise of powers to supervise from above, to reorganize and reconstitute League organs from below, in short to control the internal structure and exercise of power by the organs of the League, the Assembly is supreme. Its growing moral prestige, added to its constitutional position, makes up for any lack of formal legislative or administrative powers on its part.

CHAPTER XXIII

THE COUNCIL

THE Council is undoubtedly that organ of the League of Nations whose essential nature and the essential nature of whose activities it is most difficult to divine and to describe.[1]

Yet it is impossible to attain any complete or fully informing conception of the League as a whole without including the Council in such a study. The best that can be done, therefore, is to attempt a description of the Council and its activities while remembering that any such effort must be somewhat inadequate under all the circumstances.

The difficulty encountered in this connection is not, of course, due simply to secrecy in Council action. It is true that the Council meets in executive session from time to time. But a substantially complete record of what occurs in such sessions is made available at the conclusion of the meeting, and it is hardly possible to attribute the difficulty here in question to such discrepancies as there may be between the public report and the actual happenings in the Council meeting. For the difficulty is hardly less in the cases where the Council meets in public, and where, accordingly, its action while in session may be followed in all its details.

One difficulty in describing Council action arises from the fact that the Council, unlike the Secretariat and the Assembly—and the Labor Organization also, for that matter—is a relatively simple body, internally. Being a small

[1] There is no work available on the Council alone. The student should consult records of Council meetings in the *Official Journal*. See also, above, Chap. XVII, p. 308, and Chap. XVIII, pp. 327-332.

body, it is not divided and subdivided internally in such a way as to reveal its activities in its structural form. It acts largely as a unit. Its committees and reporters are few and they are fugitive in their existence and activity and are designated by subject matter alone. We know beforehand that the Council deals in the main with the same matters with which the Secretariat and the Assembly deal. What we need to know is how the Council treats the subjects with which it deals, and its internal organization affords no aid in this direction.

Furthermore, the Council has a wide range of activity, the widest of any organ in the League system, even if we include in this statement the Labor Organization considered as a unit. It deals vigorously with many matters not dealt with very fully or effectively by the Assembly, such as political disputes, for example, or by the Secretariat, such as elections of Judges on the Court of International Justice. It has many duties in common with them also. Hence its work is not as highly simplified in quality as is that of the Court, which, though small and simple structurally, as is the Council, may easily be understood in what it does and how it does it.

The main reason for the difficulty encountered in understanding the activity of the Council, and the most essential fact concerning its activity, however, is still more subtle. This is found in the fact that the activity of the Council takes place very largely outside of Council meetings themselves. This means in part that the decisions reached in Council meetings are prepared in private personal conferences between representatives of the Members on the Council prior to plenary Council meetings, or, to a less extent, in meetings of Council Committees, with or without the participation of officials of the Secretariat. Council proceedings as a result frequently appear to be very formal and to constitute mere skeletons or surface indications of activity which is going on elsewhere. This

activity is similar to those activities of the Directors of certain Sections of the Secretariat such as the Political, Minorities, and Mandates Sections, which were described as quasi-diplomatic in their nature. It may, on the other hand, be largely administrative in character—the planning of conferences, arranging for investigations and so on. It provides a very useful supplement to formal Council action; but it also provides—especially the diplomatic variety of this activity—some ground for a charge that much Council action is prearranged privately outside of Council meetings, and merely ratified by that body.

This leads to a further and final restatement of the essential character of the activity of the Council. That activity consists mainly in serving as a medium through which the forces operating among the Members may function. The Council does not decide issues sharply as does the Court. It does not, in general, argue out matters and adopt resolutions and exhort the Members as do the Assembly committees and the Assembly itself. It does not administer or execute decisions as does the Secretariat, or even, as a Council, work for observance of League agreements and principles as do certain of the leading officials in the Secretariat; or strive, as a Council, to secure compliance with national demands as do certain of its members in private discussions one with another. It provides the medium—the opportunity, the occasion, the machinery—by which its members may work with one another to satisfy national demands or to secure the development and operation of League purposes through League procedure. Curiously enough, this very vigorous little body is committed to a passive rôle as is no other organ of the League, and yet is able to accomplish more—or to see more accomplished—by this method than the other organs of the League are certain to secure. We shall return to this discussion later.

The composition of the Council has been described in

general terms.[2] We now come to a consideration of certain problems arising out of the facts of the situation in that regard.

As has been said, the elected members of the Council are expected, so far as they find it possible to do so, to express in the Council the point of view of the Assembly. This they do repeatedly. This means, in the main, expressing the point of view of the smaller states and of the international community as a whole. And in so far as different parts of that community, different parts of the world—the Far East and Latin America—are represented in the Council by the elected members thereof, they are expected to speak for their portions of the globe in the Council meetings. Japan, however, permanently represented on the Council, is not regarded as a representative of the Far East in that body so much as being there in her own interest and being somewhat closely identified with the other permanent members, all European Great Powers. It is China who must speak in the Council for the Far East.

The chief limitation upon the services of the elected members as mouth-pieces of the Assembly on the Council is to be found in the natural disposition of all members of that body when in Council meeting to speak for themselves. The struggle for seats on the Council is not a struggle for an opportunity to represent the Assembly on that body, needless to say. It is a struggle for an opportunity to represent one's own national interests. Poland and Brazil and China have desired seats on the Council in order to speak for Poland and Brazil and China, not for the Assembly.

If this is true of the elected members of the Council it is doubly true for the permanent members. The Great Powers insist upon permanent seats on the Council in order to protect and promote their own national interests. They do not completely dominate or control Council activity, the

[2] Chap. XVII, p. 308. On the important reorganization of 1926 see *Official Journal* as already cited.

presence of nine small powers sufficing to check any such tendency rather effectively. And they, the Great Powers, do not entirely lose sight of the general interest of the international community as a whole, with which, indeed, their own national interests are intricately involved. But they at least lead and direct Council action and they do so as much as they can in their own interests. Japan, for example, sits in the Council meetings chiefly to defend and advance her own interests in competition not only with the elected members but in competition with the Great Powers of Europe as well.

This situation provides some ground for the charge which is not infrequently made that the Great Powers, particularly the Great Powers of Europe, in fact "run" the League through the Council, and manipulate it solely for their own selfish purposes. And it raises one of the two or three most fundamental problems in the whole field of international organization, namely, the problem of the value of international organization and the possibility of anything like equitable international coöperation in view of the existing gross inequalities and differences of interest among the nations.

In the first place, however, it is desirable to reduce the facts to their simplest possible terms. In doing so we shall also come in sight of the reply in terms of interpretation and principle. Who is it that dominates the Council, as it is alleged? The Great Powers. But Japan must be set aside somewhat in any such statement, in view of her non-European position and interests and in view of her still insecure position as a Great Power in general world affairs. That leaves Great Britain, France, Italy, and Germany to be considered. Clearly, however, Germany is not in a position to exercise the influence which she might exercise if the recent history of international relations were not what it is, and if Germany possessed colonies and free revenues and armaments such as she once possessed. On similar grounds

—in view of the peculiar political situation in Italy, in view of her somewhat inadequate material resources for use in international conflicts—Italy may not be regarded as occupying the undisputed position of a Great Power which she claims; there are reputable students of international relations who frankly hold that Italian claims to such a position constitute an imposture, and an imposition on the world's confidence. This would leave Great Britain and France as the only Powers secure in their position in the Council, and even here the post-war financial position of France and the intra-imperial situation of Britain might seem to raise doubts about their secure power and assurance.

Such an analysis reveals the real reply to the allegation that the Great Powers run the League at their discretion. Great Britain and France themselves are not sufficiently powerful and free of the need for considering Italian, German, and Japanese views to take any such attitude. Not only are Italy, Germany and Japan unable to disregard British and French views, but they are also compelled to take account of Roumanian, Czech, and Chinese views respectively. And among the five leading Powers on the Council there exist such divergences of interest that they are not able to combine as a group so as to impose a united will upon the remaining members of the Council even if they were not outnumbered and faced with the constant threat of an appeal to the Assembly and world public opinion. In short, the facts do not justify the allegation as made.

What is more to the point, perhaps, the neutralizing influence in the situation, the influence which blunts the edges of the wishes and demands of the Great Powers, is precisely the enmeshment of those Powers with their demands in the general structure and activity of the Council. The argument against League and Council here under discussion implies that it is positively injurious to general international interests, to the interest of world justice, to

have provided the Great Powers with a piece of machinery whereby to make their will effective upon the rest of the world. It constitutes an application, in the international sphere, of the thought that governmental organization and procedure serves only to reënforce the power of the powerful. It implies that only when the members of a community are substantially equal can government be organized and conducted equitably. The facts are that the Great Powers have no unified will to impose upon the rest of the world, that they are trammeled rather than supported in any attempt at such an object by being brought into League and Council organization, and that, indeed, the inequalities among the Powers are minimized rather than enhanced by such an arrangement.

If we turn to the suggestion that the differences of interest existing among the Powers make unified Council or League action impossible we encounter a more important criticism. It is also true that it is in the discussions in the Assembly and in the practical work of the Secretariat, rather than in the Council, that such differences tend most to be minimized and reduced. It may even be true that in Council meetings such differences as exist are at times accentuated. But it is also true that the same process of conciliation of differences of interest and policy which goes on in Assembly and Secretariat goes on in the Council to some extent, and that this process goes on most of the time in that body, the occasions where differences are accentuated being confined to the times when critical disputes among two or more of the members arise in the course of Council business.

This compels us to pass to the activity of the Council in more detail.

Much Council action is, indeed, negligible in importance. It is surprising to discover the amount of time spent by the Council in acting in an almost wholly mechanical way upon matters of little critical importance. Assembly de-

cisions or requests are ratified or passed on to the Secretariat. Secretariat work is reviewed or passed on to the Assembly. Work of the Labor Organization or the Court or the affiliated organizations is given similar treatment. Administrative arrangements are made for investigations, conferences, or what not. Many technical matters come up in Council meetings from affiliated organizations—health questions, for example—with which the members are hardly competent to deal and with which they certainly have no time to deal adequately in any except a formal manner. Much Council action is therefore of a routine procedural character, decisive of nothing; the central position of the Council is responsible for this, in the main, and the work is necessary and useful; but it seems out of keeping with the nature of the Council as normally conceived.

It is in political matters, in discussion and treatment of questions involving clashes of national policies, that the Council appears to perform its own peculiar function. These questions may arise in isolated form, as in the form of a boundary dispute, or in connection with a question of humanitarian or social reform, such as the traffic in narcotics. It is here that the nature of distinctive Council action is most sharply defined.

That action may be described as conciliation in the technical sense of that term as used in diplomatic practice. It consists of permitting or at most inducing the parties in interest to attain a settlement by free agreement. There is, however, one very important element in Council action in this direction which is not present in mediation or conciliation as ordinarily practised. That is the presence, with a right to make their views heard, of other members of the international community. The other Great Powers are present when France and Italy attempt to adjust their differences, and the elected Council members as well. They may not say much, they cannot of right demand much if anything, and France and Italy must reach an agreement vol-

untarily. But the presence of the non-disputant Powers imports into the transaction a quality—the quality of consideration for general international interests—the presence of which elevates this sort of action in the Council to a plane possibly above legalistic decision by the Court or legislative settlement by the Assembly, if that were possible. Even where terms of adjustment are reached, as was suggested earlier, outside of Council meeting, or in committee, the results must be brought into the Council and, as it were, ratified, before they become finally operative, and this provides the necessary opportunity for the sort of general scrutiny just described. Appointment of relatively disinterested states upon committees in such cases promotes the development of this sort of action very definitely. Voluntary agreements between disputants with adequate consideration for general international interests constitute the essential quality of action in the Council, and a very high type of political action when measured by any standard.

The function of the committees of the Council, and of their reporters, in this connection is peculiar and should not be overlooked. These committees are used primarily because time and the facilities of general discussion in Council meetings are not adequate for the treatment of many problems before the Council. It is possible through the committees to draw upon the aid of the Secretariat in preparing for final Council action. But on political questions the committees permit something else to be accomplished which might be impossible in full Council meeting, namely, compromise. The willingness of disputants to defer to the report of a committee of the Council as submitted to the Council by the reporter of the Committee is considerably greater than the willingness to give way in the first discussion in full Council, especially where there has been an opportunity, as there always is, for them to share in the deliberations of the committee and in the formulation of the committee report. The whole procedure resembles

submission of a question to arbitration. Just as questions among Members of the League in general are now referred to the Council instead of being threshed out in the diplomacy of the old style, so such questions when raised in Council are now referred to Council committees. Having thus been provided with a sufficiently confidential atmosphere they can finally be settled, and the settlement referred back to the Council and thence to the Members for acceptance. It is an interesting and instructive performance.

With this performance in view it is possible to consider the question of the size of the Council more intelligently. If the Council must act as a unit or be accustomed to act as a unit it must be kept small, and fourteen members would be close to the maximum practicable membership. In fact, however, the Council acts only in part as a unit, as we have seen. It is in large part a mediatory or ratifying body, the real actions taking place elsewhere. This being the case it may be suggested that the Council could be expanded considerably without loss of efficiency. It would thenceforward be unable to work in any other way than through committees, and this might be a misfortune on occasion. But it must be admitted that already the Council is far from constituting that highly unified little organ, capable of, and accustomed to, taking action itself without further reference, which it is sometimes considered to be.

Certain minor aspects of Council meetings may be noted in passing, aspects of Council action more or less connected with what has just been said.

Thus it must not be thought that the Council is entirely free from certain qualities which might not be expected in the small executive body which it is often visualized as being. Oratorical outbursts are not unknown in that body. Nor are discussions of general principles and the fundamental problems of organized international coöperation, the statement of principles to be applied to specific cases

or in committee activities. Something like debates develop from time to time. And all of this tends to increase rather than decrease with the increase in the size of the Council and its resort to committee action on a more extensive scale. We even encounter remarks made for the public audience outside of the walls of the Council chamber. Nothing could be further from the concept of the Council as a secret and self-contained executive body.

One need not and cannot conclude that the present developments will progress to their ultimate possible conclusion. But the possibilities of Council development cannot wisely be forgotten. The Council may displace the Assembly as the representative legislative, or at least decision-making organ of the League. This would leave to the Assembly, meeting not more but less frequently, the rôle of constitutional Assembly, concerned only with fundamental problems of League organization—the chief field of interest of the Assembly at the present time, as already indicated. Council legislation—to continue the speculation one step further—would at first partake of the nature of special legislation in concrete cases, as is true in the early history of legislative bodies generally. But it might develop into general legislation later, thus leading to a situation differing widely from the situation in the Labor Organization, where legislative functions of a sort have been possessed by the General Conference from the very beginning. This is more probable, it would seem, than the conferring of legislative power on the Assembly comparable with that possessed by the General Conference of the Labor Organization. At all events, the evolution of the powers of the Council and its rôle in the League will demand the closest and most constant observation.

Second, the position of the Secretary-General and Secretariat personnel generally in the Council meetings should be noted. The Secretary-General is present in Assembly meetings but he has little or nothing to say. Other

Secretariat officials may be present, but they have still less. In Council meetings, however, the Secretary-General and other persons from the Secretariat are not only present but are frequently called upon for information and even for suggestions. And problems of personnel in the Secretariat—the appointment of certain individuals from certain countries—have taken on some considerable degree of importance.

In other words, we may detect the development of the parliamentary or ministerial relationship between Council and Secretariat rather than between Assembly and Council or Assembly and Secretariat. That this development would not conflict with but would reënforce the development just discussed, does not weaken confidence in the accuracy of this analysis. Even the solicitude of members of the Council regarding appointments in the Secretariat seems to imply a political interest in that direction which suggests that the ministerial concept of the Secretariat is held by the members of the Council more or less consciously. Needless to say, if this relationship should develop very far, the attitude taken by the Ministers—the Secretary-General and Directors of departments—would have to be that taken by Ministers in the Government of that very progressive and enlightened little country within whose territory the headquarters of the League are located, the attitude, namely, that the ministerial agent acts according to the voice of the representative body, rather than that he resigns or appeals to the public over the heads of the representatives, which is the more common but less efficient practice in other parliamentary countries.

All this is, perhaps, rather fanciful and speculative. It is believed that it is substantially sound. In either case it must be considered against the background of the actual conduct of business in the Council. Here the units are certain individuals representing certain countries, and the attitudes and utterances of the members are often highly

colored with nationalistic points of view and personal views and experiences. Personalities stand out here more clearly even than in the larger Assembly. The members are naturally men of deeper and broader experience than all but a few members of the Assembly. Leading personalities remain members of the Council year after year and become familiar with League business as a whole and with one another as is not possible in the Assembly or even in the Secretariat. The result is a vivid and often astounding intermixture of humanism in Council discussions. That the members of the Council are somewhat free from public scrutiny and are under few illusions concerning the realities of international relations leads at times to an amazing degree of candor in discussion, the usual formalism and even artificiality of diplomatic discussion being considered. It leads also to the development on the part of the members of a sense of humor regarding League business, and to expressions of that sense of humor, not to be found in solemn Assembly debates. In whatever direction the Council develops, it will develop under the impulse of vital national and personal influences rather than by formal mechanical change.

This does not mean that the note of formal diplomacy is entirely absent from Council meetings. On the contrary, it is precisely in the Council, of all League organs, that the traditional note of diplomatic intercourse is most prominent. The elaborate diction, the complimentary remark, the indirect reference, the formal reservation of rights,—all the habitual devices of the diplomatist—are observable in Council discussions. That this is true particularly when the Council is engaged in discussions of political questions merely enhances its significance, because, as has been suggested already, it is in discussion of political questions that the Council seems to be most peculiarly itself.

So, in conclusion, it must be added, is the Council most

exist, are treated by general convention or informal administrative arrangements under League auspices. Much is done in this direction, indeed, which would probably prove too severe a strain to be borne effectively by the simpler types of diplomacy and treaty negotiation.

It is, however, in the fields of conference and administration that the effect of the League upon organized international coöperation is most obvious. The facilities which the League possesses and generously provides for the holding of international conferences are so superior to any that can be provided extemporaneously and independently that few are the conferences now held outside of League precincts. The conferences held by or under the auspices of the League cover so much ground that there is little occasion for extra-League meetings. More conferences are now being held than would have been held, probably, if the League had not been created; but apart from this the facilities which the League provides in the direction of the preparation for, and the conduct of, international conferences are such as to make it seem quite natural for the states of the world, even non-Member states, to confer at Geneva rather than in London, Paris, or even Washington.

The work of preparation and conduct of conferences falls to the Secretariat, as we have seen. In reality it is the facilities of the League in the field of international administration which, very largely, produce the effect just noted. These facilities extend, however, beyond the fields of preparation and conduct, and extend to the stage of execution of the conference decisions. One of the chief claims which the League may make to act as the headquarters for international conference is the facilities which it can provide in the Secretariat and affiliated organizations for carrying out the results of the conference.

There are two qualifications to be noted here, however, which relate in part to the place of the League among the nations of the world in general. Non-Member states hesi-

tate to join in conferences under League auspices and to permit independent administrative bureaus to be placed under League control; in the latter attitude the non-Members are not, moreover, alone. Non-Members do not appear to be greatly worried lest conferences held under League auspices suffer from League influence; at most they may fear the influence of certain nations prominent in League membership, which is quite another matter. But they do hesitate at times to permit execution of decisions of conferences in which they have taken part to be involved in League machinery and League procedure, assuming, erroneously perhaps, but naturally, that this might mean coercion to be exercised by or against them at some future stage.

For similar reasons non-Members hesitate to permit independent international administrative bureaus to be placed under League auspices. In this they are partly joined by League Members and, more directly, by the persons connected with the work of these bureaus. Apart from such considerations, of course, there is room for the thought that too great a concentration of international administration in League hands would be undesirable on general grounds and might impair the effectiveness of the work conducted by the bureaus. It may also be just as well for the League not to have its administrative organization rendered any more elaborate and complex than it is already. But the real cause for the phenomenon under examination is probably the cause which has led to the creation of the semi-independent Technical Organizations in the League, namely, the tendency for institutions of administration, because of political and personal influences, to develop independent existences in spite of the fact that administrative effectiveness demands unity and close correlation.

As for international judicial settlement, the League Court cannot be said to have had much effect yet. On paper it promises to supplant the old Hague Court of arbitration

and the many bilateral arbitral tribunals created from time to time by individual states. Some indications of this in practice are already evident. But international adjudication is at present in such a stagnant condition, as already described, that nothing much can be said on this point yet.

The relation of the League to non-Member states is an ambiguous matter. It is not to be understood or stated by reference to that article of the Covenant which treats the topic in so many words,[4] but by reference to practice in fact.

With regard to the relations between the League and certain states such as Afghanistan, Andorra, Egypt, and others, nothing needs to be said. They are too small or too unimportant to render membership or non-membership on their part of any importance. The presence of Egypt in the League, if it should come about, might seem to promise interesting and important political repercussions of one sort or another, but this is probably a deceptive thought.

Nothing need any longer be said concerning the relations between the League and Germany prior to the entrance of Germany into League membership. What might be said in that connection may now be noticed better in another connection.

The absence of Costa Rica, Ecuador, and Mexico will not bear the same summary dismissal, but will be discussed later in another connection also. Mexico may be found among League Members in the not distant future.

The absence of Turkey is attributable to political reasons, of course. The Allied post-war campaign against Turkey both directly and through Greek military action in Asia Minor placed Turkey in an anti-European attitude which was sharply felt in her attitude toward the League. She has subsequently accepted League participation in administration of the Straits, and, in spite of her hostility to League action in the Mosul matter, has indicated that

[4] *Covenant*, Art. XVII.

she would apply for membership soon. In the meantime some League action in Turkey is found to be possible and Turkish non-membership does not seem very critical from the point of view of League prestige.

Russian non-membership is more serious, but not more important than Russian non-membership in the circle of nations as such. The other nations need Russia economically more than they do diplomatically, and the League certainly needs Russia less, except in the field of efforts at land disarmament, than Russia needs the League. In the meantime some slight League action in Russia is possible, and Russia has given the League a limited degree of coöperation in certain matters. It need hardly be added that Russian hostility is, as is the case of Turkey, wholly political, and is directed against leading powers in the League rather than against the League idea.

With regard to the United States much might be said and much must be said to give any accurate picture of the situation. The United States led the other nations of the world in the foundation of the League. With the exception of any ideas of federal coercion which may exist in League law or practice, the whole philosophy of League activity is more in accord with American thought on international relations than with the traditions of any one of the Great Powers among the present League Members. More League publications are sold in this country than in any other country in the world, and the League enjoys, probably, more attention and interest as an idea and an institution in America than in any other part of the globe. When it is added that many American individuals have participated, in various capacities, paid and unpaid, in League activities of all sorts, from the very beginning, it will be seen that American non-membership must be appreciated very carefully in order to be properly understood.

There is little doubt about the accuracy of the statement that considerations of party politics and personal ani-

mosity played a chief part in the decision of the United States Senate which kept the United States out of the League in 1920. It is also startling, in view of the history of the past eight years, to realize how close we came to joining the League at that time; only the intervention of Senators Borah and Johnson at 11 o'clock on a critical Friday morning at the end of January, 1920, prevented, probably, a final agreement between Senator Lodge, speaking for the Republican opposition, and Senator Hitchcock, speaking for President Wilson, on a compromise set of reservations which would have led to American membership at that time.[5] Finally, it is impossible, as President Coolidge, not untalented in his grasp of the meaning of political events and election returns, has pointed out, to regard the election of 1920 as a vote against League membership,[6] even though it may not be possible, as others have contended,[7] to regard it as a strong vote in favor of that action.

There is no doubt whatever, on the other hand, that many Senators, and many private American citizens, regarded the League as embodying an element contrary not only to the mythical policy of isolation to which they erroneously but sincerely believed we were committed but also to the degree of national sovereignty and independence to which they felt we must cling, and to sound principles of international relations. That element was coercion by military force, on the part of the League, acting through its Members, for the enforcement of League agreements or decisions and for the preservation of peace. It is to this consideration that honest American opposition to membership in the League may most accurately be attributed.

This interpretation has a significance not merely of an historical character. As will appear in the next chapter,

[5] *New York Times*, 24 January, 1920, p. 1.

[6] Address of 23 November, 1920, to Boston business men; *New York Times*, 24 November, 1920, p. 1.

[7] Colcord, entire.

this element in League law and practice has undergone considerable revision since 1920, and if or when the American decision comes to be reconsidered the state of facts will have changed somewhat from what it was at that time. More important still, for the time being, is the fact that, this being the element in the League to which, and to which alone, serious objection could be taken in accord with historic American policy, we have become more and more willing to participate, upon invitation, in League action, unofficially, semi-officially, and finally officially, all the while remaining a non-Member.[8] The vote to join the League Court, under reservations unnecessarily elaborate again because of hostility to the supposed power assumed by the League to impose its authority upon unwilling states, is merely one example of this participation. That participation has, indeed, become so extensive as to justify the statement that the United States is already "in the League" in a sense and to a degree which cannot be said of the majority of its Members!

For the future of the relations between the League and the United States as well as of relations with Russia, Turkey, the Latin American states, and China, much depends upon the evolution of the League as a world organization. To this we now turn, reserving a discussion of League action by way of coercion upon Members for consideration later. Where does the League stand today among the nations of the world?

The geographical distribution of the Members of the League is a simple matter to describe. In December of 1926 when League membership was at its maximum, there were five Members from Asia, five from Africa and Australasia (three only from Africa itself), nineteen from the Americas (including Canada), and twenty-seven from Europe. Thus

[8] "American Coöperation with Other Nations Through the League of Nations, 1919-1926," in World Peace Foundation, Pamphlet Series, Vol. VII, No. 1, revised edition (1927).

nearly one half of the Member states were located in Europe; subsequent changes do not alter this situation appreciably.

What is certainly of still more importance is the fact that only one of the Asiatic Members can be numbered among the leading Members of the League, judging by the part played by various Members in Assembly and Council activities; that none of the African and Australasian Members can be so classified; and that among the nineteen American Members only a bare three or four have ever taken any very active part in League work; while among the twenty-seven European Members some eight or ten may fairly be regarded as prominent in Assembly and Council meetings. In other words, in the conduct of its activities the League is still further a European organization than its mere membership list would indicate. The fact that non-European states are not infrequently unrepresented in Assembly meetings and often in arrears in payment of their League contributions confirms this general picture of the situation.

When we turn to the work of the League we find the same situation to exist. Most of the important and critical problems treated by the League arise in Europe and must be settled there. This is especially true of the political problems treated by the League, and it is in the settlement of such difficulties, probably, that the League may be regarded as performing its most characteristic function. Even in its work in humanitarian matters and in regard to social problems the European applications and connections of League activity are more numerous than the Asiatic, African, or American connections. Only in the matter of Mandates may the League's non-European work be said to be of critical importance, and even here the Mandatories are mainly European states. Finally it may be noted that the League is very chary about touching any problem of whatever variety which arises in Latin-America.

Now all of this is easy to explain, is most natural, and is fairly familiar. More than half of the important nations of the globe are located in Europe. International social and political relations are most active among the European powers. It is to be expected that the chief theater of League activity should be Europe. All competent observers are so familiar with this situation that it causes no comment or surprise.

Yet it has certain important implications. It means, for example, that the Asiatic and African and Australasian Members take less interest in League activity for its own sake than they might, less than do the European Members, less than would, probably, be necessary or sufficient to hold them in League Membership at any very great sacrifice. Japan is present mainly in order to hold her position among the Great Powers; China to obtain, if that be possible, some protection against exploitation by Japan or by the European Powers themselves. South Africa, Australia, and New Zealand are present chiefly to make good their claims to independent nationhood and to control of territories wrested from Germany during the World War. All of these reasons, it is true, are premised upon the fact that the League is at present the one existing world federation of the nations, but none of these Asiatic and African states are primarily interested in or competent to contribute much toward what are supposed to be the main objectives of the League,—namely, maintenance of peace and the development of international coöperation—where those objectives must be sought, that is, in Europe.

What has just been said regarding the Asiatic and African states may be said still more forcibly regarding the Latin American states. They are hardly interested in League membership to the extent of paying their contributions. They are interested in League membership chiefly as a means of bolstering up their right to speak for themselves and escape from under the hegemony of the United

States. Certain individual delegates from certain Latin American states, like certain individual delegates from certain Asiatic and African states, are devoted to League ideals and active in League work to an extent greater than this analysis would imply, but the personal ideas and feelings of these individuals may not safely be taken as corresponding to the interest felt by the governments sending these delegates to Geneva.

Does this imply that the assumption of world union which underlies the League, conceived, as it is, as a world-wide institution, is unsound? Does it imply that, this assumption being unsound, the League as at present constituted is in a precarious position? And what bearing does all this have upon non-membership in the League on the part of Russia and the United States?

The assumption of any very extensive degree of world unity, at least in the political sphere, which was made so glibly in 1919, seems to be unsound. In the sphere of social questions some considerable degree of such unity does exist, and is growing daily. In the political sphere some such unity already exists and is doubtless also on the increase. But it is very far from the truth to assume that Japan and South Africa and Argentina are at one with Britain and Czechoslovakia in the international questions with which they are confronted, the considerations with which they must reckon, and the desires which they harbor, even in such general matters as peace and security, international justice and coöperation. The inequalities and the differences among the nations in different parts of the world are so great that a League based on the assumption of any serious degree of identity of interests among them must be regarded in truth as resting upon a tendency rather than on a fact. The lack of success which has attended League efforts in the direction of providing security and inducing disarmament among the nations derives in a spectacular manner from just this state of facts.

This means, of course, that the League cannot place any very serious demands upon its non-European Members and must hold them by its services to them until the time when they cannot do without it. At the present time, indeed, the League is fast making itself indispensable to its Members, even to its non-European Members, by just this process, and in the meantime reënforcing the effect of the natural course of events in thus producing greater world unity every day. A more specific phase of this problem will be discussed in the next chapter; here it may be said in anticipation that the one thing which the League cannot with safety do at all is to demand great sacrifices of national life or treasure from its non-European Members.

What bearing does all of this have upon the position of Russia and of the United States?

It obviously means that with respect to Russia the reasons which might lead that nation to join the League must be stronger than those which lead certain nations to remain Members at present. Russia cannot hope to play the part of an Asiatic power and lead China and other Asiatic nations away from the League into a rival league or into international freebootery. Japan has a very definite and cogent, if somewhat highly specialized, reason for remaining in the League, and as long as Japan is there China must be also; the materials for a rival Asiatic league under Russian leadership are lacking, even if Russia could succeed in persuading Asiatic nations to accept her as leader or master, in face of certain Japanese opposition. Russia must remain a European power. And, remaining a European power, she must have more interest in League membership than any one of over half the Members at the present time. If, in addition, she aspires to resume her place as one of the Great Powers she must have more reason for joining the League than do all but a half dozen nations in the world today. Unless the League disappears, and disappears not only as a world organization but as a Euro-

pean organization as well, and it is almost inconceivable that Europe will be able to get along without the present League or an immediate and very similar successor hereafter, Russia must almost certainly enter the League and that in a not very distant future.

For the United States the situation is somewhat different. We are, it is true, more closely "connected" with Europe in many "interesting and profitable" ways, as Washington once said, than is Japan, or are the Latin American states, or, for that matter, than any other non-European nation. We are far, however, from being identified with European interests to the extent to which Russia is, of course, and our position is affected by the position and attitude of the Latin American states and by our position and attitude toward them.

As will be remembered, we were responsible for leading the Latin American states into the community of nations in the beginning, now over a century ago. We have done much to protect their independent nationhood ever since. In 1907 we sponsored their appearance in organized international coöperation at The Hague. And we led them into war and into the League in the years 1917-1919. They owe their position in the League largely to us.

As already suggested, however, they have in later years seized upon their position in the League as a means of protection against a possibly overweening protection, leadership, or domination on our part. And this they have done while continuing to take part in the American system of organized international coöperation developed under our leadership in this hemisphere, namely, the Pan-American Union. The result is an ambiguous situation which must be stated and given full attention in spite of the difficulty of placing any very certain interpretation upon it.

Thus, it might be possible for the United States to prevail upon the Latin American states to drop their merely lukewarm interest in the work of the League of Nations

in Europe, to turn to the Pan-American Union and provide in that organization the more immediate services which they need for national protection and development on this continent. Inclusion of Canada in the Union, now discussed more vigorously than ever before, might promote or retard such an orientation. Codification of "American international law" in a distinct body of rules and principles alleged to be peculiar to this hemisphere, now in process, might contribute to the same end. Permanent nonmembership in the League of Nations on the part of the United States might suggest some such step on our part.

While such a development is not beyond the bounds of possibility, and is suggested by certain actual occurrences in the real world, there are three or four serious obstacles in its path. We should have to win back the confidence of the Latin American states, and that could hardly be done at the present time without radical alterations in our foreign policy. Our activities in the Gulf and the Caribbean regions, in Mexico, the West Indies, and Central America, would have to be regulated so as to allay suspicions of imperialistic designs of one sort or another. We should have to permit the Latin American states to share in the definition and application of the Monroe Doctrine. We should have to permit the Pan-American system to be developed from the plane of commercial and cultural activities to the plane of political and juristic action, and agree to obligatory arbitration of international disputes with the Latin American nations. All of these steps are demanded by the Latin American nations; so far we have been unwilling to concede one of them.

In addition to all this, we should have to overcome the natural desire of the leading Latin American states to take part in world affairs, and persuade them to be content to cut loose from Europe and find their future in America. And we should have to foreswear any great amount of cooperation with Europe ourselves, for it would scarcely be

possible to carry out such a program as that suggested above and remain on close terms ourselves with the League.

Moreover, as it may be needless to say, coöperation of the United States in the League will make the Latin American states not less anxious but more anxious to maintain their position in that body. This is the other side of this whole situation. If we persist in our present attitude toward Latin America, on the points outlined above, refuse to share the Monroe Doctrine, refuse to broaden Pan-Americanism, extend rather than contract our Gulf-Caribbean policies, we are certain to drive Latin America further and further into the arms of the League. It must be a long time before the Latin American states are able to secure serious League intervention on their behalf against the United States. But in that direction they will aim and in no other. And this whether we join the League or not; if we are not in the League it must appear to Latin America as a haven of refuge where our voice is not heard and our influence not felt and where she can appeal for aid against us; if we are in the League it must appear absolutely indispensable to Latin American states that they be present there also to defend themselves and if possible bring pressure to bear upon us in League discussions and League action.

It is not necessary to attempt to reach a conclusion in this problem in advance. At present the surface tendency seems all in the direction of the second alternative, in spite of or except for one or two rather unconvincing efforts to develop a separatist American jurisprudence in international relations, and seduce Canada away from the League. The fundamental tendencies all seem to point in the same direction, what with the gradual maturity of the Latin American states themselves, our own ever deeper participation in League activities, and the development of greater world unity as the years go by. One may await with interest the outcome of this most important conflict in

tendencies between world unity and continental or hemispherical separatism.

Nothing can be said with certainty concerning probable changes in the state-system of the world itself and the effect of such changes on League membership. We have seen four, five, and six Dominions emerge from under the British wing and assume membership in the League. We have seen several states appear out of the ruin of Austria-Hungary and assume a similar position. We have seen Poland and the Baltic states emerge from Russian possession and become League Members. We hear of similar possibilities in China, and membership in the League is suggested for the Philippines. The Mandates, at least three of them, are to be independent states and Members of the League some day. Egypt may add another African state. And other colonial or provincial units may assume statehood unexpectedly in these times of rapid social and political evolution. All this is highly speculative in character, it is true. But it is also true that to regard the state-system of the world and the membership of the League as rigid or limited, as independent statehood was once regarded as a rigid and limited thing, would be to fall into grave error. In the insecurity of post-war years there has developed in many quarters a mental attitude on this point curiously reactionary in character; hard-won national independence has been regarded as sacrosanct and the whole idea of state independence invested with an air of rigidity out of keeping with revisionist tendencies prevalent elsewhere. In the future we should look to see alterations in the state system made more frequently and more readily than in the years between 1815 and 1919. And the center of any such revisionary changes must be the League of Nations. The evolution of the state-system of the world is one of the two or three problems in the whole field of international cooperation upon the solution of which the future of any league of nations must largely depend.

CHAPTI

SANCTIONS OF LE

THERE are three element grounds upon which the regarded as constituting an a of international coöperation a Those elements are the eleme and coercion.

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Similarly, the element of c ternational coöperation by Lea value. The Assembly meets r in special session at short not and Court. As for the Secretar tinuously, as, indeed, did vari tive bureaus in the past. It is

[1] The student is urged to review Cha see also references, below, Appendix B, note 1.

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considerations arise spontaneously at times. At times they may be presented to the attention of the state by another state seeking performance of the obligations in question. Much of the success attained by League organs and officials in securing observance of League covenants is attained by the utilization of considerations of this order. Such considerations may be called the intrinsic sanctions for obedience to international obligations, sanctions intrinsic to the situation itself and the benefits to be derived therefrom by the nation in interest, again including reciprocal performance by other states acting on similar considerations. What we are discussing here is coercion of such a character that the prospective advantages of fidelity to the obligations in question or the disadvantages of refusal to perform those obligations arise from sources external to the situations involving the obligations themselves. We are speaking of such a situation as would exist where a state carried out an obligation to admit products of another state to its territory free of duty not because of commercial benefits anticipated but because of a threat of war. Or, to put it generally, because of the losses anticipated in one or another field of international relations resulting from action of another state attempting by external pressure applied deliberately to the recalcitrant state to coerce it into performance of its obligations. Such sanctions may be called extrinsic sanctions, sanctions applied by another state to the recalcitrant state which are extrinsic to the point in dispute.

Now such provisions for coercion as exist in the League Covenant originated in an effort to substitute organized extrinsic sanctions for both the unorganized extrinsic sanctions and the automatic intrinsic sanctions already existing, or to add the former to the latter. The Members of the League were to act in concert to apply to the recalcitrant state penalties which would compel obedience to League covenants entirely apart from the desirability of living up

to those covenants for the benefits automatically arising out of such action—the benefit of full knowledge of existing treaty agreements, for example. This was a radical step in the development of organized international coöperation. It created, in so far as it was provided, in legal principle a unified law-enforcing superstate.

The forms of action adopted for coercive purposes by the League may be listed as economic and military. Under the Covenant both economic and military coercion is provided for use against defaulting Members.[3] But to these should be prefixed a third type of action which is not quite League action or concerted coercion, but is at least concerted incitement to coercion on the part of individual Members.

The action last referred to consists of exposing the disloyalty of a Member to its obligations and thus inviting such retaliation by individual Members as they are entitled to take under general international law.[4] This action on the part of the League, taken either in Council or Assembly, is commonly described as the invocation of the sanction of "public opinion." Reduced to exact terms, however, this must refer to the opinions of the governments of the Members, for the League can hardly be committed to invoking action against a recalcitrant Member of its government by the individuals of other states. What is actually involved here is action by the League by way of inviting other Members to retaliate against the recalcitrant Member by any sort of activity—from war down through reprisals and commercial retaliation and still subtler forms of pressure—permitted by general international law and by the Covenant of the League itself. There is little evidence to indicate the effectiveness of this form of sanction, whether it be regarded as a true case of coercion by the League or, more accurately, a case of coercion by states

[3] *Covenant*, Arts. XVI and XVII.
[4] *Covenant*, Art. XV, Pars. 3 and 4.

who happen to be Members of the League which is incited by League action.

There is no need to recite here the details of the Covenant providing for economic or military penalties for breach of League covenants. Such penalties are provided in connection with only three provisions in the Covenant.[5] And inasmuch as the problem of coercion by the League, considered as a problem of values in the art of international political organization and procedure, is the same whether the coercion be applied to enforce respect for territorial sovereignty and independence, or to enforce compliance with an arbitral or conciliatory settlement of an international dispute, we may turn immediately to the question of whether coercion by the League, as provided in the Covenant, is a working arrangement or not.

The provisions for coercion, by economic or military means, contained in the Covenant, are, of course, provisions for concerted action by Members of the League, rather than by the League acting in its own corporate personality or through officials or agencies of its own. Proposals made in 1919 and since that time for providing the League with agencies for the enforcement of Covenant obligations have always come to naught. This in itself implies some hesitation in developing international coercion under League auspices. It is important also in estimating the present arrangement both as to its nature and its value.

Even with this understood, however, the provisions for coercion contained in the Covenant seem strangely radical and impracticable today. Members are to sever trade relations with a recalcitrant fellow-Member and even, in the last resort, to undertake military action against that Member. It all has an air of unreality now that the serious and somewhat—paradoxical as it may seem—artificial mood of 1919 has passed. One cannot read the Covenant in these

[5] Namely the provision for territorial guarantee in Art. X and the provisions for pacific settlement of disputes in Arts. XIII and XVI.

provisions today with the confidence, not to say the credulity, of the Peace Conference year.

It was not long after the League had been established before two views of the coercive provisions of the Covenant appeared which were radically opposed one to the other but which played into one another in the evolution of this element in League action.

The new states of Europe, such as Czechoslovakia and Poland, and France, feeling their position insecure in the post-war world, under the Treaty of Versailles, were led to scrutinize the protective provisions of the Covenant with great care. They were invited to disarm, and what protection could they expect from the Covenant? They soon concluded that the coercive protective provisions of the Covenant were quite inadequate for their needs. They complained of this and sought additional guarantees, just as France has already sought such guarantees in a tripartite treaty with Great Britain and the United States in 1919.

The erstwhile neutral states, on the other hand, such as The Netherlands, and certain of the other Members who were not anxious to become involved in Continental European politics, such as Canada, complained that the coercive provisions of the Covenant were too exacting. These provisions imposed, it was claimed, burdens upon the Members which some of them at least were unable, or at all events unwilling, to bear.

Thus Canada proposed the suppression of Article X in its entirety. This action cannot be regarded in any way as an echo of the position taken by the United States, but it must be regarded as based upon an exactly identical attitude. Canada did not wish to be required, under the Covenant, to aid in coercing, by economic or military means, a fellow-Member of the League in all conceivable circumstances.

When this demand on the part of Canada, supported more or less vigorously by Northern European ex-neutrals,

was rejected, or, at all events, postponed for consideration, an effort was next made by these same Powers to secure at least a restrictive interpretation of the provisions of the Covenant looking to concerted coercion by League Members. It was argued that Article X, for example, took no account of the justice of the status of the national sovereignty and independence which it pledged the Members to preserve, and that it took no account,—as Article XVI did not,—of the relative capacities of the Members to participate in coercive measures, nor of the burdens and dangers to which they would be exposed by such action on their part. It was insisted that the Council, in invoking such action under the Covenant, must take account of these factors, including the political conditions surrounding the national life of Members called upon to act. This, of course, would include considerations of the national policies and interests of the Members, especially their interests in participating in such action. And it was made doubly sure that this factor would be taken into account by insisting also that the action of the Council in invoking coercion on the part of Members should be regarded merely as a recommendation which was entitled to the most serious consideration of national organs of government in the Member states charged with taking decisions in the name of the Members on questions of international coercive action, such as the declaration of war. And the Assembly finally approved a resolution to this effect in 1923.[6]

Needless to say, this action alarmed the Members laboring under a feeling of insecurity. It is probable that the interpretation thus placed on Article X—and by implication on Article XVI—must be regarded as wholly in accord with the original meaning and intent of those provisions. But it emphasized the weaknesses of those provisions, the presence of the two elements of delay and discretion—delay until the Members could be consulted when execution

[6] *Official Journal, Special Supplement* No. 11, 34.

of the provisions of the Covenant should be needed, and discretion on their part to act or decline to act as circumstances might dictate—in a striking manner. The fearsome states were confirmed in their fears.

The essential fact underlying this whole situation, of course, is the same fact to which allusion has been made in the preceding chapter, namely, the lack of world unity in the question of guarantees and coercion. The interests of the nations diverge too widely to make feasible such a general guarantee as that contained in Article X and such general provisions for coercion as those contained in Article XVI. Neither American nor Asiatic nations are very deeply interested in guaranteeing boundaries and peace in Europe, nor are all European powers equally interested in such a function.

As might be expected, the states feeling most keenly the need for security, and other states who perceived the need for some action in the premises, without precisely having the same urge to seek its solution, had already been striving to remedy matters. This was all the more necessary if any progress were to be hoped for in the direction of disarmament. The remedy obviously seemed to lie in regional agreements for mutual protection, which would be confined to states actually interested in a given geographical situation. A resolution of the Second Assembly, adopted in 1921, by way of interpretation of Article XXI, had suggested some such step.[7] At first it was thought that by descending from the plane of a universal world agreement to agreements or arrangements applying only to single continents the remedy might be found, and incidentally room might be made for the further recognition of the operation of the Monroe Doctrine under League sanction. Such an idea underlay a "Draft Treaty of Mutual Assistance" offered to the Members in 1923.[8] Soon, however, it became apparent that still

[7] *Official Journal, Special Supplement*, No. 6, 15.
[8] *Official Journal*, IVth Year, No. 12, 1520.

more restricted units, geographically, would have to be taken as the bases of any such arrangements, and the way was open for a radical reorganization of security and coercion under the League.

There existed, however, a serious opposition to such a reorganization. Latin American Members had no relish for a sanctification of "protection" by the United States. What is more, certain Members, including some of the very states most strongly opposed to being called upon to help execute a general guarantee, but likewise states not in great fear of aggression, and given, perhaps, to unduly minimizing the importance of the whole question, feared that regional protective agreements would lead to a revival of the rival alliances which were thought to have been one of the contributing causes of the catastrophe of 1914. Great Britain herself, who was later to rebel at a general guarantee, at times took this position very strongly.

The facts of international relations have been too strong for effective opposition, however. A last attempt was made in 1924 to reënforce the general guarantees of the Covenant and to make the execution of those guarantees even more certain, and that not on a local or even a continental basis, but upon a world-wide scale. Great Britain and France, under Labor and Socialist leadership, agreed, and signed the "Geneva Protocol" of that year.[9] As far as it is possible to do so on paper the security of the Members and the peace of the world were given perfect protection and the way was opened for a beginning in real disarmament. But the signing of the Protocol was the high water mark which precedes the ebbing of the tide. On sober reconsideration, under the leadership of the Conservative Party, and partly as a result of Canadian warnings, Great Britain refused to ratify the Protocol, and the tide turned strongly and permanently, as it now seems, for a long time to come at any rate, toward regional pacts. Even some of the states

[9] *Official Journal, Special Supplement,* No. 23, 225.

which had stood for a weakening of the general guarantee, and were also fearful of the recrudescence of alliances, began to favor local informal elastic guarantees in place of the world guarantee.

One step might, it was felt, be taken to minimize the danger that regional guarantees would become alliances of the dangerous type. Such guarantees might be placed under League supervision. The operation of their provisions might be made to depend upon some degree of League action. The invocation of action by the signatory states might be arranged in such a way that the League, acting through the Council, would obtain an opportunity to pass upon the propriety of coercion for protection under the pact. And the guarantees could and must be made mutual: not merely British guarantee of France against Germany, but of Germany against France as well, must be provided.

The treaties initialed at Locarno in October and signed at London on December 1, 1925, whereby Great Britain, France, and Italy guarantee the security of Belgium, France, Czechoslovakia, and Poland against German aggression, and vice versa, were the foremost manifestations of this reorientation.[10] These arrangements derived in part from independent efforts made by France ever since 1919 to secure British guarantees of her own safety, but they culminated in direct connection with the evolution of League action here under discussion. They have been followed by numerous other treaties of the same sort [11] until the security of the insecure nations of Europe at least is today probably as well guaranteed as it was under the general terms of the Covenant. Those treaties do not include all Members covered by the Covenant, but if it be admitted that the general guarantees of the Covenant already had

[10] *Official Journal*, VIIth Year, No. 2, 179; texts in *Treaty Series*, LIV, 289 and following.

[11] *Official Journal*, VIIIth Year (No. 3, 290; No. 5, 618; No. 6, 693; No. 8, 965).

been found unreliable this does not mean that anything real has been lost. Meanwhile new and presumably effective guarantees have been created, and the guarantees of the Covenant remain in force for whatever they are worth morally or psychologically.

The relation of the League to these new treaties is not simple. They have been created by the signatories outside of Council or Assembly meetings, by the old machinery of diplomacy. In their creation many considerations other than those of supplementing and fulfilling League covenants have played their part. And in many of them provisions are found which look to performance independent of League action of any kind.[12] They might be regarded, possibly, as so many exhibits tending to indicate a region of international relations in which the League has failed and in which even the Members have decided to dispense with the League and go ahead independently.

This would amount to an exaggeration and a distortion of the significance of the guarantee treaties if they may be taken at face value, and if we may take at face value some of the utterances of the same powers who have signed these treaties when later acting in the capacity of Members of the League in League meetings.[13] Here resolutions have been passed approving the treaties in question, recognizing that they are in harmony with League principles, taking note of the formal connections existing in the provisions of those treaties between the operation of the treaties and League procedure, and encouraging the Members to create further arrangements of the same kind.[14] The texts of these treaties do, indeed, include many provisions for League action in connection with their operation.[15] They are, so far as may be, made part of the League

[12] Treaty of Guarantee between Germany, Belgium, etc., initialled at Locarno, 16 October, 1925, Art. 4 (3).

[13] *Official Journal*, VIIth Year, No. 2, 179.

[14] *Official Journal*, VIIIth Year, No. 3, 290.

[15] *Official Journal*, Treaty cited, above, note 12, Art. 4 (1, 2).

system, and the going into effect of the Locarno treaties was made dependent upon the entry of Germany into the League.[16]

How these arrangements will work, what will be the future of all this evolution of the organization of security and armed protection, remains to be seen. The treaties of Locarno read, in parts, as fantastic and artificial as the coercion sections of the Covenant; "Germany and France pledge themselves never to make war upon one another again." But one thing is clear, the forcible protection of national security has escaped from the limits of League action under Article X and set out upon a career of its own. In spite of Assembly resolutions still calling for a generalization of these arrangements [17] the universal guarantee contemplated in 1919 has been put on the side and will never be enforced. Article X is dead.

By contagion the provisions of Article XVI looking to coercive enforcement of the submission of disputes or peaceful settlement of disputes are dead. Most of the discussion above has turned upon Article X. But the objections raised to coercive action in connection with Article X apply with the same if not with greater force to the provisions of Article XVI, with their wide and indefinite implications. Coercion has been abandoned as a method of League action. This may mean that the American criticism of the Covenant of 1919-20 has been justified in the event; it also means that the American pettifoggery which could not see the League for the Covenant has been revealed for what it was, a preoccupation with a legal text to the exclusion of realistic considerations and an understanding of how things must work out in any such situation. Those who insisted that the coercive provisions of the Covenant would never work, could never work, and must be disregarded in judging,

[16] *Official Journal*, VIIIth Year, No. 3, 290.
[17] *Official Journal, Special Supplement*, No. 43, 16.

prospectively, the League, are the real victors in the assize of the history of the past eight years.

It is rather interesting to note how another radical scheme which was incorporated in the Covenant has fared by contrast. The Mandate system is a going arrangement and more than reasonably successful. Yet it is very nearly as radical in character as the system of coercion provided in the Covenant which has now collapsed. The explanation seems to lie in the fact that it was necessary to put the Mandate arrangements into operation and to put them in operation immediately in 1919; any alternative would have been worse than the scheme proposed, and it was impossible merely to let matters drift along. Moreover the action required from Members under that plan was required not from all of the Members, but from a few, and from those which felt that they had a selfish interest in carrying out the plan. League action was, moreover, confined to exercising a negative restraint upon the Mandatories.

In the case of sanctions under the Covenant all was different. Time was permitted to slip by until the good resolutions of 1919 had cooled. The international post-war situation made it possible to drift along in this way for a while. The obligation of providing sanctions was placed upon all Members without discrimination according to interest, and what was required was affirmative, positive, action. It would not work.

International enforcement of the universal type provided in the Covenant will not, probably, be feasible until it is needed much more desperately than it is now—and the necessity for it may be declining rather than increasing—, and until that need is felt more keenly by all states than it is at present. It must even then be organized so as to require the minimum possible action on the part of individual Members. It is hardly too much to say that international enforcement will never be possible so long as the

Members must be called on to perform that task themselves by concerted action. In other words, international enforcement will not be feasible until an international police force is feasible, and that is a long way off, what with our modern patriotic armies, in contrast to the professional soldiery of another day.

One may, however, well raise a query at this point as to the effect of the collapse of sanctions under the Covenant upon the stability of international obligations, particularly the League covenants, and upon the probable progress in the direction of disarmament in view of this event.

It does not seem that any great disintegration of League obligations and arrangements is to be feared from the collapse of sanctions under the Covenant. Those sanctions extended only to territorial possessions or national independence and to pacific settlement of international disputes in any case. The former item is covered, presumably, by the treaties of security concluded since 1925. And the respect of the Members for the obligations of the Covenant, including especially the obligations relating to pacific settlement, rests, has hitherto rested, and must continue to rest, mainly upon the advantages to be derived from performance of those obligations in themselves—upon the intrinsic sanctions involved, in other words.

The long and the short of it is that, given the existing disparities in power and differences in interest among the nations, it is difficult to provide community sanctions behind the obligations of international law and treaty provisions. We must rely upon organized voluntary international coöperation. This seems a weak reed upon which to lean. It may be recalled, however, that in national life also, where the relative powerlessness of any individual member, and the general interest in the maintenance of law and order, make the community organization of sanctions practicable, the existence of a few persons or corporations capable of defying the law, and the inadequacy of the ordi-

nary police forces to cope with any general recalcitrance on the part of members of the community, bring it about that voluntary coöperation rather than enforced submission constitutes the real basis of social order.

Similarly it may be said that disarmament may not be expected from the substitution of international enforcement for national defense. It is doubtful whether the provision of all our elaborate machinery for settlement of disputes over international legal rights contributes in any degree to this same end. Provisions for conciliation in settlement of political disputes do contribute to this end, but that is true because the decisive element in the conciliation process is the willingness of the parties to agree to a settlement. At least in the process of conciliation it is this element which produces the result. So in regard to disarmament generally. It will come when security is attained and peace is preserved and rival international interests are considered and the rights of other nations are respected by the nations because of the value attached to community international life. Organized international coöperation is a manifestation and an embodiment of developing international unity, not an engine for creating or enforcing this unity. It is indispensable for the proper formulation and expression of that unity, but it is in its best forms merely a natural outgrowth of the maturing unity of this cosmopolitan world. As such it is the body and raiment of the soul of the civilization of the future.

APPENDIX A

DOCUMENTS ILLUSTRATING INTERNATIONAL ORGANIZATION.

No. 1. Consular Convention between the United States and Sweden, 1910.[1]

The President of the United States of America and His Majesty the King of Sweden, being mutually desirous of defining the rights, privileges, and immunities of consular officers of the two countries, and deeming it expedient to conclude a consular convention for that purpose, have accordingly named as their Plenipotentiaries:

The President of the United States of America, Philander C. Knox, Secretary of State of the United States of America; and

His Majesty the King of Sweden, Herman Ludvig Fabian de Lagercrantz, his Envoy Extraordinary and Minister Plenipotentiary at Washington;

Who, after having communicated to each other their respective full powers, found to be in good and proper form, have agreed upon the following articles:

Article I.

Each of the High Contracting Parties agrees to receive from the other consuls-general, consuls, vice-consuls-general, vice-consuls, deputy consuls-general, deputy consuls, and consular agents in all its ports, cities, and places, except those where it may not be convenient to recognize such officers. This reservation, however, shall not apply to one of the High Contracting Parties without also applying to every other power.

Article II.

The consuls-general, consuls, vice-consuls-general, vice-consuls, deputy consuls-general, deputy consuls, and consular agents of each

[1] *U. S. S. L.*, XXXVII, 1479; see, above, text, Chap. VI.

of the two High Contracting Parties shall enjoy reciprocally, in the States of the other, all the privileges, exemptions, and immunities that are enjoyed by officers of the same rank and quality of the most favored nation. The said officers, before being admitted to the exercise of their functions and the enjoyment of the immunities thereto pertaining, shall present their commissions in the forms established in their respective countries. The Government of each of the two High Contracting Parties shall furnish the necessary exequatur free of charge, and, on the exhibition of this instrument, the said officers shall be permitted to enjoy the rights, privileges, and immunities granted by this Convention.

Article III.

Consuls-general, consuls, vice-consuls-general, vice-consuls, deputy consuls-general, deputy consuls, and consular agents, citizens of the State by which they are appointed, shall be exempt from arrest except in the cases of offenses which the local legislation qualifies as crimes and punishes as such; they shall be exempt from military billetings, service in the Regular Army or Navy, in the militia, or in the national guard; they shall likewise be exempt from all direct taxes—national, State, or municipal—imposed upon persons, either in the nature of a capitation tax or in respect to their property, unless such taxes become due on account of the possession of real estate, or for interest on capital invested in the country where said officers exercise their functions, or for income from pensions of a public or private nature enjoyed from said country. This exemption shall not, however, apply to consuls-general, consuls, vice-consuls-general, vice-consuls, deputy consuls-general, deputy consuls, or consular agents engaged in any profession, business, or trade; but the said officers shall in such case be subject to the payment of the same taxes that would be paid by any other foreigner under the like circumstances.

Article IV.

When in a civil case a court of one of the two countries shall desire to receive the judicial declaration or deposition of a consul-general, consul, vice-consul, or consular agent, who is a citizen of

the State which appointed him, and who is engaged in no commercial business, it shall request him, in writing, to appear before it, and in case of his inability to do so it shall request him to give his testimony in writing, or shall visit his residence or office to obtain it orally, and it shall be the duty of such officer to comply with this request with as little delay as possible; but in all criminal cases, contemplated by the sixth article of the amendments to the Constitution of the United States, whereby the right is secured to persons charged with crimes to obtain witnesses in their favor, the appearance in court of said consular officers shall be demanded, with all possible regard to the consular dignity and to the duties of his office, and it shall be the duty of such officer to comply with said demand. A similar treatment shall also be extended to the consuls of the United States in Sweden, in the like cases.

Article V.

Consuls-general, consuls, vice-consuls-general, vice-consuls, deputy consuls-general, deputy consuls, and consular agents may place over the outer door of their offices the arms of their nation, with this inscription: Consulate-General, or Consulate, or Vice-Consulate, or Consular Agency of the United States or of Sweden.

They may also raise the flag of their country on their offices, except in the capital of the country when there is a legation there. They may in like manner raise the flag of their country over the boat employed by them in the port and for the exercise of their functions.

Article VI.

The consular offices shall at all times be inviolable. The local authorities shall not, under any pretext, invade them. In no case shall they examine or seize the papers there deposited. In no case shall those offices be used as places of asylum. When a consular officer is engaged in other business, the papers relating to the consulate shall be kept separate. Nor shall consular officers be required to produce the official archives in court or to testify as to their contents.

Article VII.

In the event of the death, incapacity, or absence of consuls-general, consuls, vice-consuls-general, vice-consuls, and consular agents, their chancellors or secretaries, whose official character may have previously been made known to the Department of State at Washington or to the Ministry for Foreign Affairs in Sweden, may temporarily exercise their functions, and while thus acting shall enjoy all the rights, prerogatives, and immunities granted to the incumbents.

Article VIII.

Consuls-general and consuls may, so far as the laws of their country allow, with the approbation of their respective Governments, appoint vice-consuls-general, deputy consuls-general, vice-consuls, deputy consuls, and consular agents in the cities, ports, and places within their consular district. These agents may be selected from among citizens of the United States or of Sweden, or those of other countries. They shall be furnished with a regular commission, and shall enjoy the privileges stipulated for consular officers in this convention, subject to the exceptions specified in Article III.

Article IX.

Consuls-general, consuls, vice-consuls-general, vice-consuls, and consular agents shall have the right to address the authorities whether, in the United States, of the Union, the States, or the municipalities, or in Sweden, of the State, the Provinces, or the commune, throughout the whole extent of their consular district in order to complain of any infraction of the treaties and conventions between the United States and Sweden, and for the purpose of protecting the rights and interests of their countrymen. If the complaint should not be satisfactorily redressed, the consular officers aforesaid, in the absence of a diplomatic agent of their country, may apply directly to the Government of the country where they exercise their functions.

Article X.

Consuls-general, consuls, vice-consuls-general, vice-consuls, deputy consuls-general, deputy consuls, and consular agents of the

respective countries may, as far as may be compatible with the laws of their own country, take at their offices, their private residences, at the residence of the parties concerned, or on board ship, the depositions of the captains and crews of the vessels of their own country and of passengers thereon, as well as the depositions of any citizen or subject of their own country; draw up, attest, certify, and authenticate all unilateral acts, deeds, and testamentary dispositions of their countrymen, as well as all articles of agreement or contracts to which one or more of their countrymen is or are party; draw up, attest, certify, and authenticate all deeds or written instruments which have for their object the conveyance or encumbrance of real or personal property situated in the territory of the country by which said consular officers are appointed, and all unilateral acts, deeds, testamentary dispositions, as well as articles of agreement or contracts relating to property situated or business to be transacted in the territory of the nation by which the said consular officers are appointed; even in cases where said unilateral acts, deeds, testamentary dispositions, articles of agreement, or contracts are executed solely by citizens or subjects of the country within which said consular officers exercise their functions.

All such instruments and documents thus executed and all copies and translations thereof, when duly authenticated by such consul-general, consul, vice-consul-general, vice-consul, deputy consul-general, deputy consul, or consular agent under his official seal, shall be received as evidence in the United States and in Sweden as original documents or authenticated copies, as the case may be, and shall have the same force and effect as if drawn up by and executed before a notary or public officer duly authorized in the country by which said consular officer was appointed; provided, always, that they have been drawn and executed in conformity to the laws and regulations of the country where they are intended to take effect.

Article XI.

The respective consuls-general, consuls, vice-consuls-general, vice-consuls, deputy consuls-general, deputy consuls, and consular agents shall have exclusive charge of the internal order of the

merchant vessels of their nation, and shall alone take cognizance of any differences which may arise, either at sea or in port, between the captains, officers, and crews, without exception, particularly in reference to the adjustment of wages and the execution of contracts. The local authorities shall not interfere, except when the disorder that has arisen is of such a nature as to disturb tranquillity and public order on shore or in the port, or when a person of the country or not belonging to the crew shall be concerned therein.

In all other cases the aforesaid authorities shall confine themselves to lending aid to the said consular officers, if they are requested by them to do so, in causing the arrest and imprisonment of any person whose name is inscribed on the crew list whenever, for any cause, the said officers shall think proper.

Article XII.

The respective consuls-general, consuls, vice-consuls-general, vice-consuls, deputy consuls-general, deputy consuls, and consular agents may cause to be arrested the officers, sailors, and all other persons making part of the crews in any manner whatever, of ships of war or merchant vessels of their nation, who may be guilty, or be accused, of having deserted said ships and vessels, for the purpose of sending them on board or back to their country. To this end they shall address the competent local authorities of the respective countries, in writing, and shall make to them a written request for the deserters, supporting it by the exhibition of the register of the vessel and list of the crew, or by other official documents, to show that the persons claimed belong to the said ship's company. Upon such request thus supported, the delivery to them of the deserters can not be refused, unless it should be duly proved that they were citizens of the country where their extradition is demanded at the time of their being inscribed on the crew list. All the necessary aid and protection shall be furnished for the pursuit, seizure, and arrest of the deserters, who shall even be put and kept in the prisons of the country, at the request and expense of the consular officers, until there may be an opportunity for sending them away. If, however, such an opportunity should not present itself within the space of two months, counting from

the day of the arrest, the deserters shall be set at liberty, nor shall they be again arrested for the same cause.

If the deserter has committed any misdemeanor, and the court having the right to take cognizance of the offense shall claim and exercise it, the delivery of the deserter shall be deferred until the decision of the court has been pronounced and executed.

Article XIII.

All proceedings relative to the salvage of vessels of the United States wrecked upon the coasts of Sweden, and of Swedish vessels wrecked upon the coasts of the United States, shall be directed by the consuls-general, consuls, vice-consuls-general, and vice-consuls of the two countries, respectively, and until their arrival by the respective consular agents, wherever an agency exists. In the places and ports where an agency does not exist, the local authorities until the arrival of the consular officer in whose district the wreck may have occurred, and who shall be immediately informed of the occurrence, shall take all necessary measures for the protection of persons and the preservation of wrecked property. The local authorities shall not otherwise interfere than for the maintenance of order, the protection of the interests of the salvors, if these do not belong to the crews that have been wrecked, and to carry into effect the arrangements made for the entry and exportation of the merchandise saved. It is understood that such merchandise is not to be subjected to any custom-house charges, unless it be intended for consumption in the country where the wreck may have taken place.

The intervention of the local authorities in these different cases shall occasion no expense of any kind, except such as may be caused by the operations of salvage and the preservation of the goods saved, together with such as would be incurred under similar circumstances by vessels of the nation.

Article XIV.

In case of the death of any citizen of Sweden in the United States or of any citizen of the United States in the Kingdom of Sweden without having in the country of his decease any known heirs or testamentary executors by him appointed, the competent

local authorities shall at once inform the nearest consular officer of the nation to which the deceased belongs of the circumstances, in order that the necessary information may be immediately forwarded to parties interested.

In the event of any citizens of either of the two Contracting Parties dying without will or testament, in the territory of the other Contracting Party, the consul-general, consul, vice-consul-general, or vice-consul of the nation to which the deceased may belong, or, in his absence, the representative of such consul-general, consul, vice-consul-general, or vice-consul, shall, so far as the laws of each country will permit and pending the appointment of an administrator and until letters of administration have been granted, take charge of the property left by the deceased for the benefit of his lawful heirs and creditors, and, moreover, have the right to be appointed as administrator of such estate.

It is understood that when, under the provisions of this article, any consul-general, consul, vice-consul-general, or vice-consul, or the representative of each or either, is acting as executor or administrator of the estate of one of his deceased nationals, said officer or his representative shall, in all matters connected with, relating to, or growing out of the settlement of such estates, be in such capacities as fully subject to the jurisdiction of the courts of the country wherein the estate is situated as if said officer or representative were a citizen of that country and possessed of no representative capacity whatsoever.

The citizens of each of the Contracting Parties shall have power to dispose of their personal goods within the jurisdiction of the other, by sale, donation, testament, or otherwise, and their representatives, being citizens of the other Party, shall succeed to their personal goods, whether by testament or *ab intestato,* and they may in accordance with and acting under the provisions of the laws of the jurisdiction in which the property is found take possession thereof, either by themselves or others acting for them, and dispose of the same at their will, paying such dues only as the inhabitants of the country wherein such goods are shall be subject to pay in like cases.

As for the case of real estate, the citizens and subjects of the two Contracting Parties shall be treated on the footing of the most-favored nation.

Article XV.

The present convention shall remain in force for the space of ten years, counting from the day of the exchange of ratifications, which shall be made in conformity with the respective Constitutions of the two countries, and exchanged at Washington as soon as possible within the period of one year. In case neither Party gives notice, twelve months before the expiration of the said period of ten years, of its intention not to renew this Convention, it shall remain in force one year longer, and so on, from year to year, until the expiration of a year from the day on which one of the Parties shall have given such notice.

In faith whereof the respective Plenipotentiaries have signed this Convention, and have hereunto affixed their seals.

Done in duplicate at the City of Washington this first day of June, one thousand nine hundred and ten.

No. 2. Regulations of Vienna, 1815, and of Aix-la-Chapelle, 1818, concerning Diplomatic Rank.[1]

In order to prevent in the future the inconveniences which have frequently occurred, and which may still occur, from the claims of Precedence among the different Diplomatic characters, the Plenipotentiaries of the Powers who signed the Treaty of Paris have agreed on the following Articles, and think it their duty to invite those of other Crowned Heads to adopt the same regulations:

Article I.

Diplomatic characters are divided into three classes:

That of Ambassadors, Legates, or Nuncios.

That of Envoys, Ministers, or other persons accredited to Sovereigns.

That of Chargés d'Affaires accredited to Ministers for Foreign Affairs.

Article II.

Ambassadors, Legates, or Nuncios only shall have the Representative character.

[1] *U. S. Diplomatic Instructions*, § 18; see, above, text, Chap. VII.

Article III.

Diplomatic characters charged with any special mission shall not, on that account, assume any superiority of rank.

Article IV.

Diplomatic characters shall rank in their respective classes according to the date of the official notification of their arrival.

The present Regulation shall not occasion any change respecting the Representative of the Pope.

Article V.

There shall be a regular form adopted by each State for the reception of Diplomatic Characters of every class.

Article VI.

Ties of consanguinity or family alliance between Courts confer no rank on their Diplomatic Agents. The same rule also applies to political alliances.

Article VII.

In Acts or Treaties between several Powers that admit alternity, the order which is to be observed in the signatures of Ministers shall be decided by ballot.

Article VIII.

It is agreed between the Five Courts that Ministers Resident accredited to them shall form, with respect to their Precedence, an intermediate class between Ministers of the Second Class and Chargés d'Affaires.

No. 3. American Foreign Service and Foreign Diplomatic and Consular Representatives in the United States, December, 1916.

a. Diplomatic Service of the United States.[1]

Argentina	Buenos Aires	A. E. & P.;[2] 2 Secs.; C. M. N. Atts.

[1] *Register*, 15 December, 1916, 27-31; see, above, text, Chap. VII.

[2] A. E. and P.: Ambassador Extraordinary and Plenipotentiary. E. E. and M. P.: Envoy Extraordinary and Minister Plenipotentiary. Att.: Attaché. C.: Commercial. C. G.: Consul General. Couns.: Counsellor. M.: Military. N.: Naval. Sec.: Secretary. St. Int.: Student Interpreter.

Austria-Hungary	Vienna	A. E. & P.; Couns.; 5 Secs.; M. N. Atts.
Belgium	Brussels	E. E. & M. P.; Sec.; C. Att.
Bolivia	La Paz	E. E. & M. P.; Sec.; C. Att.
Brazil	Rio de Janeiro	A. E. & P.; 2 Secs.: C. N. Atts.
Bulgaria	See Roumania	
Chile	Santiago	A. E. & P.; 1 Sec.; C. M. Atts.
China	Peking	E. E. & M. P.; 4 Secs.; C. M. 2 N. Atts.; 8 St. Ints.
Colombia	Bogota	E. E. & M. P.; Sec.; M. Att.
Costa Rica	San Jose	E. E. & M. P.; Sec.; M. Att.
Cuba	Habana	E. E. & M. P.; 2 Secs.; M. Att.
Denmark	Copenhagen	E. E. & M. P.; Sec.; C. M. Att.
Dominican Republic	Santo Domingo	E. E. & M. P.; Sec.
Ecuador	Quito	E. E. & M. P.; Sec.; C. Att.
France	Paris	A. E. & P.; Couns.; 4 Secs.; C. M. 2 N. Atts.
German Empire	Berlin	A. E. & P.; Couns.; 6 Secs.; C. M. 2 N. Atts.
Great Britain	London	A. E. & P.; Couns.; 7 Secs.; C. 2 M. 3 N. Atts.
Greece	Athens	E. E. & M. P.; Sec.; M. Att.
Guatemala	Guatemala	E. E. & M. P.; Sec.; M. Att.
Haiti	Port au Prince	E. E. & M. P.; Sec.
Honduras	Tegucigalpa	E. E. & M. P.; Sec.; M. Att.
Italy	Rome	A. E. & P.; Couns.; 2 Secs.; M. N. Atts.
Japan	Tokyo	A. E. & P.; 4 Secs.; 6 M. 2 N. Atts.
Liberia	Monrovia	Minister Resident & C. G.; Sec.; M. Att.
Luxemburg	See Netherlands	
Mexico	Mexico	A. E. & P.; Sec.
Montenegro	See Greece	
Morocco	Tangier	E. E. & M. P.
Netherlands	The Hague	E. E. & M. P.; Sec.; C. M. N. Atts.
Nicaragua	Managua	E. E. & M. P.; Sec.; M. Att.
Norway	Christiania	E. E. & M. P.; Sec.; C. M. Atts.
Panama	Panama	E. E. & M. P.; Sec.
Paraguay	Asuncion	E. E. & M. P.; Sec.; C. Att.
Persia	Teheran	E. E. & M. P.; Sec.

Peru	Lima	E. E. & M. P.; Sec.; C. Att.
Portugal	Lisbon	E. E. & M. P.; Sec.; C. Att.
Roumania	Bucharest	E. E. & M. P.; 3 Secs.; M. Att.
Russia	Petrograd	A. E. & P.; Couns.; 4 Secs.; C. M. 2 N. Atts.
Salvador	San Salvador	E. E. & M. P.; Sec.; M. Att.
Serbia	See Roumania	
Siam	Bangkok	E. E. & M. P.; Sec.; Interpreter.
Spain	Madrid	A. E. & P.; Couns.; Sec.; C. M. Atts.
Sweden	Stockholm	E. E. & M. P.; Sec.; C. M. Atts.
Switzerland	Berne	E. E. & M. P.; Sec.; C. M. Atts.
Turkey	Constantinople	A. E. & P.; Couns.; 4 Secs.; M. Att.; 2 Stud. Ints.
Egypt	Cairo	Agent & C. G.
Uruguay	Montevideo	E. E. & M. P.; Sec.; C. Att.
Venezuela	Caracas	E. E. & M. P.; Sec.; M. Att.
Department		4 Secs.
Unassigned		6 persons.

b. Foreign Diplomatic Representatives in the United States[1]

Argentina	A. E. & P.;[2] Couns.; 2 Secs.; M. N. Atts.
Austria-Hungary	Couns. & Ch.; 2 Secs.; N. Att.; Att.
Belgium	E. E. & M. P.; Couns.; Att.
Bolivia	E. E. & M. P.
Brazil	A. E. & P.; Couns.; 3 Secs.
Bulgaria	E. E. & M. P.; Sec.; Att.
Chile	A. E. & P.; Couns. & Ch.; Sec.; C. M. N. Atts.
China	E. E. & M. P.; Couns.; 3 Secs.; Att.
Colombia	E. E. & M. P.; Sec.
Costa Rica	E. E. & M. P.; Sec.
Cuba	E. E. & M. P.; 2 Secs.
Denmark	E. E. & M. P.; Att.
Dominican Republic	E. E. & M. P.; Sec.
Ecuador	E. E. & M. P.; 2 Secs.

[1] *Register*, 1915, 181-185; see, above, text, Chap. VII.

[2] A. E. and P.: Ambassador Extraordinary and Plenipotentiary. E. E. and M. P.: Envoy Extraordinary and Minister Plenipotentiary. Att.: Attaché. C.: Commercial. Ch.: Chargé d'Affaires. Couns.: Counsellor. M.: Military. N.: Naval. Sec.: Secretary.

France	A. E. & P.; Couns.; 3 Secs.; C. M. N. Atts.; Att.
Germany	A. E. & P.; 2 Couns.; 2 Secs.; C. Att.; Att.
Great Britain	A. E. & P.; Couns.; 6 Secs.; M. 2 N. Atts.; 2 Atts.
Greece	Ch.; Sec.
Guatemala	E. E. & M. P.; Sec.
Haiti	E. E. & M. P.; Sec.
Honduras	E. E. & M. P.; Sec.
Italy	A. E. & P.; Couns.; 2 Secs.; C. Att.; Att.
Japan	A. E. & P.; Couns.; 2 Secs.; M. N. Atts.; 2 Atts.
Netherlands	E. E. & M. P.; 2 Atts.
Nicaragua	E. E. & M. P.; Ch.
Norway	E. E. & M. P.; Sec.
Panama	E. E. & M. P.; Sec.; Att.
Paraguay	E. E. & M. P.; Att.
Persia	E. E. & M. P.; Couns.; 2 Secs.
Peru	E. E. & M. P.; Ch.
Portugal	E. E. & M. P.
Russia	A. E. & P.; Couns.; 3 Secs.; 2 C. M. 3 N. Atts.; Att.
Salvador	E. E. & M. P.; Sec.
Siam	E. E. & M. P.; Sec.; 2 Atts.
Spain	A. E. & P.; Couns.; Sec.; M. Att.
Sweden	E. E. & M. P.; Couns.; Sec.
Switzerland	E. E. & M. P.; Sec.
Turkey	A. E. & P.; Sec. & Ch.; Sec.
Uruguay	E. E. & M. P.; Sec.
Venezuela	E. E. & M. P.; Sec.

c. Consular Service of the United States.[1]

5 Consuls General at Large

For: North America; South and Central America; Western Europe; Eastern Europe, Asia Minor, and Africa; and the Far East.

Argentina

Buenos Aires	C. G.;[2] 3 V. C.
Rosario	C.; V. C.

[1] *Register*, 1916, 41-59; see, above, text, Chap. VI.

[2] C. G.: Consul General. C.: Consul. V. C.: Vice Consul. Agt.: Consular Agent. Mar.: Marshal. St. Int: Student Interpreter.

Austria-Hungary

Budapest, Hungary	C. G.; C.; V. C.
Carlsbad, Bohemia, Austria	C.; V. C.
Fiume, Hungary	C.; V. C.
Prague, Bohemia, Austria	C.; V. C.
Reichenberg, Bohemia, Austria	C.; V. C.
Trieste, Coastland, Austria	C.; V. C.
Vienna, Lower Austria	C. G.; 2 V. C.

Belgium

Antwerp	C. G.; V. C.
Brussels	C. G.; V. C.
Ghent	C.; V. C.
Liege	C.; V. C.

Brazil

Bahia	C.; V. C.
Para	C.; 2 V. C.; 3 Agts.[1]
Pernambuco	C.; V. C.
Rio de Janeiro	C. G.; 2 V. C.; Agt.
Rio Grande do Sul	C.
Santos	C.; V. C.
São Paulo	C.; V. C.

Bulgaria

Sofia	C. G.

Chile

Antofagasta	C.; 2 V. C.; 2 Agts.
Punta Arenas	C.; V. C.
Valparaiso	C. G.; 2 V. C.; 4 Agts.

China

Amoy	C.; V. C.; Mar.
Antung	C.; V. C.; St. Int.
Canton	C. G.; 2 V. C.; Mar.; Interpreter.

[1] Consular Agents are stationed at outlying points and report to the consular officers at a central point. Thus, the three Agents reporting to the Consul at Para are stationed at Ceara, Manaos, and Maranhão, the agents reporting to the Consul at Calais, France (below), are stationed at Boulogne and Dunkirk, and so on. In this way consular representatives are stationed in many more cities than those actually named in these tables. For details see *Register*, as cited.

Changsha	C.
Chefoo	C.; V. C.; Mar.; Interpreter.
Chungking	C.; V. C.
Foochow	C.; V. C.
Hankow	C. G.; 2 V. C.; Mar.; Interpreter
Harbin	C.; V. C.
Mukden	C. G.; V. C.
Nanking	C.; V. C.
Shanghai	C. G.; 7 V. C.; Mars.; Interpreters.
Swatow	C.; V. C.; Interpreter
Tientsin	C. G.; 3 V. C.; Mar.; Interpreter.

Colombia

Barranquilla	2 C.; 3 Agts.
Cartagena	C.; V. C.

Costa Rica

Port Limon	C.; V. C.
San Jose	C.; V. C.; Agt.

Cuba

Cienfuegos	C.; V. C.; 2 Agts.
Habana	C. G.; 4 V. C.; 3 Agts.
Santiago de Cuba	C.; V. C.; 4 Agts.

Denmark and Dominions

Copenhagen	C. G.; V. C.
St. Thomas, West Indies	C.; V. C.; Agt.

Dominican Republic

Puerto Plata	C.; V. C.; 3 Agts.
Santo Domingo	V. C.; 3 Agts.

Ecuador

Guayaquil	C. G.; V. C.; 2 Agts.

France and Dominions

Algiers, Algeria	C.; V. C.; Agt.
Bordeaux	C.; 3 V. C.; Agt.
Calais	C.; 2 V. C.; 2 Agts.
Dakar, Senegal	C.; V. C.

Grenoble	C.; V. C.
Guadeloupe, West Indies	C.; V. C.
Havre	C.; V. C.
La Rochelle	C.; V. C.
Limoges	C.; V. C.
Lyon	C.; V. C.; Agt.
Marseille	C. G.; V. C.; 2 Agts.
Martinique, West Indies	C.; V. C.
Nantes	C.; V. C.; Agt.
Nice	C.; V. C.
Paris	C. G.; C.; 3 V. C.
Rouen	C.; V. C.; Agt.
Saigon, French Indo-China	C.; V. C.
St. Etienne	C.; V. C.
St. Pierre-Miquelon	C.; V. C.
Tahiti, Society Islands	C.; V. C.
Tananarivo, Madagascar	C.; V. C.
Tunis, Tunis	C.

German Empire

5 C. G.; 18 C.; 28 V. C.; 5 Agts.; stationed at following points:

Aix la Chapelle, Prussia	Hanover, Prussia
Apia, Samoa	Kehl, Baden
Barmen, Prussia	Leipzig, Saxony
Berlin, Prussia	Madgeburg, Prussia
Bremen	Mannheim, Baden
Breslau, Prussia	Munich, Bavaria
Chemnitz, Saxony	Nuremberg, Bavaria
Cologne, Prussia	Plauen, Saxony
Dresden, Saxony	Stettin, Prussia
Erfurt, Prussia	Stuttgart, Wurttemberg
Frankfort on the Main, Prussia	Tsingtau, China
Hamburg	

Great Britain and Dominions

12 C. G.; 80 C.; 88 V. C.; 54 Agts.; 1 Interpreter; Commercial Attaché; stationed at following points:

Aden, Arabia	Bradford, England
Auckland, New Zealand	Bristol, England
Barbados, West Indies	Calcutta, India
Belfast, Ireland	Calgary, Alberta, Canada
Belize, British Honduras	Campbellton, New Brunswick
Birmingham, England	Cape Town, Cape of Good Hope
Bombay, India	Cardiff, Wales

Charlottetown, P. E. I.
Colombo, Ceylon
Cork (Queenstown), Ireland
Cornwall, Ontario
Dublin, Ireland
Dundee, Scotland
Dunfermline, Scotland
Durban, Natal
Edinburgh, Scotland
Fernie, British Columbia
Fort William and Port Arthur, Ontario
Georgetown, Guiana
Gibraltar, Spain
Glasgow, Scotland
Halifax, Nova Scotia
Hamilton, Bermuda
Hamilton, Ontario
Hobart, Tasmania
Hongkong
Huddersfield, England
Hull, England
Johannesburg, Transvaal
Karachi, India
Kingston, Jamaica
Kingston, Ontario
Lagos, Nigeria
Leeds, England
Liverpool, England
London, England
Madras, India
Malta, Maltese Islands
Manchester, England
Melbourne, Australia
Mombasa, British East Africa
Moncton, New Brunswick
Montreal, Quebec
Nassau, N. P., Bahamas
Newcastle, N. S. W., Australia
Newcastle-on-Tyne, England
Niagara Falls, Ontario
Nottingham, England
Ottawa, Ontario
Plymouth, England
Port Antonio, Jamaica
Port Elizabeth, Cape of Good Hope
Prescott, Ontario
Prince Rupert, British Columbia
Quebec, Quebec
Rangoon, India
Regina, Saskatchewan
Riviere du Loup, Quebec
St. John, New Brunswick
St. John's, Newfoundland
St. Stephen, New Brunswick
Sarnia, Ontario
Sault Ste. Marie, Ontario
Sheffield, England
Sherbrooke, Quebec
Singapore, Straits Settlements
Southampton, England
Stoke-on-Trent, England
Swansea, Wales
Sydney, Australia
Sydney, Nova Scotia
Toronto, Ontario
Trinidad, West Indies
Vancouver, British Columbia
Victoria, British Columbia
Windsor, Ontario
Winnipeg, Manitoba
Yarmouth, Nova Scotia

Greece

C. G.; 2 C.; 4 V. C.; 2 Agts.; at:

Athens
Patras
Saloniki

Guatemala

Guatemala — C.; 3 V. C.; 3 Agts.

Haiti

2 C.; 2 V. C.; 6 Agts.; at:

Cape Haitien
Port au Prince

Honduras

3 C.; 3 V. C.; 6 Agts.; at:

Ceiba
Puerto Cortes
Tegucigalpa

Italy

C. G.; 10 C.; 14 V. C.; at:

Catania
Florence
Genoa
Leghorn
Milan
Naples
Palermo
Rome
Turin
Venice

Japan

2 C. G.; 4 C.; 8 V. C.; 4 Interpreters, 2 St. Ints.; 2 Agts.; at:

Dairen, Manchuria
Kobe
Nagasaki
Seoul, Chosen
Taihoku, Taiwan
Yokohama

Kongo

Boma — C. G.; V. C.

Liberia

Monrovia — C. G.; V. C.

Mexico

2 C. G.; 20 C.; 25 V. C.; 10 Agts.; at:

Acapulco, Guerrero
Aguascalientes, Aguascalientes
Chihuahua, Chihuahua
Ciudad Juarez, Chihuahua
Durango, Durango
Frontera, Tabasco
Guadalajara, Jalisco
Hermosillo, Sonora
Manzanillo, Colima
Matamoros, Tamaulipas
Mazatlan, Sinaloa
Mexico, Mexico
Monterey, Nueva Leon
Nogales, Sonora
Nuevo Laredo, Tamaulipas
Piedras Negras, Coahuila
Progreso, Yucatan
Salina Cruz, Oaxaca
Saltillo, Coahuila
San Luis Potosi, San Luis Potosi
Tampico, Tamaulipas
Vera Cruz, Vera Cruz

Morocco

Tangier — C. G.; V. C.; 2 Agts.; Interpreter

Netherlands and Dominions

C. G.; 3 C.; 5 V. C.; 6 Agts.; at:

Amsterdam
Batavia, Java
Curacao, West Indies
Rotterdam

Nicaragua

2 C.; 2 V. C.; 2 Agts.; at:

Bluefields
Corinto

Norway

C. G.; 2 C.; 3 V. C.; 2 Agts.; at:

Bergen
Christiania
Stavanger

Panama

C. G.; C.; 2 V. C.; Agt.; at:

Colon
Panama

Paraguay

Asuncion — C.; V. C.

Persia

2 C.; V. C.; Interpreter; at:

Tabriz
Teheran

Peru

Callao-Lima — C. G.; 2 V. C.; 4 Agts.

Portugal and Dominions

C. G.; 2 C.; 3 V. C.; 5 Agts.; at:

Lisbon
Lourenco Marques, East Africa
St. Michaels, Azores

Russia

C. G.; 8 C.; 7 V. C.; 3 Agts.; at:

Moscow
Odessa
Petrograd
Riga
Tiflis
Vladivostok, Siberia
Warsaw

Salvador

San Salvador — C. G.; V. C.

Serbia

Belgrade — C.; V. C.

Siam

Bangkok — V. C.

Spain and Dominions

C. G.; 6 C.; 8 V. C.; 10 Agts.; at:

Barcelona
Bilboa
Madrid
Malaga
Seville
Teneriffe, Canary Islands
Valencia

Sweden

C. G.; C.; 2 V. C.; 2 Agts.; at:

Goteborg
Stockholm

Switzerland

C. G.; 4 C.; 7 V. C.; 2 Agts.; at:

Basel
Berne
Geneva
St. Gall
Zurich

Turkey and Dominions

4 C. G.; 9 C.; 16 V. C.; 13 Agts.; 9 Interpreters; 1 St. Int.; at:

Aleppo, Syria
Alexandria, Egypt
Bagdad
Beirut, Syria
Cairo, Egypt
Constantinople
Harput
Jerusalem, Palestine
Mersina
Smyrna
Trebizond

Uruguay

Montevideo	C.; V. C.

Venezuela

3 C.; 3 V. C.; 2 Agts.; at:

La Guaira	Puerto Cabello
Maracaibo	

d. Foreign Consular Officers in the United States.[1]

Argentina

State	*City*	
Alabama	Mobile	V. C.[2]
California	Los Angeles	V. C.
	San Francisco	V. C.
Florida	Apalachicola	V. C.
	Fernandina	V. C.
	Pensacola	V. C.
Georgia	Brunswick	V. C.
	Savannah	V. C.
Illinois	Chicago	V. C.
Louisiana	New Orleans	V. C.
Maine	Portland	V. C.
Maryland	Baltimore	V. C.
Massachusetts	Boston	V. C.
Missouri	St. Louis	V. C.
New York	New York City	C. G.; C.
Pennsylvania	Philadelphia	V. C.
Philippine Islands	Manila	V. C.
Porto Rico	San Juan	V. C.
Texas	Port Arthur	V. C.
Virginia	Newport News	V. C.
	Norfolk	C.; V. C.
Washington	Tacoma	V. C.

[1] *Register*, 1916, 186-217; see, above, text, Chap. VI.

[2] C. G.: Consul General. C.: Consul. V. C.: Vice Consul. C. A.: Consular Agent. A. C. A.: Acting Consular Agent. D. C. A.: Deputy Consular Agent.

Austria-Hungary

California	San Francisco	C.
Colorado	Denver	C.
Florida	Pensacola	V. C.
Georgia	Savannah	V. C.
Hawaii	Honolulu	C.
Illinois	Chicago	C. G.
Louisiana	New Orleans	C.
Maryland	Baltimore	C.
Massachusetts	Boston	C.
Minnesota	St. Paul	C.
Missouri	St. Louis	C.
New York	Buffalo	A. C. A.
	New York City	C. G.
Ohio	Cleveland	C.
Pennsylvania	Philadelphia	C. G.
	Pittsburgh	C.
	Uniontown	D. C. A.
	Wilkes-Barre	D. C. A.
Philippine Islands	Manila	C.
Porto Rico	San Juan	C.
Texas	Galveston	C.
Virginia	Richmond	C.
West Virginia	Charleston	C.

Belgium

41 Consular officers in 35 cities in 18 states and the island possessions.

Bolivia

13 Consular officers in as many cities.

Brazil

34 Consular officers in 20 cities.

Bulgaria

Consul General in New York City.

Chile

15 Consular officers in as many cities.

China

6 Consular officers in 6 cities.

Colombia

19 Consular officers in 16 cities.

Costa Rica

18 Consular officers in 15 cities.

Cuba

36 Consular officers in 34 cities.

Denmark

38 Consular officers in 35 cities.

Dominican Republic

20 Consular officers in 18 cities.

Ecuador
14 Consular officers in 14 cities.

France
47 Consular officers in 42 cities.

German Empire
35 Consular officers in 34 cities.

Great Britain
92 Consular officers in 58 cities.

Greece
11 Consular officers in 11 cities.

Guatemala
20 Consular officers in 19 cities.

Haiti
Officers in 9 cities.

Honduras
Officers in 12 cities.

Italy
Officers in 65 cities.

Japan
Officers in 13 cities.

Liberia
Officers in 10 cities.

Mexico
Officers in 24 cities.

Monaco
Officers in 2 cities.

Montenegro
Consul in New York City.

Netherlands
Officers in 33 cities.

Nicaragua
Officers in 14 cities.

Norway
Officers in 53 cities.

Panama
Officers in 24 cities.

Paraguay
Officers in 12 cities.

Persia
Officers in 6 cities.

Peru
Officers in 25 cities.

Portugal
Officers in 21 cities.

Russia
Officers in 16 cities.

Salvador
Officers in 7 cities.

Serbia
Consul General in New York City.

Siam
Officers in 3 cities.

Spain
Officers in 35 cities.

Sweden
Officers in 33 cities.

Switzerland

Officers in 14 cities.

Uruguay

Officers in 27 cities.

Turkey

Officers in 5 cities.

Venezuela

Officers in 17 cities.

No. 4. Arbitration Convention between the United States and Great Britain, 1908.[1]

Preamble
Parties

The President of the United States of America and His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India, desiring, in pursuance of the principles set forth in Articles 15-19 of the Convention for the Pacific Settlement of International Disputes, signed at The Hague July 29, 1899, to enter into negotiations for the conclusion of an Arbitration Convention, have named as their Plenipotentiaries, to wit:

Purpose

Agents

The President of the United States of America, Elihu Root, Secretary of State of the United States, and

His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India, The Right Honorable James Bryce, O. M., who, after having communicated to one another their full powers, found in good and due form, have agreed upon the following articles:

Body

Article I.

General Article

Differences which may arise of a legal nature or relating to the interpretation of treaties existing between the two Contracting Parties, and which it may not have been possible to settle by diplomacy, shall be referred to the Permanent Court of Arbitration established at The Hague by the Convention of the 29th of July, 1899, provided, nevertheless, that they do not affect the vital interests,

[1] *U. S. S. L.*, XXXV, 1960; see, above, text, Chaps. VIII and X.

the independence, or the honor of the two Contracting States, and do not concern the interests of third Parties.

Special Articles

Article II.

Procedure

In each individual case the High Contracting Parties before appealing to the Permanent Court of Arbitration, shall conclude a special Agreement defining clearly the matter in dispute, the scope of the powers of the Arbitrators, and the periods to be fixed for the formation of the Arbitral Tribunal and the several stages of the procedure. It is understood that such special agreements on the part of the United States will be made by the President of the United States, by and with the advice and consent of the Senate thereof; His Majesty's Government reserving the right before concluding a special agreement in any matter affecting the interests of a self-governing Dominion of the British Empire to obtain the concurrence therein of the Government of that Dominion

Article III.

Ratification

The present Convention shall be ratified by the President of the United States of America by and with the advice and consent of the Senate thereof, and by his Britannic Majesty. The ratifications shall be exchanged at Washington as soon as possible, and the Convention shall take effect on the date of the exchange of its ratifications.

Exchange

Effectiveness

Article IV.

Duration

The present Convention is concluded for a period of five years, dating from the day of the exchange of its ratifications.

Place
Date

Done in duplicate at the City of Washington, this fourth day of April, in the year 1908.

Signatures and Seals

ELIHU ROOT (SEAL)
JAMES BRYCE (SEAL)

a. Resolution of the Senate of the United States Consenting to the Ratification of a Treaty by the President.[1]

Tuesday, January 22, 1901.

* * * *

Mr. Lodge submitted the following resolution for consideration:

Resolved (two-thirds of the Senators present concurring), That the Senate advise and consent to the ratification of the treaty between the United States and Spain signed at Washington November 7, 1900, providing for the cession to the United States of any and all islands of the Philippine Archipelago lying outside of the lines described in Article III of the treaty of peace of December 10, 1898.

On the question to agree to the resolution,

It was decided in the affirmative, two-thirds of the Senators present having voted in the affirmative; yeas, 38; nays, 19.

* * * *

Ordered, That the Secretary lay the said resolutions before the President of the United States.

b. Act of Ratification of a Treaty.[2]

The executive authority of the Dominican Republic.

To all to whom these presents shall come, greeting:

Whereas a convention was signed in the city of Santo Domingo on the eighth day of February, one thousand nine hundred and seven, by the plenipotentiaries of the Dominican Republic and the United States of America, a true copy of which convention, in Spanish and English, is word for word as follows:

(Here follows copy of convention, in Spanish and English.)

And whereas by a resolution of the third of May of the present year the national congress approved said convention, the executive authority of the Republic confirms and ratifies the aforesaid convention in all and every one of its stipulations, as above written, and promises that every article and clause thereof will be inviolably observed.

In testimony whereof these presents are executed, sealed with the seal of the Republic, and signed and countersigned in the city

[1] *Journals of the Executive Proceedings of the Senate,* XXXII, 646; see, above, text, Chap. VIII.

[2] *U. S. Foreign Relations,* 1907, 316; see, above, text, Chap. VIII.

of Santo Domingo the nineteenth day of June, in the year of our Lord 1907.

RAMON CACERES,
President of the Republic.

Countersigned:

E. TEJERA, (Seal)
Minister of Foreign Relations.

c. Protocol of an Exchange of Ratifications.[1]

The undersigned plenipotentiaries having met with the object of exchanging the ratifications of the convention signed between the Dominican Republic and the United States on February 8, 1907, providing for the assistance of the United States in the collection of the customs duties of the Dominican Republic and the application of the said customs duties, and the ratifications of said convention having been carefully compared and having been found to exactly conform one with the other, the exchange was to-day affected in the usual form.

In testimony whereof this protocol of exchange is signed and sealed.

Done in Washington the 8th day of July, 1907.

EMILIO C. JOUBERT (Seal)
ROBERT BACON. (Seal)

d. Proclamation of a Treaty by the President.[2]

By the President of the United States of America

A Proclamation.

Whereas an Arbitration Convention between the United States of America and the United Kingdom of Great Britain and Ireland was concluded and signed by their respective Plenipotentiaries at Washington, on the fourth day of April, one thousand, nine hundred and eight, the original of which Convention is word for word as follows:

(Text of Convention)

And whereas the said Convention has been duly ratified on both parts and the ratifications of the two governments were exchanged in the City of Washington, on the fourth day of June, one thousand, nine hundred and eight;

[1] *U. S. Foreign Relations*, 1907, 316; see, above, text, Chap. VIII.
[2] *U. S. S. L.*, XXXV, 1960; see, above, text, Chap. VIII.

Now, therefore, be it known that I, Theodore Roosevelt, President of the United States of America, have caused said Convention to be made public, to the end that the same and every article and clause thereof may be observed and fulfilled with good faith by the United States and the citizens thereof.

In testimony whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington this fifth day of June, in the year of our Lord one thousand, nine hundred and
(SEAL) eight, and of the Independence of the United States of America the one hundred and thirty second.

By the President:

THEODORE ROOSEVELT.

ELIHU ROOT,
Secretary of State.

No. 5. Treaty of Peace, Signed at Paris, 30 March, 1856, and Declaration of Paris, adopted by signatories thereto.

a. Treaty of Paris, 30 March, 1856.[1]

In the Name of Almighty God.

Their Majesties the Queen of the United Kingdom of Great Britain and Ireland, the Emperor of the French, the Emperor of all the Russias, the King of Sardinia, and the Emperor of the Ottomans, animated by the desire of putting an end to the calamities of war, and wishing to prevent the return of the complications which occasioned it, resolve to come to an understanding with His Majesty the Emperor of Austria as to the bases on which peace might be reëstablished and consolidated, by securing, through effectual and reciprocal guarantees, the independence and integrity of the Ottoman Empire.

For this purpose Their said Majesties have named as their Plenipotentiaries, that is to say:

(Names of plenipotentiaries.)

Which Plenipotentiaries, assembled in Congress at Paris,

An understanding having been happily established between them, Their Majesties the Queen of the United Kingdom of Great Britain and Ireland, the Emperor of Austria, the Emperor of the French, the Emperor of all the Russias, the King of Sardinia, and the Emperor of the Ottomans, considering that in the interest of Europe, His Majesty the King of Prussia, a signing Party to the Convention of the 13th of July, 1841, should be invited to partici-

[1] *B. & F.*, XLVI, 8-26; see, above, text, Chap. VIII.

pate in the new arrangements to be adopted, and appreciating the value that the concurrence of His said Majesty would add to a work of general pacification, invited him to send Plenipotentiaries to the Congress,

In consequence, His Majesty the King of Prussia has named as His Plenipotentiaries, that is to say:

(Names of plenipotentiaries.)

The Plenipotentiaries, after having exchanged their full powers, found in good and due form, have agreed upon the following Articles:—

Article I.

From the day of the exchange of the ratifications of the present Treaty, there shall be peace and friendship between Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, His Majesty the Emperor of the French, His Majesty the King of Sardinia, His Imperial Majesty the Sultan, on the one part, and His Majesty the Emperor of all the Russias, on the other part; as well as between their heirs and successors, their respective dominions and subjects, in perpetuity.

* * * *

Article VII.

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, His Majesty the Emperor of Austria, His Majesty the Emperor of the French, His Majesty the King of Prussia, His Majesty the Emperor of all the Russias, and His Majesty the King of Sardinia, declare the Sublime Porte admitted to participate in the advantages of the public law and system (concert) of Europe. Their Majesties engage, each on his part, to respect the independence and the territorial integrity of the Ottoman Empire; guarantee in common the strict observance of that engagement; and will, in consequence, consider any act tending to its violation as a question of general interest.

Article VIII.

If there should arise between the Sublime Porte and one or more of the other signing Powers, any misunderstanding which might endanger the maintenance of their relations, the Sublime Porte, and each of such Powers, before having recourse to the use of force, shall afford the other Contracting Parties the opportunity of preventing such an extremity by means of their mediation.

Article IX.

His Imperial Majesty the Sultan, having, in his constant solicitude for the welfare of his subjects, issued a Firman which, while ameliorating their condition without distinction of religion or of race, records his generous intentions towards the Christian populations of his Empire, and wishing to give a further proof of his sentiments in that respect, has resolved to communicate to the Contracting Parties the said Firman emanating spontaneously from his sovereign will.

The Contracting Powers recognize the high value of this communication. It is clearly understood that it cannot, in any case, give to the said Powers the right to interfere, either collectively or separately, in the relations of His Majesty the Sultan with his subjects, nor in the internal administration of his Empire.

Article X.

The Convention of the 13th of July, 1841, which maintains the ancient rule of the Ottoman Empire relative to the closing of the Straits of the Bosphorus and of the Dardanelles, has been revised by common consent.

The Act concluded for that purpose, and in conformity with that principle, between the High Contracting Parties, is and remains annexed to the present Treaty, and shall have the same force and validity as if it formed an integral part thereof.

Article XI.

The Black Sea is neutralized: its waters and its ports, thrown open to the mercantile marine of every nation, are formally and in perpetuity interdicted to the flag of war, either of the Powers possessing its coasts, or of any other Power, with the exceptions mentioned in Articles XIV and XIX of the present Treaty.

Article XII.

Free from any impediment, the commerce in the ports and waters of the Black Sea shall be subject only to regulations of health, customs, and police, framed in a spirit favorable to the development of commercial transactions.

In order to afford to the commercial and maritime interests of every nation the security which is desired, Russia and the Sublime Porte will admit Consuls into their ports situated upon the coast of the Black Sea, in conformity with the principles of international law.

Article XIII.

The Black Sea being neutralized according to the terms of Article XI, the maintenance or establishment upon its coast of military-maritime arsenals becomes alike unnecessary and purposeless; in consequence, His Majesty the Emperor of all the Russias and His Imperial Majesty the Sultan engage not to establish or to maintain upon that coast any military-maritime arsenal.

Article XIV.

Their Majesties the Emperor of all the Russias and the Sultan having concluded a Convention for the purpose of settling the force and the number of light vessels, necessary for the service of their coasts, which they reserve to themselves to maintain in the Black Sea, that Convention is annexed to the present Treaty, and shall have the same force and validity as if it formed an integral part thereof. It cannot be either annulled or modified without the assent of the Powers signing the Present Treaty.

Article XV.

The Act of the Congress of Vienna having established the principles intended to regulate the navigation of rivers which separate or traverse different States, the Contracting Powers stipulate among themselves that those principles shall in future be equally applied to the Danube and its mouths. They declare that this arrangement henceforth forms a part of the public law of Europe, and take it under their guarantee.

The navigation of the Danube cannot be subjected to any impediment or charge not expressly provided for by the stipulations contained in the following Articles: in consequence, there shall not be levied any toll founded solely upon the fact of the navigation of the river, nor any duty upon the goods which may be on board of vessels. The regulations of police and of quarantine to be established for the safety of the States separated or traversed by that river shall be so framed as to facilitate, as much as possible, the passage of vessels. With the exception of such regulations, no obstacle whatever shall be opposed to free navigation.

Article XVI.

With the view to carry out the arrangements of the preceding Article, a Commission, in which Great Britain, Austria, France, Prussia, Russia, Sardinia, and Turkey, shall each be represented by one delegate, shall be charged to designate and to cause to be

executed the works necessary below Isaktcha, to clear the mouths of the Danube, as well as the neighboring parts of the sea, from the sands and other impediments which obstruct them, in order to put that part of the river and the said parts of the sea in the best possible state for navigation.

In order to cover the expenses of such works, as well as of the establishments intended to secure and to facilitate the navigation at the mouths of the Danube, fixed duties, of a suitable rate, settled by the Commission by a majority of votes, may be levied, on the express condition that, in this respect as in every other, the flags of all nations shall be treated on the footing of perfect equality.

Article XVII.

A Commission shall be established, and shall be composed of delegates of Austria, Bavaria, the Sublime Porte, and Würtemberg (one for each of those Powers), to whom shall be added Commissioners from the three Danubian Principalities, whose nomination shall have been approved by the Porte. This Commission, which shall be permanent: 1. Shall prepare regulations of navigation and river police; 2. Shall remove the impediments, of whatever nature they may be, which still prevent the application to the Danube of the arrangements of the Treaty of Vienna; 3. Shall order and cause to be executed the necessary works throughout the whole course of the river; and 4, Shall, after the dissolution of the European Commission, see to maintaining the mouths of the Danube and the neighboring parts of the sea in a navigable state.

Article XVIII.

It is understood that the European Commission shall have completed its task, and that the Riverain Commission shall have finished the works described in the preceding Article, under Nos. 1 and 2, within the period of two years. The signing Powers assembled in Conference having been informed of that fact, shall, after having placed it on record, pronounce the dissolution of the European Commission, and from that time the permanent Riverain Commission shall enjoy the same powers as those with which the European Commission shall have until then been invested.

Article XIX.

In order to insure the execution of the regulations which shall have been established by common agreement, in conformity with the principles above declared, each of the Contracting Powers shall have the right to station, at all times, two light vessels at the mouths of the Danube.

* * * *

Article XXII.

The Principalities of Wallachia and Moldavia shall continue to enjoy, under the suzerainty of the Porte, and under the guarantee of the Contracting Powers, the privileges and immunities of which they are in possession. No exclusive protection shall be exercised over them by any of the Guaranteeing Powers. There shall be no separate right of interference in their internal affairs.

* * * *

Article XXXIV.

The present Treaty shall be ratified, and the ratifications shall be exchanged at Paris in the space of four weeks, or sooner if possible.

In witness whereof the respective Plenipotentiaries have signed the same, and have affixed thereto the seal of their arms.

Done at Paris, the thirtieth day of the month of March, in the year one thousand eight hundred and fifty-six.

CLARENDON.
COWLEY.
BUOL-SCHAUENSTEIN.
HÜBNER.
A. WALEWSKI.
BOURQUENEY.
MANTEUFFEL.
C. M. D'HATZFELDT.
ORLOFF.
BRUNNOW.
C. CAVOUR.
DE VILLAMARINA.
AALI.
MEHEMMED DJEMIL.

b. Declaration of Paris, 1856.[1]

Considering:

That maritime law, in time of war, has long been the subject of deplorable disputes:

That the uncertainty of the law and of the duties in this same matter gives occasion to differences of opinion between neutrals and belligerents which may cause serious difficulties and even conflicts:

That it is consequently advantageous to establish a uniform doctrine on so important a point:

[1] *B. & F.*, XLVI, 26-27; see, above, text, Chap. V.

That the Plenipotentiaries assembled at the Congress of Paris cannot better respond to the intentions by which their Governments are animated than by seeking to introduce into international relations fixed principles in this respect:

The above-mentioned Plenipotentiaries, being duly authorized, resolved to concert among themselves as to the means of attaining this object; and, having come to an agreement, have adopted the following solemn Declaration:—

1. Privateering is and remains abolished:

2. The neutral flag covers enemy's goods, with the exception of contraband of war:

3. Neutral goods, with the exception of contraband of war, are not liable to capture under enemy's flag:

4. Blockades, in order to be binding, must be effective; that is to say maintained by a force sufficient really to prevent access to the enemy's coast.

The Governments of the undersigned Plenipotentiaries engage to bring the present Declaration to the knowledge of the States which have not been called upon to take part in the Congress of Paris, and invite them to accede to it.

Convinced that the maxims which they now proclaim cannot but be received with gratitude by the whole world, the undersigned Plenipotentiaries doubt not that the efforts of their Governments to obtain the general adoption thereof will be crowned with full success.

The present Declaration is not and shall not be binding except between those powers who have acceded or shall accede to it.

No. 6. Convention for the Pacific Settlement of International Disputes signed at The Hague, 1907.[1]

His Majesty the German Emperor, King of Prussia; [etc.]:

Animated by the sincere desire to work for the maintenance of general peace;

Resolved to promote by all the efforts in their power the friendly settlement of international disputes;

Recognizing the solidarity uniting the members of the society of civilized nations;

Desirous of extending the empire of law and of strengthening the appreciation of international justice;

Convinced that the permanent institution of a tribunal of arbitration, accessible to all, in the midst of independent Powers, will contribute effectively to this result;

Having regard to the advantages attending the general and regular organization of the procedure of arbitration;

[1] *U. S. S. L.*, XXXVI, 2199; see, above, text, Chaps. IX and X.

Sharing the opinion of the august initiator of the International Peace Conference that it is expedient to record in an international agreement the principles of equity and right on which are based the security of States and the welfare of peoples;

Being desirous, *with this object, of insuring the better working in practice of commissions of inquiry and tribunals of arbitration, and of facilitating recourse to arbitration in cases which allow of a summary procedure,*[1]

Have deemed it necessary to revise in certain particulars and to complete the work of the First Peace Conference for the pacific settlement of international disputes;

The high contracting Parties have resolved to conclude a *new* Convention for this purpose, *and* have appointed the following as their plenipotentiaries:

(*Here follow the names of plenipotentiaries.*)

Who, after having *deposited* their full powers, found in good and due form, have agreed upon the following:

PART I.—THE MAINTENANCE OF GENERAL PEACE.

Article 1.

With a view to obviating as far as possible recourse to force in the relations between States, the *contracting* Powers agree to use their best efforts to insure the pacific settlement of international differences.

PART II.—GOOD OFFICES AND MEDIATION.

Article 2.

In case of serious disagreement or dispute, before an appeal to arms, the *contracting* Powers agree to have recourse, as far as circumstances allow, to the good offices or mediation of one or more friendly Powers.

Article 3.

Independently of this recourse, the *contracting* Powers deem it expedient *and desirable* that one or more Powers, strangers to the dispute, should, on their own initiative and as far as circumstances may allow, offer their good offices or mediation to the States at variance.

Powers strangers to the dispute have the right to offer good offices or mediation even during the course of hostilities.

[1] Italics indicate changes in the Convention as drawn in 1907.

The exercise of this right can never be regarded by either of the parties in dispute as an unfriendly act.

Article 4.

The part of the mediator consists in reconciling the opposing claims and appeasing the feelings of resentment which may have arisen between the States at variance.

Article 5.

The functions of the mediator are at an end when once it is declared, either by one of the parties to the dispute or by the mediator himself, that the means of reconciliation proposed by him are not accepted.

Article 6.

Good offices and mediation undertaken either at the request of the parties in dispute or on the initiative of Powers strangers to the dispute have exclusively the character of advice, and never have binding force.

Article 7.

The acceptance of mediation can not, unless there be an agreement to the contrary, have the effect of interrupting, delaying, or hindering mobilization or other measures of preparation for war.

If it takes place after the commencement of hostilities, the military operations in progress are not interrupted in the absence of an agreement to the contrary.

Article 8.

The *contracting* Powers are agreed in recommending the application, when circumstances allow, of special mediation in the following form:

In case of a serious difference endangering peace, the States at variance choose respectively a Power, to which they intrust the mission of entering into direct communication with the Power chosen on the other side, with the object of preventing the rupture of pacific relations.

For the period of this mandate, the term of which, unless otherwise stipulated, can not exceed thirty days, the States in dispute cease from all direct communication on the subject of the dispute, which is regarded as referred exclusively to the mediating Powers, which must use their best efforts to settle it.

In case of a definite rupture of pacific relations, these Powers are charged with the joint task of taking advantage of any opportunity to restore peace.

PART III.—INTERNATIONAL COMMISSIONS OF INQUIRY

Article 9.

In disputes of an international nature involving neither honor nor vital interests, and arising from a difference of opinion on points of fact, the *contracting* Powers deem it expedient *and desirable* that the parties who have not been able to come to an agreement by means of diplomacy, should, as far as circumstances allow, institute an international commission of inquiry, to facilitate a solution of these disputes by elucidating the facts by means of an impartial and conscientious investigation.

Article 10.

International commissions of inquiry are constituted by special agreement between the parties in dispute.

The inquiry convention defines the facts to be examined; *it determines the mode and time in which the commission is to be formed* and the extent of the powers of the commissioners.

It also determines, if there is need, where the commission is to sit, and whether it may remove to another place, the language the commission shall use and the languages the use of which shall be authorized before it, as well as the date on which each party must deposit its statement of facts, and, generally speaking, all the conditions upon which the parties have agreed.

If the parties consider it necessary to appoint assessors, the convention of inquiry shall determine the mode of their selection and the extent of their powers.

Article 11.

If the inquiry convention has not determined where the commission is to sit, it will sit at The Hague.

The place of meeting, once fixed, can not be altered by the commission except with the assent of the parties.

If the inquiry convention has not determined what languages are to be employed, the question shall be decided by the commission.

Article 12.

Unless an undertaking is made to the contrary, commissions of inquiry shall be formed in the manner determined by Articles *45 and 57* of the present Convention.

Article 13.

Should one of the commissioners or one of the assessors, should there be any, either die, or resign, or be unable for any reason whatever to discharge his functions, the same procedure is followed for filling the vacancy as was followed for appointing him.

Article 14.

The parties are entitled to appoint special agents to attend the commission of inquiry, whose duty it is to represent them and to act as intermediaries between them and the commission.

They are further authorized to engage counsel or advocates, appointed by themselves, to state their case and uphold their interests before the commission.

Article 15.

The International Bureau of the Permanent Court of Arbitration acts as registry for the commissions which sit at The Hague, and shall place its offices and staff at the disposal of the contracting Powers for the use of the commission of inquiry.

Article 16.

If the commission meets elsewhere than at The Hague, it appoints a secretary general, whose office serves as registry.

It is the function of the registry, under the control of the president, to make the necessary arrangements for the sittings of the commission, the preparation of the minutes, and, while the inquiry lasts, for the charge of the archives, which shall subsequently be transferred to the International Bureau at The Hague.

Article 17.

In order to facilitate the constitution and working of commissions of inquiry, the contracting Powers recommend the following rules, which shall be applicable to the inquiry procedure in so far as the parties do not adopt other rules.

Article 18.

The commission shall settle the details of the procedure not covered by the special inquiry convention or the present Convention, and shall arrange all the formalities required for dealing with the evidence.

Article 19.

On the inquiry both sides must be heard.

At the dates fixed, each party communicates to the commission and to the other party the statements of facts, if any, and, in all cases, the instruments, papers, and documents which it considers useful for ascertaining the truth, as well as the list of witnesses and experts whose evidence it wishes to be heard.

Article 20.

The commission is entitled, with the assent of the Powers, to move temporarily to any place where it considers it may be useful to have recourse to this means of inquiry or to send one or more of its members. Permission must be obtained from the State on whose territory it is proposed to hold the inquiry.

Article 21.

Every investigation, and every examination of a locality, must be made in the presence of the agents and counsel of the parties or after they have been duly summoned.

Article 22.

The commission is entitled to ask from either party for such explanations and information as it considers necessary.

Article 23.

The *parties* undertake to supply the commission of inquiry, as fully as they may think possible, with all means and facilities necessary to enable it to become completely acquainted with, and to accurately understand, the facts in question.

They undertake to make use of the means at their disposal, under their municipal law, to insure the appearance of the witnesses or experts who are in their territory and have been summoned before the commission.

If the witnesses or experts are unable to appear before the commission, the parties will arrange for their evidence to be taken before the qualified officials of their own country.

Article 24.

For all notices to be served by the commission in the territory of a third contracting Power, the commission shall apply direct to the Government of the said Power. The same rule applies in the case of steps being taken on the spot to procure evidence.

The requests for this purpose are to be executed so far as the means at the disposal of the Power applied to under its municipal law allow. They can not be rejected unless the Power in question considers they are calculated to impair its sovereign rights or its safety.

The commission will equally be always entitled to act through the Power on whose territory it sits.

Article 25.

The witnesses and experts are summoned on the request of the parties or by the commission of its own motion, and, in every case, through the Government of the State in whose territory they are.

The witnesses are heard in succession and separately, in the presence of the agents and counsel, and in the order fixed by the commission.

Article 26.

The examination of witnesses is conducted by the president.

The members of the commission may however put to each witness questions which they consider likely to throw light on and complete his evidence, or get information on any point concerning the witness within the limits of what is necessary in order to get at the truth.

The agents and counsel of the parties may not interrupt the witness when he is making his statement, nor put any direct question to him, but they may ask the president to put such additional questions to the witness as they think expedient.

Article 27.

The witness must give his evidence without being allowed to read any written draft. He may, however, be permitted by the president to consult notes or documents if the nature of the facts referred to necessitates their employment.

Article 28.

A minute of the evidence of the witness is drawn up forthwith and read to the witness. The latter may make such alterations and additions as he thinks necessary, which will be recorded at the end of his statement.

When the whole of his statement has been read to the witness, he is asked to sign it.

Article 29.

The agents are authorized, in the course of or at the close of the inquiry, to present in writing to the commission and to the other party such statements, requisitions, or summaries of the facts as they consider useful for ascertaining the truth.

Article 30.

The commission considers its decisions in private and the proceedings are secret.

All questions are decided by a majority of the members of the commission.

If a member declines to vote, the fact must be recorded in the minutes.

Article 31.

The sittings of the commission are not public, nor the minutes and documents connected with the inquiry published except in virtue of a decision of the commission taken with the consent of the parties.

Article 32.

After the parties have presented all the explanations and evidence, and the witnesses have all been heard, the president declares the inquiry terminated, and the commission adjourns to deliberate and to draw up its report.

Article 33.

The report is signed by all the members of the commission.

If one of the members refuses to sign, the fact is mentioned; but the validity of the report is not affected.

Article 34.

The report of the commission is read at a public sitting, the agents and counsel of the parties being present or duly summoned.

A copy of the report is given to each party.

Article 35.

The report of the commission is limited to a statement of facts, and has in no way the character of an award. It leaves to the parties entire freedom as to the effect to be given to the statement.

Article 36.

Each party pays its own expenses and an equal share of the expenses incurred by the commission.

PART IV.—INTERNATIONAL ARBITRATION

CHAPTER I.—*The System of Arbitration*

Article 37.

International arbitration has for its object the settlement of disputes between States by judges of their own choice and on the basis of respect for law.

Recourse to arbitration implies an engagement to submit in good faith to the award.

Article 38.

In questions of a legal nature, and especially in the interpretation or application of international conventions, arbitration is recognized by the *contracting* Powers as the most effective, and, at the same time, the most equitable means of settling disputes which diplomacy has failed to settle.

Consequently, it would be desirable that, in disputes about the above-mentioned questions, the contracting Powers should, if the case arose, have recourse to arbitration, in so far as circumstances permit.

Article 39.

The arbitration convention is concluded for questions already existing or for questions which may arise eventually.

It may embrace any dispute or only disputes of a certain category.

Article 40.

Independently of general or private treaties expressly stipulating recourse to arbitration as obligatory on the *contracting* Powers, the said Powers reserve to themselves the right of concluding new agreements, general or particular, with a view to extending compulsory arbitration to all cases which they may consider it possible to submit to it.

CHAPTER II.—*The Permanent Court of Arbitration.*

Article 41.

With the object of facilitating an immediate recourse to arbitration for international differences, which it has not been possible to settle by diplomacy, the *contracting* Powers undertake to *maintain the* Permanent Court of Arbitration, *as established by the First Peace Conference,* accessible at all times, and operating, unless otherwise stipulated by the parties, in accordance with the rules of procedure inserted in the present Convention.

Article 42.

The Permanent Court *is* competent for all arbitration cases, unless the parties agree to institute a special tribunal.

Article 43.

The Permanent Court sits at The Hague.

An International Bureau serves as registry for the Court. It is the channel for communications relative to the meetings of the Court; it has charge of the archives and conducts all the administrative business.

The *contracting* Powers undertake to communicate to the Bureau, *as soon as possible,* a certified copy of any conditions of arbitration arrived at between them and of any award concerning them delivered by a special tribunal.

They likewise undertake to communicate to the Bureau the laws, regulations, and documents eventually showing the execution of the awards given by the Court.

Article 44.

Each *contracting* Power *selects* four persons at the most, of known competency in questions of international law, of the highest moral reputation, and disposed to accept the duties of arbitrator.

The persons thus selected *are* inscribed, as members of the Court, in a list which shall be notified to all the *contracting* Powers by the Bureau.

Any alteration in the list of arbitrators is brought by the Bureau to the knowledge of the *contracting* Powers.

Two or more Powers may agree on the selection in common of one or more members.

The same person can be selected by different Powers.

The members of the Court are appointed for a term of six years. These appointments are renewable.

Should a member of the Court die or resign, the same procedure is followed for filling the vacancy as was followed for appointing him. *In this case the appointment is made for a fresh period of six years.*

Article 45.

When the *contracting* Powers wish to have recourse to the Permanent Court for the settlement of a difference which has arisen between them, the arbitrators called upon to form the tribunal with jurisdiction to decide this difference must be chosen from the general list of members of the Court.

Failing the direct agreement of the parties on the composition of the arbitration tribunal, the following course shall be pursued:

Each party appoints two arbitrators, *of whom one only can be its national or chosen from among the persons selected by it as members of the Permanent Court.* These arbitrators together choose an umpire.

If the votes are equally divided, the choice of the umpire is intrusted to a third Power, selected by the parties by common accord.

If an agreement is not arrived at on this subject each party selects a different Power, and the choice of the umpire is made in concert by the Powers thus selected.

If, within two months' time, these two Powers can not come to an agreement, each of them presents two candidates taken from the list of members of the Permanent Court, exclusive of the members selected by the parties and not being nationals of either of them. Drawing lots determines which of the candidates thus presented shall be umpire.

Article 46.

The tribunal being thus composed, the parties notify to the Bureau their determination to have recourse to the Court, *the text of their compromis,* and the names of the arbitrators.

The Bureau communicates without delay to each arbitrator the compromis, and the names of the other members of the tribunal.

The tribunal assembles at the date fixed by the parties. *The Bureau makes the necessary arrangements for the meeting.*

The members of the *tribunal,* in the exercise of their duties and out of their own country, enjoy diplomatic privileges and immunities.

Article 47.

The Bureau is authorized to place its offices and staff at the disposal of the *contracting* Powers for the use of any special board of arbitration.

The jurisdiction of the Permanent Court may, within the conditions laid down in the regulations, be extended to disputes between *non-contracting* Powers or between *contracting* Powers and *non-contracting* Powers, if the parties are agreed on recourse to this tribunal.

Article 48.

The *contracting* Powers consider it their duty, if a serious dispute threatens to break out between two or more of them, to remind these latter that the Permanent Court is open to them.

Consequently, they declare that the fact of reminding the parties at variance of the provisions of the present Convention, and the advice given to them, in the highest interests of peace, to have recourse to the Permanent Court, can only be regarded as friendly actions.

In case of dispute between two Powers, one of them can always address to the International Bureau a note containing a declaration that it would be ready to submit the dispute to arbitration.

The Bureau must at once inform the other Power of the declaration.

Article 49.

The Permanent Administrative Council, composed of the diplomatic representatives of the *contracting* Powers accredited to The Hague and of the Netherland Minister for Foreign Affairs who will act as president, is charged with the direction and control of the International Bureau.

The Council *settles* its rules of procedure and all other necessary regulations.

It *decides* all questions of administration which may arise with regard to the operations of the Court.

It *has* entire control over the appointment, suspension, or dismissal of the officials and employees of the Bureau.

It *fixes* the payments and salaries, and controls the general expenditure.

At meetings duly summoned the presence of *nine* members is sufficient to render valid the discussions of the Council. The decisions are taken by a majority of votes.

The Council communicates to the *contracting* Powers without delay the regulations adopted by it. It furnishes them with an annual report on the labors of the Court, the working of the administration, and the expenditure. *The report likewise contains a résumé of what is important in the documents communicated to the Bureau by the Powers in virtue of Article 43, paragraphs 3 and 4.*

Article 50.

The expenses of the Bureau shall be borne by the *contracting* Powers in the proportion fixed for the International Bureau of the Universal Postal Union.

The expenses to be charged to the adhering Powers shall be reckoned from the date on which their adhesion comes into force.

CHAPTER III.—*Arbitration Procedure*

Article 51.

With a view to encouraging the development of arbitration, the *contracting* Powers have agreed on the following rules, which are applicable to arbitration procedure, unless other rules have been agreed on by the parties.

Article 52.

The Powers which have recourse to arbitration sign a compromis, in which the subject of the dispute is clearly defined, *the time allowed for appointing arbitrators, the form, order, and time in which the communication referred to in Article 63 must be made, and the amount of the sum which each party must deposit in advance to defray the expenses.*

The compromis likewise defines, if there is occasion, the manner of appointing arbitrators, any special powers which may eventually belong to the tribunal, where it shall meet, the language it shall use, and the languages the employment of which shall be authorized before it, and, generally speaking, all the conditions on which the parties are agreed.

Article 53.

The Permanent Court is competent to settle the compromis, if the parties are agreed to have recourse to it for the purpose.

It is similarly competent, even if the request is only made by one of the parties, when all attempts to reach an understanding through the diplomatic channel have failed, in the case of—

1. A dispute covered by a general treaty of arbitration concluded or renewed after the present Convention has come into force, and providing for a compromis in all disputes and not either explicitly or implicitly excluding the settlement of the compromis from the competence of the Court. Recourse can not, however, be had to the Court if the other party declares that in its opinion the dispute does not belong to the category of disputes which can

be submitted to compulsory arbitration, unless the treaty of arbitration confers upon the arbitration tribunal the power of deciding this preliminary question.

2. A dispute arising from contract debts claimed from one Power by another Power as due to its nationals, and for the settlement of which the offer of arbitration has been accepted. This arrangement is not applicable if acceptance is subject to the condition that the compromis should be settled in some other way.

Article 54.

In the cases contemplated in the preceding article, the compromis shall be settled by a commission consisting of five members selected in the manner arranged for in Article 45, paragraphs 3 to 6.

The fifth member is president of the commission ex officio.

Article 55.

The duties of arbitrator may be conferred on one arbitrator alone or on several arbitrators selected by the parties as they please, or chosen by them from the members of the Permanent Court of Arbitration established by the present Convention.

Failing the constitution of the tribunal by direct agreement between the parties, the course *referred to in Article 45, paragraphs 3 to 6, is followed.*

Article 56.

When a sovereign or the chief of a State is chosen as arbitrator, the arbitration procedure is settled by him.

Article 57.

The umpire is president of the tribunal ex officio.

When the tribunal does not include an umpire, it appoints its own president.

Article 58.

When the compromis is settled by a commission, as contemplated in Article 54, and in the absence of an agreement to the contrary, the commission itself shall form the arbitration tribunal.

Article 59.

Should one of the arbitrators either die, retire, or be unable for any reason whatever to discharge his functions, the same procedure

is followed for filling the vacancy as was followed for appointing him.

Article 60.

The tribunal sits at The Hague, unless some other place is selected by the parties.

The tribunal can only sit in the territory of a third Power with the latter's consent.

The place of meeting once fixed can not be altered by the tribunal, except with the consent of the parties.

Article 61.

If the question as to what languages are to be used has not been settled by the compromis, it shall be decided by the tribunal.

Article 62.

The parties are entitled to appoint special agents to attend the tribunal to act as intermediaries between themselves and the tribunal.

They are further authorized to retain for the defense of their rights and interests before the tribunal counsel or advocates appointed by themselves for this purpose.

The members of the Permanent Court may not act as agents, counsel, or advocates except on behalf of the Power which appointed them members of the Court.

Article 63.

As a general rule, arbitration procedure comprises two distinct phases: pleadings and oral discussions.

The pleadings consist in the communication by the respective agents to the members of the tribunal and the opposite party of *cases, counter-cases, and, if necessary, of replies; the parties annex thereto all papers* and documents called for in the case. This communication shall be made *either directly or through the intermediary of the International Bureau,* in the *order* and within the time fixed by the *compromis.*

The time fixed by the compromis may be extended by mutual agreement by the parties, or by the tribunal when the latter considers it necessary for the purpose of reaching a just decision.

The discussions consist in the oral development before the tribunal of the arguments of the parties.

Article 64.

A *certified copy* of every document produced by one party must be communicated to the other party.

Article 65.

Unless special circumstances arise, the tribunal does not meet until the pleadings are closed.

Article 66.

The discussions are under the control of the president.

They are only public if it be so decided by the tribunal, with the assent of the parties.

They are recorded in minutes drawn up by the secretaries appointed by the president. These minutes *are signed by the president and by one of the secretaries and* alone have an authentic character.

Article 67.

After the close of the pleadings, the tribunal is entitled to refuse discussion of all new papers or documents which one of the parties may wish to submit to it without the consent of the other party.

Article 68.

The tribunal is free to take into consideration new papers or documents to which its attention may be drawn by the agents or counsel of the parties.

In this case, the tribunal has the right to require the production of these papers or documents, but is obliged to make them known to the opposite party.

Article 69.

The tribunal can, besides, require from the agents of the parties the production of all papers, and can demand all necessary explanations. In case of refusal the tribunal takes note of it.

Article 70.

The agents and the counsel of the parties are authorized to present orally to the tribunal all the arguments they may consider expedient in defense of their case.

Article 71.

They are entitled to raise objections and points. The decisions of the tribunal on these points are final and can not form the subject of any subsequent discussion.

Article 72.

The members of the tribunal are entitled to put questions to the agents and counsel of the parties, and to ask them for explanations on doubtful points.

Neither the questions put, nor the remarks made by members of the tribunal in the course of the discussions, can be regarded as an expression of opinion by the tribunal in general or by its members in particular.

Article 73.

The tribunal is authorized to declare its competence in interpreting the compromis, as well as the other *papers and documents* which may be invoked, and in applying the principles of law.

Article 74.

The tribunal is entitled to issue rules of procedure for the conduct of the case, to decide the forms, *order*, and time in which each party must conclude its arguments, and to arrange all the formalities required for dealing with the evidence.

Article 75.

The parties undertake to supply the tribunal, as fully as they consider possible, with all the information required for deciding the case.

Article 76.

For all notices which the tribunal has to serve in the territory of a third contracting Power, the tribunal shall apply direct to the Government of that Power. The same rule applies in the case of steps being taken to procure evidence on the spot.

The requests for this purpose are to be executed as far as the means at the disposal of the Power applied to under its municipal law allow. They can not be rejected unless the Power in question considers them calculated to impair its own sovereign rights or its safety.

The Court will equally be always entitled to act through the Power on whose territory it sits.

Article 77.

When the agents and counsel of the parties have submitted all the explanations and evidence in support of their case the president shall declare the discussion closed.

Article 78.

The tribunal considers its decisions in private and *the proceedings remain secret.*

All questions are decided by a majority of the members of the tribunal.

Article 79.

The award must give the reasons on which it is based. *It contains the names of the arbitrators; it is signed by the president and registrar or by the secretary acting as registrar.*

Article 80.

The award is read out in public sitting, the agents and counsel of the parties being present or duly summoned to attend.

Article 81.

The award, duly pronounced and notified to the agents of the parties, settles the dispute definitively and without appeal.

Article 82.

Any dispute arising between the parties as to the interpretation and execution of the award shall, in the absence of an agreement to the contrary, be submitted to the tribunal which pronounced it.

Article 83.

The parties can reserve in the compromis the right to demand the revision of the award.

In this case and unless there be an agreement to the contrary, the demand must be addressed to the tribunal which pronounced the award. It can only be made on the ground of the discovery of some new fact calculated to exercise a decisive influence upon the award and which was unknown to the tribunal and to the party which demanded the revision at the time the discussion was closed.

Proceedings for revision can only be instituted by a decision of

the tribunal expressly recording the existence of the new fact, recognizing in it the character described in the preceding paragraph, and declaring the demand admissible on this ground.

The compromis fixes the period within which the demand for revision must be made.

Article 84.

The award is not binding except on the parties *in dispute.*

When it concerns the interpretation of a Convention to which Powers other than those in dispute are parties, they shall inform all the signatory Powers *in good time.* Each of these Powers is entitled to intervene in the case. If one or more avail themselves of this right, the interpretation contained in the award is equally binding on them.

Article 85.

Each party pays its own expenses and an equal share of the expenses of the tribunal.

CHAPTER IV.—*Arbitration by Summary Procedure.*

Article 86.

With a view to facilitating the working of the system of arbitration in disputes admitting of a summary procedure, the contracting Powers adopt the following rules, which shall be observed in the absence of other arrangements and subject to the reservation that the provisions of Chapter III apply so far as may be.

Article 87.

Each of the parties in dispute appoints an arbitrator. The two arbitrators thus selected choose an umpire. If they do not agree on this point, each of them proposes two candidates taken from the general list of the members of the Permanent Court exclusive of the members appointed by either of the parties and not being nationals of either of them; which of the candidates thus proposed shall be the umpire is determined by lot.

The umpire presides over the tribunal, which gives its decisions by a majority of votes.

Article 88.

In the absence of any previous agreement the tribunal, as soon as it is formed, settles the time within which the two parties must submit their respective cases to it.

Article 89.

Each party is represented before the tribunal by an agent, who serves as intermediary between the tribunal and the Government who appointed him.

Article 90.

The proceedings are conducted exclusively in writing. Each party, however, is entitled to ask that witnesses and experts should be called. The tribunal has, for its part, the right to demand oral explanations from the agents of the two parties, as well as from the experts and witnesses whose appearance in Court it may consider useful.

PART V.—FINAL PROVISIONS.

Article 91.

The present Convention, duly ratified, shall replace, as between the contracting Powers, the Convention for the pacific settlement of international disputes of the 29th July, 1899.

Article 92.

The present Convention shall be ratified as soon as possible.

The ratifications shall be deposited at The Hague.

The first deposit of ratifications shall be recorded in a procès-verbal signed by the representatives of the Powers which take part therein and by the Netherland Minister for Foreign Affairs.

The subsequent deposits of ratifications shall be made by means of a written notification, addressed to the Netherland Government and accompanied by the instrument of ratification.

A duly certified copy of the procès-verbal relative to the first deposit of ratifications, of the notifications mentioned in the preceding paragraph, and of the instruments of ratification, shall be immediately sent by the Netherland Government, through the diplomatic channel, to the Powers invited to the Second Peace Conference, as well as to those Powers which have adhered to the Convention. In the cases contemplated in the preceding paragraph, the said Government shall at the same time inform the Powers of the date on which it received the notification.

Article 93.

Non-signatory Powers which have been *invited to* the *Second* Peace Conference may adhere to the present Convention.

The Power which desires to adhere notifies its intention in writing to the Netherland Government, forwarding to it the act of adhesion, which shall be deposited in the archives of the said Government.

This Government shall immediately forward to all the other Powers invited to the Second Peace Conference a duly certified copy of the notification as well as of the act of adhesion, mentioning the date on which it received the notification.

Article 94.

The conditions on which the Powers which have not been *invited to* the *Second* Peace Conference may adhere to the present Convention shall form the subject of a subsequent agreement between the contracting Powers.

Article 95.

The present Convention shall take effect, in the case of the Powers which were not a party to the first deposit of ratifications, sixty days after the date of the procès-verbal of this deposit, and, in the case of the Powers which ratify subsequently or which adhere, sixty days after the notification of their ratification or of their adhesion has been received by the Netherland Government.

Article 96.

In the event of one of the contracting *Powers wishing to* denounce the present Convention, *the* denunciation shall be notified in writing to the Netherland Government, *which shall* immediately communicate *a duly certified copy of* the notification to all the other Powers *informing them of the date on which it was received.*

The denunciation shall only have effect in regard to the notifying Power, *and one year after the notification has reached the Netherland Government.*

Article 97.

A register kept by the Netherland Minister for Foreign Affairs shall give the date of the deposit of ratifications effected in virtue of Article 92, paragraphs 3 and 4, as well as the date on which the notifications of adhesion (Article 93, paragraph 2) or of denunciation (Article 96, paragraph 1) have been received.

Each contracting Power is entitled to have access to this register and to be supplied with duly certified extracts from it.

In faith whereof the plenipotentiaries have *appended their signatures to* the present Convention.

Done at The Hague, the *18th October, 1907*, in a single copy, which shall remain deposited in the archives of the Netherland Government, and duly certified copies of which shall be sent, through the diplomatic channel to the contracting Powers.

(Here follow signatures.)

No. 7. Convention for the Creation of an International Institute of Agriculture, 1905.[1]

In a series of meetings held at Rome, from May 29 to June 6, 1905, the delegates of the Powers convened at the Conference for the creation of an International Institute of Agriculture, having agreed upon the text of a Convention to be dated June 7, 1905, and this text having been submitted for approval to the Governments which took part in the said conference, the undersigned, having been furnished with full powers, found in good and due form, have agreed, in the names of their respective Governments, on what follows:

Article I.

There is hereby created a permanent international institute of agriculture, having its seat in Rome.

Article II.

The international institute of agriculture is to be a government institution, in which each adhering power shall be represented by delegates of its choice.

The institute shall be composed of a general assembly and a permanent committee, the composition and duties of which are defined in the ensuing articles.

Article III.

The general assembly of the institute shall be composed of the representatives of the adhering governments. Each nation, whatever be the number of its delegates, shall be entitled to a number of votes in the assembly which shall be determined according to the group to which it belongs, and to which reference will be made in Article X.

[1] *U. S. S. L.*, XXXV, 1918. Compare, above, Document No. 5, Arts. XV-XVIII, pp. 477-478. See above, Chap. XI.

Article IV.

The general assembly shall elect for each session from among its members a president and two vice-presidents.

The sessions shall take place on dates fixed by the last general assembly and according to a program proposed by the permanent committee and adopted by the adhering governments.

Article V.

The general assembly shall exercise supreme control over the international institute of agriculture.

It shall approve the projects prepared by the permanent committee regarding the organization and internal workings of the institute. It shall fix the total amount of expenditures and audit and approve the accounts.

It shall submit to the approval of the adhering governments modifications of any nature involving an increase in expenditure or an enlargement of the functions of the institute. It shall set the date for holding the sessions. It shall prepare its regulations.

The presence at the general assemblies of delegates representing two-thirds of the adhering nations shall be required in order to render the deliberations valid.

Article VI.

The executive power of the institute is intrusted to the permanent committee, which, under the direction and control of the general assembly, shall carry out the decisions of the latter and prepare propositions to submit to it.

Article VII.

The permanent committee shall be composed of members designated by the respective governments. Each adhering nation shall be represented in the permanent committee by one member. However, the representation of one nation may be intrusted to a delegate of another adhering nation, provided that the actual number of members shall not be less than fifteen.

The conditions of voting in the permanent committee shall be the same as those indicated in Article III for the general assemblies.

Article VIII.

The permanent committee shall elect from among its members for a period of three years a president and a vice-president, who

may be reëlected. It shall prepare its internal regulations, vote the budget of the institute within the limits of the funds placed at its disposal by the general assembly, and appoint and remove the officials and employees of its office.

The general secretary of the permanent committee shall act as secretary of the assembly.

Article IX.

The institute, confining its operations within an international sphere, shall—

(a) Collect, study, and publish as promptly as possible statistical, technical, or economic information concerning farming, both vegetable and animal products, the commerce in agricultural products, and the prices prevailing in the various markets;

(b) Communicate to parties interested, also as promptly as possible, all the information just referred to;

(c) Indicate the wages paid for farm work;

(d) Make known the new diseases of vegetables which may appear in any part of the world, showing the territories infected, the progress of the disease, and, if possible, the remedies which are effective in combating them;

(e) Study questions concerning agricultural coöperation, insurance, and credit in all their aspects; collect and publish information which might be useful in the various countries in the organization of works connected with agricultural coöperation, insurance, and credit;

(f) Submit to the approval of the governments, if there is occasion for it, measures for the protection of the common interests of farmers and for the improvement of their condition, after having utilized all the necessary sources of information, such as the wishes expressed by international or other agricultural congresses or congresses of sciences applied to agriculture, agricultural societies, academies, learned bodies, etc.

All questions concerning the economic interests, the legislation, and the administration of a particular nation shall be excluded from the consideration of the institute.

Article X.

The nations adhering to the institute shall be classed in five groups, according to the place which each of them thinks it ought to occupy.

The number of votes which each nation shall have and the number of units of assessment shall be established according to the following gradations:

	NUMBERS OF VOTES.	UNITS OF ASSESSMENT.
I	5	16
II	4	8
III	3	4
IV	2	2
V	1	1

In any event the contribution due per unit of assessment shall never exceed a maximum of 2,500 francs.

As a temporary provision the assessment for the first two years shall not exceed 1,500 francs per unit.

Colonies may, at the request of the nations to which they belong, be admitted to form part of the institute on the same conditions as the independent nations.

Article XI.

The present Convention shall be ratified and the ratifications exchanged as soon as possible by depositing them with the Italian Government.

In faith whereof the respective Plenipotentiaries have signed the present Convention and have hereunto affixed their seals.

Done at Rome the 7th of June one thousand nine hundred and five, in a single original, deposited with the Ministry of Foreign Affairs of Italy, of which certified copies shall be sent through the diplomatic channel to the contracting States.

No. 8. Proposals for The Hague Conference of 1907.[1]

a. Memorandum from the Russian Embassy in Washington, handed to the President of the United States, 13 September, 1905, proposing a Second Peace Conference at The Hague.

In view of the termination, with the cordial coöperation of the President of the United States, of the war, and of the conclusion of peace between Russia and Japan, His Majesty the Emperor, as initiator of the International Peace Conference of 1899, holds that a favorable moment has now come for the further development and for the systematizing of the labors of that international conference. With this end in view, and being assured in advance of the sympathy of President Roosevelt, who has already, last year, pronounced himself in favor of such a project, His Majesty desires to approach him with a proposal to the effect that the Government of the United States take part in a new interna-

[1] *U. S. For. Rels., 1905*, 828; *1906*, 1629; see, above, text, Chap. XII.

tional conference which could be called together at The Hague as soon as favorable replies could be secured from all the other States to which a similar proposal will be made. As the course of the late war has given rise to a number of questions which are of the greatest importance and closely related to the Acts of the First Conference, the plenipotentiaries of Russia at the future meeting will lay before the conference a detailed program which could serve as a starting point for its deliberations.

b. Note from the Russian Ambassador to the Secretary of State, 3 April, 1906.

Imperial Russian Embassy,
Washington, D. C., April 3, 1906.

Mr. Secretary of State: I have just received from my Government order by telegraph to bring the following to the knowledge of the United States Government:

The Imperial (Russian) Government, in agreement with the Dutch Government, proposes to call The Hague Conference during the first half of the month of July of the present year.

Russia at the same time invites the nations which did not sign the convention relative to the laws of war on land, nor that relative to the adaptation of the Geneva Convention to war at sea, to inform the Royal Government of The Netherlands of their adhesion to these conventions. With regard to further adhesions to the convention concerning international arbitration, the Imperial Government is conferring on this subject with the Governments which signed the acts of 1899.

I deem it proper at the same time to inclose herewith a summary of the program which the Imperial Government proposes to submit to the Conference at The Hague, and I should thank your Excellency to inform me of the response of your Government to this proposition, in order that I may transmit it to St. Petersburg by telegraph.

Please accept, etc., ROSEN.

c. Note from the Russian Ambassador to the Secretary of State proposing the Program of the Second Peace Conference 12 April, 1906.

Imperial Embassy of Russia,
Washington, April 12, 1906.

Mr. Secretary of State: When it assumed the initiative of calling a Second Peace Conference, the Imperial Government had

in view the necessity of further developing the humanitarian principles on which was based the work accomplished by the great international assemblage of 1899.

At the same time, it deemed it expedient to enlarge as much as possible the number of States participating in the labors of the contemplated conference, and the alacrity with which the call was answered bears witness to the depth and breadth of the present sentiment of solidarity for the application of ideas aiming at the good of all mankind.

The First Conference separated in the firm belief that its labors would subsequently be perfected from the effect of the regular progress of enlightenment among the nations and kept abreast of the results acquired from experience. Its most important creation, the International Court of Arbitration, is an institution that has already proved its worth and brought together, for the good of all, an areopagus of jurists who command the respect of the world. How much good could be accomplished by international commissions of inquiry toward the settlement of disputes between States has also been shown.

There are, however, certain improvements to be made in the Convention relative to the Pacific Settlement of International Disputes. Following recent arbitrations, the jurists assembled in court have raised certain questions of detail which should be acted upon by adding to the said Convention the necessary amplifications. It would seem especially desirable to lay down fixed principles in regard to the use of languages in the proceedings in view of the difficulties that may arise in the future as the cases referred to arbitral jurisdiction multiply. The *modus operandi* of International Commissions of Inquiry would likewise be open to improvement.

As regards the regulating of the Laws and Customs of War on Land, the provisions established by the First Conference ought also to be completed and defined, so as to remove all misapprehensions.

As for maritime warfare, in regard to which the laws and customs of the several countries differ on certain points, it is necessary to establish fixed rules in keeping with the exigencies of the rights of belligerents and the interests of neutrals.

A convention bearing on these subjects should be framed and would constitute one of the most prominent parts of the tasks devolved upon the forthcoming conference.

Holding, therefore, that there is at present occasion only to examine questions that demand special attention as being the outcome of the experience of recent years, without touching upon those that might have reference to the limitation of military or

naval forces, the Imperial Government proposes for the program of the contemplated meeting the following main points:

1. Improvements to be made in the provisions of the Convention relative to the pacific settlement of international disputes as regards the Court of Arbitration and the International Commissions of Inquiry.
2. Additions to be made to the provisions of the Convention of 1899 relative to the Laws and Customs of War on Land—among others, those concerning the opening of Hostilities, the Rights of Neutrals on land, etc. Declarations of 1899: one of these having expired, question of its being revived.
3. Framing of a convention relative to the laws and customs of maritime warfare, concerning—

   The special operations of maritime warfare, such as the bombardment of ports, cities, and villages by a naval force; the laying of torpedoes, etc.;

   The transformation of merchant vessels into warships;

   The private property of belligerents at sea;

   The length of time to be granted to merchant ships for their departure from ports of neutrals or of the enemy after the opening of hostilities;

   The rights and duties of neutrals at sea, among others, the questions of contraband, the rules applicable to belligerent vessels in neutral ports; destruction, in case of *vis major,* of neutral merchant vessels captured as prizes;

   In the said convention to be drafted, there would be introduced the provisions relative to war on land that would be also applicable to maritime warfare.
4. Additions to be made to the Convention of 1899 for the Adaptation to Maritime Warfare of the Principles of the Geneva Convention of 1864.

As was the case at the Conference of 1899, it would be well understood that the deliberations of the contemplated meeting should not deal with the political relations of the several States, or the condition of things established by treaties, or in general with questions that did not directly come within the program adopted by the several cabinets.

The Imperial Government desires distinctly to state that the data of this program and the eventual acceptance of the several States clearly do not prejudge the opinion that may be delivered in the conference in regard to the solving of the questions brought up for discussion. It would likewise be for the contemplated meet-

ing to decide as to the order of the questions to be examined and the form to be given to the decisions reached, as to whether it should be deemed preferable to include some of them in new conventions or to append them, as additions, to conventions already existing.

In formulating the above-mentioned program, the Imperial Government bore in mind, as far as possible, the recommendations made by the First Peace Conference, with special regard to the Rights and Duties of Neutrals, the private property of belligerents at sea, the bombardment of ports, cities, etc. It entertains the hope that the Government of the United States will take the whole of the points proposed as the expression of a wish to come nearer that lofty ideal of international justice which is the permanent goal of the whole civilized world.

By order of my Government, I have the honor to acquaint you with the foregoing, and, awaiting the reply to the Government of the United States with as little delay as possible, I embrace this opportunity to beg you, Mr. Secretary of State, to accept the assurance of my very high consideration. ROSEN.

No. 9. Final Act of the Second Hague Peace Conference, 1907.[1]

The Second International Peace Conference, proposed in the first instance by the President of the United States of America, having been convoked, on the invitation of His Majesty the Emperor of All the Russias, by Her Majesty the Queen of the Netherlands, assembled on the 15th June, 1907, at The Hague, in the Hall of the Knights, for the purpose of giving a fresh development to the humanitarian principles which served as a basis for the work of the First Conference of 1899,

The following Powers took part in the Conference, and appointed the Delegates named below:—

(*Here follow the names of the delegates.*)

At a series of meetings, held from the 15th June to the 18th October, 1907, in which the above Delegates were throughout animated by the desire to realize, in the fullest possible measure, the generous views of the august initiator of the Conference and the intentions of their Governments, the Conference drew up for submission for signature by the Plenipotentiaries, the text of the Conventions and of the Declaration enumerated below and annexed to the present Act:—

1. Convention for the Pacific Settlement of International Disputes.
2. Convention respecting the Limitation of the Employment of Force for the Recovery of Contract Debts.

[1] *U. S. For. Rels., 1907*, 1266; see, above, text, Chaps. VIII and XII.

3. Convention relative to the Opening of Hostilities.
4. Convention respecting the Laws and Customs of War on Land.
5. Convention respecting the Rights and Duties of Neutral Powers and Persons in case of War on Land.
6. Convention relative to the Status of Enemy Merchant-ships at the Outbreak of Hostilities.
7. Convention relative to the Conversion of Merchant-ships into War-ships.
8. Convention relative to the Laying of Automatic Submarine Contact Mines.
9. Convention respecting Bombardment by Naval Forces in Time of War.
10. Convention for the Adaptation to Naval War of the Principles of the Geneva Convention.
11. Convention relative to certain Restrictions with regard to the Exercise of the Right of Capture in Naval War.
12. Convention relative to the creation of an International Prize Court.
13. Convention concerning the Rights and Duties of Neutral Powers in Naval War.
14. Declaration prohibiting the discharge of Projectiles and Explosives from Balloons.

These Conventions and Declaration shall form so many separate Acts. These Acts shall be dated this day, and may be signed up to the 30th June, 1908, at The Hague, by the Plenipotentiaries of the Powers represented at the Second Peace Conference.

The Conference, actuated by the spirit of mutual agreement and concession characterizing its deliberations, has agreed upon the following Declaration, which, while reserving to each of the Powers represented full liberty of action as regards voting, enables them to affirm the principles which they regard as unanimously admitted:—

It is unanimous—

1. In admitting the principle of compulsory arbitration.
2. In declaring that certain disputes, in particular those relating to the interpretation and application of the provisions of International Agreements, may be submitted to compulsory arbitration without any restriction.

Finally, it is unanimous in proclaiming that, although it has not yet been found feasible to conclude a Convention in this sense, nevertheless the divergences of opinion which have come to light have not exceeded the bounds of judicial controversy, and that, by working together here during the past four months, the collected Powers not only have learnt to understand one another and to

draw closer together, but have succeeded in the course of this long collaboration in evolving a very lofty conception of the common welfare of humanity.

The Conference has further unanimously adopted the following Resolution:—

The Second Peace Conference confirms the Resolution adopted by the Conference of 1899 in regard to the limitation of military expenditure; and inasmuch as military expenditure has considerably increased in almost every country since that time, the Conference declares that it is eminently desirable that the Governments should resume the serious examination of this question.

It has besides expressed the following opinions:—

1. The Conference calls the attention of the Signatory Powers to the advisability of adopting the annexed draft Convention for the creation of a Judicial Arbitration Court, and of bringing it into force as soon as an agreement has been reached respecting the selection of the Judges and the constitution of the Court.
2. The Conference expresses the opinion that, in case of war, the responsible authorities, civil as well as military, should make it their special duty to ensure and safeguard the maintenance of pacific relations, more especially of the commercial and industrial relations between the inhabitants of the belligerent States and neutral countries.
3. The Conference expresses the opinion that the Powers should regulate, by special Treaties, the position, as regards military charges, of foreigners residing within their territories.
4. The Conference expresses the opinion that the preparation of regulations relative to the laws and customs of naval war should figure in the program of the next Conference, and that in any case the Powers may apply, as far as possible, to war by sea the principles of the Convention relative to the laws and Customs of War on land.

Finally, the Conference recommends to the Powers the assembly of a Third Peace Conference, which might be held within a period corresponding to that which has elapsed since the preceding Conference, at a date to be fixed by common agreement between the Powers, and it calls their attention to the necessity of preparing the program of this Third Conference a sufficient time in advance to ensure its deliberations being conducted with the necessary authority and expedition.

In order to attain this object the Conference considers that it

would be very desirable that, some two years before the probable date of the meeting, a preparatory Committee should be charged by the Governments with the task of collecting the various proposals to be submitted to the Conference, of ascertaining what subjects are ripe for embodiment in an International Regulation, and of preparing a program which the Governments should decide upon in sufficient time to enable it to be carefully examined by the countries interested. This Committee should further be intrusted with the task of proposing a system of organization and procedure for the Conference itself.

In faith whereof the Plenipotentiaries have signed the present Act and have affixed their seals thereto.

Done at The Hague, the 18th October, 1907, in a single copy, which shall remain deposited in the archives of the Netherland Government, and duly certified copies of which shall be sent to all the Powers represented at the Conference.

(*Here follow signatures.*)

No. 10. Regulations Governing the Organization and Work of the Peace Conference of Paris, 1919.[1]

Article I.

The Conference assembled to fix the conditions of peace, first in the preliminaries of peace and then in the definite treaty of peace, shall include the representatives of the belligerent Allied and associated Powers. The belligerent Powers with general interests (the United States of America, the British Empire, France, Italy, and Japan) shall take part in all sittings and commissions. The belligerent Powers with particular interests (Belgium, Brazil, the British Dominions and India, China, Cuba, Greece, Guatemala, Haiti, Hedjaz, Honduras, Liberia, Nicaragua, Panama, Poland, Portugal, Rumania, Serbia, Siam, and the Czecho-Slovak Republic) shall take part in the sittings at which questions concerning them are discussed. The Powers in a state of diplomatic rupture with the enemy Powers (Bolivia, Ecuador, Peru, and Uruguay) shall take part in the sittings at which questions concerning them are discussed. Neutral Powers and States in process of formation may be heard either orally or in writing when summoned by the Powers with general interests at sittings devoted especially to the examination of questions directly concerning them, but only so far as these questions are concerned.

[1] *Am. Jour. Int. Law*, XIII, No. 2 (April, 1919), Supplement, 109; see, above, text, Chap. XII.

Article II.

The Powers shall be represented by Plenipotentiary Delegates to the number of five for the United States of America, the British Empire, France, Italy, and Japan; three for Belgium, Brazil and Serbia; two for China, Greece, Hedjaz, Poland, Portugal, Rumania, Siam, and the Czecho-Slovak Republic; one for Cuba, Guatemala, Haiti, Honduras, Liberia, Nicaragua, and Panama; one for Bolivia, Ecuador, Peru, and Uruguay. The British Dominions and India shall be represented as follows: Two delegates each for Australia, Canada, South Africa, and India (including the Native States); one delegate for New Zealand. Although the number of delegates may not exceed the figures above mentioned, each delegation has the right to avail itself of the panel system. The representation of the Dominions (including Newfoundland) and India may besides be included in the representation of the British Empire by the panel system. Montenegro shall be represented by one delegate, but the rules concerning the designation of this delegate shall not be fixed until the moment when the political situation of this country shall have been cleared up. The conditions of the representation of Russia shall be fixed by the Conference at the moment when the matters concerning Russia are examined.

Article III.

Each delegation of Plenipotentiaries may be accompanied by technical delegates properly accredited and by two stenographers. The technical delegates may be present at the sittings for the purpose of furnishing information which may be asked of them. They shall be allowed to speak for the purpose of giving any desired explanations.

Article IV.

The delegates take precedence according to the alphabetical order in French of the Powers.

Article V.

The Conference will be declared open by the President of the French Republic. The President of the Council of French Ministers will be invested temporarily with the Chairmanship. Immediately after this, a Committee, composed of one Plenipotentiary of each of the great Allied or associated Powers, shall proceed at once to the authentication of the credentials of all members present.

Article VI.

In the course of the first meeting, the Conference will proceed to appoint a permanent President and four Vice-Presidents chosen from the Plenipotentiaries of the Great Powers in alphabetical order.

Article VII.

A Secretariat appointed from outside Plenipotentiaries and composed of one representative of the United States of America, one of the British Empire, one of France, one of Italy, and one of Japan, will be submitted to the approval of the Conference by the President, who will be the controlling authority responsible for its operations. This Secretariat will be entrusted with the task of drafting protocols of the meetings, of classifying the archives, of providing for the administrative organization of the Conference, and generally of ensuring the regular and punctual working of the services entrusted to it. The head of the Secretariat will have charge of, and be responsible for, the protocols and archives. The archives will always be open to the members of the Conference.

Article VIII.

The publicity of the proceedings shall be ensured by official communiqués which shall be prepared by the Secretariat for publication. In case of disagreement as to the drafting of these communiqués the matter shall be referred to the principal Plenipotentiaries or their representatives.

Article IX.

All documents intended for inclusion in the protocols must be handed in in writing by the Plenipotentiaries presenting them. No document or proposition may be submitted save by one of the Plenipotentiaries or in his name.

Article X.

Plenipotentiaries wishing to make a proposal unconnected with the questions on the agenda or not arising from the discussion shall give notice of the same twenty-four hours in advance in order to facilitate discussion. However, exceptions can be made to this rule in the case of amendments or secondary questions, but not in the case of substantive proposals.

Article XI.

Petitions, memoranda, observations, or documents forwarded to the Conference by any person other than Plenipotentiaries must be received and classified by the Secretariat. Such of these communications as are of political interest will be briefly summarized in a list to be distributed to all the Plenipotentiaries. This list will be kept up to date as analogous communications are received. All such documents will be deposited in the archives.

Article XII.

The discussion of the questions to be decided will comprise a first and a second reading. The first will consist of general discussion with the object of obtaining agreement on matters of principle. Subsequently, there will be a second reading for more detailed examination.

Article XIII.

The Plenipotentiaries shall have the right, subject to the agreement of the Conference, to authorize their technical delegates to submit technical explanations on such points as may be deemed useful. If the Conference thinks it advisable, the technical examination of any particular question may be entrusted to a committee of technical delegates, whose duty it will be to report and suggest solutions.

Article XIV.

The protocols drawn up by the Secretariat shall be printed and distributed in proof to the delegates in the shortest possible time in order to expedite the work of the Conference. The communication thus made in advance shall take the place of the reading of the protocols at the beginning of each meeting. If no alteration is proposed by the Plenipotentiaries, the text shall be deemed approved and be entered in the archives. If any alteration is proposed, its text shall be read by the President at the beginning of the following meeting. In any case, the protocol must be read out in full at the request of any Plenipotentiary.

Article XV.

A committee shall be formed for drafting the resolutions adopted. This committee shall concern itself only with questions which have been decided. Its sole duty shall be to draw up the text of the decisions adopted and to present it for the approval of

the Conference. It shall be composed of five members not forming part of the Plenipotentiary Delegates, and composed of one representative of the United States of America, one of the British Empire, one of France, one of Italy, and one of Japan.

No. 11. Treaty of Alliance for the Preservation of the Balance of Power, 1814.[1]

In the Name of the Most Holy and Undivided Trinity.

His Majesty the King of the United Kingdom of Great Britain and Ireland, His Imperial and Royal Apostolic Majesty the Emperor of Austria, King of Hungary and Bohemia, His Majesty the Emperor of All the Russias, and His Majesty the King of Prussia, have transmitted to the French Government proposals for concluding a General Peace, and being desirous, should France refuse the Conditions therein contained, to draw closer the ties which unite them for the vigorous prosecution of a War undertaken for the salutary purpose of putting an end to the miseries of Europe, of securing its future repose, by reëstablishing a just balance of Power, and being at the same time desirous, should the Almighty bless their pacific intentions, to fix the means of maintaining against every attempt the order of things which shall have been the happy consequence of their efforts, have agreed to sanction by a solemn Treaty, signed separately by each of the four Powers with the three others, this twofold engagement.

(*Here the plenipotentiaries are named.*)

The said Plenipotentiaries, after having exchanged their Full Powers, found to be in due and proper form, have agreed upon the following Articles:

Article I.

The High Contracting Parties above named solemnly engage by the present Treaty, and in the event of France refusing to accede to the Conditions of Peace now proposed, to apply all the means of their respective States to the vigorous prosecution of the War against that Power, and to employ them in perfect concert, in order to obtain for themselves and for Europe a General Peace, under the protection of which the rights and liberties of all Nations may be established and secured.

This engagement shall in no respect affect the Stipulations which the several Powers have already contracted relative to the number of Troops to be kept against the Enemy; and it is understood that the Courts of England, Austria, Russia, and Prussia,

[1] *B. & F.*, I, 121-129; see, above, text, Chap. XIII.

engage by the present Treaty to keep in the field, each of them, one hundred and fifty thousand effective men, exclusive of garrisons, to be employed in active service against the common Enemy.

Article II.

The High Contracting Parties reciprocally engage not to negotiate separately with the common Enemy, nor to sign Peace, Truce, nor Convention, but with common consent. They, moreover, engage not to lay down their Arms until the object of the War, mutually understood and agreed upon, shall have been attained.

* * * *

Article V.

The High Contracting Parties, reserving to themselves to concert together, on the conclusion of a Peace with France, as to the means best adapted to guarantee to Europe, and to themselves reciprocally, the continuance of the Peace, have also determined to enter, without delay, into defensive engagements for the protection of their respective States in Europe against every attempt which France might make to infringe the order of things resulting from such Pacification.

Article VI.

To effect this, they agree that in the event of one of the High Contracting Parties being threatened with an attack on the part of France, the others shall employ their most strenuous efforts to prevent it, by friendly interposition.

Article VII.

In the case of these endeavors proving ineffectual, the High Contracting Parties promise to come to the immediate assistance of the Power attacked, each with a body of sixty thousand men.

* * * *

Article XV.

In order to render more effectual the Defensive Engagements above stipulated, by uniting for their common defense the Powers the most exposed to a French invasion, the High Contracting Parties engage to invite those Powers to accede to the present Treaty of Defensive Alliance.

Article XVI.

The present Treaty of Defensive Alliance having for its object to maintain the equilibrium of Europe, to secure the repose and independence of its States, and to prevent the invasions which during so many years have desolated the World, the High Contracting Parties have agreed to extend the duration of it to twenty years, to take date from the day of its Signature; and they reserve to themselves, to concert upon its ulterior prolongation, three years before its expiration, should circumstances require it.

Article XVII.

The present Treaty shall be ratified, and the Ratifications exchanged within two months, or sooner if possible.

In witness whereof, the respective Plenipotentiaries have signed the same, and affixed thereto the Seal of their Arms.

Done at Chaumont this 1st of March, in the year of our Lord 1814.

(L. S.) CASTLEREAGH.
(L. S.) CLEMENT WENCESLAUS LOTHAIRE,
Prince of Metternich.

No. 12. Act of the Holy Alliance, 26 September, 1815.[1]

In the Name of the Most Holy and Invisible Trinity.

Their Majesties the Emperor of Austria, the King of Prussia, and the Emperor of Russia, having, in consequence of the great events which have marked the course of the three last years in Europe, and especially of the blessings which it has pleased Divine Providence to shower down upon those States which place their confidence and their hope on it alone, acquired the intimate conviction of the necessity of settling the steps to be observed by the Powers, in their reciprocal relations, upon the sublime truths which the Holy Religion of our Saviour teaches:

They solemnly declare that the present Act has no other object than to publish, in the face of the whole world, their fixed resolution, both in the administration of their respective States, and in their political relations with every other Government, to take for their sole guide the precepts of that Holy Religion, the precepts of Justice, Christian Charity, and Peace, which, far from being applicable only to private concerns, must have an immediate influence on the councils of Princes, and guide all their steps, as being the only means of consolidating human institutions and remedying

[1] *B. & F.*, III, 211; see, above, text, Chap. XIII.

their imperfections. In consequence, their Majesties have agreed on the following Articles:

Article I.

Conformably to the words of the Holy Scriptures, which command all men to consider each other as brethren, the Three Contracting Monarchs will remain united by the bonds of a true and indissoluble fraternity, and, considering each other as fellow countrymen, they will, on all occasions and in all places, lend each other aid and assistance; and, regarding themselves toward their subjects and armies as fathers of families, they will lead them, in the same spirit of fraternity with which they are animated, to protect Religion, Peace and Justice.

Article II.

In consequence, the sole principle of force, whether between the said Governments or between their Subjects, shall be that of doing each other reciprocal service, and of testifying by unalterable good will the mutual affection with which they ought to be animated, to consider themselves all as members of one and the same Christian nation; the three allied Princes looking on themselves as merely delegated by Providence to govern three branches of the one family, namely, Austria, Prussia, and Russia, thus confessing that the Christian world, of which they and their people form a part, has in reality no other Sovereign than Him to whom alone power really belongs, because in Him alone are found all the treasures of love, science, and infinite wisdom, that is to say, God, our Divine Saviour, the Word of the Most High, the Word of life. Their Majesties consequently recommend to their people, with the most tender solicitude, as the sole means of enjoying that Peace which arises from a good conscience, and which alone is durable, to strengthen themselves every day more and more in the principles and exercise of the duties which the Divine Saviour has taught to mankind.

Article III.

All the Powers who shall choose solemnly to avow the sacred principles which have dictated the present Act, and shall acknowledge how important it is for the happiness of nations, too long agitated, that these truths should henceforth exercise over the destinies of mankind all the influence which belongs to them, will be received with equal ardor and affection into this Holy Alliance.

Done in triplicate, and signed at Paris, the year of Grace 1815, 14/26 September.

(L. S.) FRANCIS.
(L. S.) FREDERICK WILLIAM.
(L. S.) ALEXANDER.

No. 13. Program of the Concert of Europe in the Greek Question; Treaty of 6 July, 1827.[1]

In the name of the Most Holy and Undivided Trinity.

His Majesty the King of the United Kingdom of Great Britain and Ireland, His Majesty the King of France and Navarre, and His Majesty the Emperor of all the Russias, penetrated with the necessity of putting an end to the sanguinary struggle which, while it abandons the Greek Provinces and the Islands of the Archipelago to all the disorders of anarchy, daily causes fresh impediments to the commerce of the States of Europe, and gives opportunity for acts of Piracy which not only expose the subjects of the High Contracting Parties to grievous losses, but also render necessary measures which are burdensome for their observation and suppression.

His Majesty the King of the United Kingdom of Great Britain and Ireland, and His Majesty the King of France and Navarre, having, moreover, received from the Greeks an earnest invitation to interpose their mediation with the Ottoman Porte; and together with His Majesty the Emperor of all the Russias, being animated with the desire of putting a stop to the effusion of blood, and of preventing the evils of every kind which the continuance of such a state of things may produce;

They have resolved to combine their efforts, and to regulate the operation thereof by a formal Treaty, for the object of reëstablishing peace between the contending parties, by means of an arrangement called for, no less by sentiments of humanity, than by interests for the tranquillity of Europe.

For these purposes they have named their Plenipotentiaries to discuss, conclude, and sign the said Treaty, that is to say:— . . .

Who having communicated to each other their full powers, found to be in due and proper form, have agreed upon the following articles.

Article I.

The contracting Powers shall offer their mediation to the Ottoman Porte, with the view of effecting a reconciliation between it and the Greeks. This offer of mediation shall be made to that Power immediately after the ratification of the present treaty, by

[1] *B. & F.*, XIV, 632; see, above, text, Chap. XIII.

means of a joint declaration, signed by the plenipotentiaries of the Allied Courts at Constantinople; and, at the same time, a demand for an immediate armistice shall be made to the two contending parties, as a preliminary and indispensable condition to the opening of any negotiation.

Article II.

The arrangement to be proposed to the Ottoman Porte shall rest upon the following bases:—

The Greeks shall hold under the Sultan as under a Lord paramount; and, in consequence thereof, they shall pay to the Ottoman Empire an annual tribute, the amount of which shall be fixed, once for all, by common agreement. They shall be governed by authorities whom they shall choose and appoint themselves, but in the nomination of whom the Porte shall have a defined right. In order to effect a complete separation between the individuals of the two nations, and to prevent the collisions which would be the inevitable consequence of so protracted a struggle, the Greeks shall become possessors of all Turkish property situated either upon the continent, or in the islands of Greece, on condition of indemnifying the former proprietors, either by an annual sum to be added to the tribute which they shall pay to the Porte, or by some other arrangement of the same nature.

Article III.

The details of this arrangement, as well as the limits of the territory upon the continent, and the designation of the islands of the Archipelago to which it shall be applicable, shall be settled by a negotiation to be afterwards entered into between the High Powers and the two contending parties.

Article IV.

The contracting Powers engage to pursue the salutary work of the pacification of Greece, upon the bases laid down in the preceding articles, and to furnish, without the least delay, their representatives at Constantinople with all the instructions which are required for the execution of the Treaty which they now sign.

Article V.

The contracting Powers will not seek in these arrangements, any augmentation of territory, any exclusive influence, or any commercial advantage for their subjects, which those of every other nation may not equally obtain.

Article VI.

The arrangements for reconciliation and peace, which shall be definitively agreed upon between the contending parties, shall be guaranteed by those of the signing Powers who may judge it expedient or possible to contract that obligation. The operation and the effects of such guarantee shall become the subject of future stipulation between the High Powers.

Article VII.

The present Treaty shall be ratified, and the ratifications shall be exchanged in two months, or sooner if possible.

In witness, &c.

Done at London, the 6th day of July, in the year of our Lord 1827.

DUDLEY. LE PRINCE DE POLIGNAC. LIEVEN.

Additional Article.

In case the Ottoman Porte should not, within the space of one month, accept the mediation which is to be proposed to it, the High contracting parties agree upon the following measures:—

1. It shall be declared to the Porte, by their representatives at Constantinople, that the inconveniences and evils described in the Patent Treaty as inseparable from the state of things which has, for six years, existed in the East, and the termination of which, by the means at the command of the Sublime Ottoman Porte, appears to be still distant, impose upon the High contracting parties the necessity of taking immediate measures for forming a connection with the Greeks. It is understood that this shall be effected by establishing commercial relations with the Greeks, and by sending to and receiving from them, for this purpose, consular agents, provided there shall exist in Greece authorities capable of supporting such relations.

2. If, within the said term of one month, the Porte does not accept the armistice proposed in the first article of the Patent Treaty, or if the Greeks refuse to carry it into execution, the High contracting Powers shall declare to either of the contending parties which may be disposed to continue hostilities, or to both of them, that the said High Powers intend to exert all the means which circumstances may suggest to their prudence, for the purpose of obtaining the immediate effects of the armistice of which they desire the execution, by preventing, as far as possible, all collision

between the contending parties; and in consequence, immediately after the above-mentioned declaration, the High Powers will, jointly, exert all their efforts to accomplish the object of such armistice, without, however, taking any part in the hostilities between the two contending parties. Immediately after the signature of the present additional Article, the High contracting Powers will, jointly, transmit to the admirals commanding their respective squadrons in the Levant, conditional instructions in conformity to the arrangements above declared.

3. Finally, if, contrary to all expectation, these measures do not prove sufficient to procure the adoption of the propositions of the High contracting parties by the Ottoman Porte; or if, on the other hand, the Greeks decline the conditions stipulated in their favor, by the Treaty of this date, the High contracting Powers will, nevertheless, continue to pursue the work of pacification, on the bases upon which they have agreed; and, in consequence, they authorize, from the present moment, their representatives at London to discuss and determine the future measures which it may become necessary to employ.

The present additional article shall have the same force and validity as if it were inserted, word for word, in the treaty of this day. It shall be ratified, and the ratifications shall be exchanged at the same time as those of the said treaty.

In witness, &c.

Done at London, the 6th day of July, in the year of our Lord 1827.

DUDLEY. LE PRINCE DE POLINAC, LIEVEN.

No. 14. Convention of the Concert of Europe providing Guarantees for the Kingdom of Greece, 7 May, 1832.[1]

The Courts of France, Great Britain, and Russia, exercising the power conveyed to them by the Greek Nation, to make choice of a Sovereign for Greece, raised to the rank of an independent State, and being desirous of giving to that country a fresh proof of their friendly disposition, by the election of a Prince descended from a Royal House, the friendship and alliance of which cannot fail to be of essential service to Greece, and which has already acquired claims to her esteem and gratitude, have resolved to offer the Crown of the new Greek State to the Prince Frederick Otho of Bavaria, second son of His Majesty the King of Bavaria.

His Majesty the King of Bavaria, on his part, acting in the character of Guardian of the said Prince Otho during his minority,

[1] *B. & F.*, XIX, 33; see, above, text, Chap. XIII.

participating in the views of the three Courts, and duly appreciating the motives which have induced them to fix their choice upon a Prince of his house, has determined to accept the Crown of Greece for his second son the Prince Frederick Otho of Bavaria.

In consequence of such acceptance, and for the purpose of agreeing upon the arrangements which it has rendered necessary, their Majesties the King of the French, the King of the United Kingdom of Great Britain and Ireland, and the Emperor of all the Russias, on the one part, and His Majesty the King of Bavaria on the other, have named as their Plenipotentiaries, viz.:

Who, after having exchanged their full powers, found to be in good and due form, have agreed upon and signed the following Articles:—

Article I.

The Courts of Great Britain, France, and Russia, duly authorized for this purpose by the Greek nation, offer the hereditary Sovereignty of Greece to the Prince Frederick Otho of Bavaria, second son of His Majesty the King of Bavaria.

Article II.

His Majesty the King of Bavaria, acting in the name of his said son, a minor, accepts, on his behalf, the hereditary Sovereignty of Greece, on the conditions hereinafter settled.

Article III.

The Prince Otho of Bavaria shall bear the title of King of Greece.

Article IV.

Greece, under the sovereignty of the Prince Otho of Bavaria, and under the guarantee of the three Courts, shall form a monarchical and independent State, according to the terms of the Protocol signed between the said Courts, on the 3rd of February, 1830, and accepted both by Greece and by the Ottoman Porte.

Article V.

The limits of the Greek State shall be such as shall be definitely settled by the negotiations which the Courts of Great Britain, France, and Russia, have recently opened with the Ottoman Porte, in execution of the Protocol of the 26th of September, 1831.

Article VI.

The three Courts having beforehand determined to convert the Protocol of the 3rd of February, 1830, into a definite Treaty, as soon as the negotiations relative to the limits of Greece shall have terminated, and to communicate such Treaty to all the States with which they have relations, it is hereby agreed that they shall fulfil this engagement, and that His Majesty the King of Greece shall become a Contracting Party to the Treaty in question.

Article VII.

The three Courts shall, from the present moment, use their influence to procure the recognition of the Prince Otho of Bavaria as King of Greece, by all the Sovereigns and States with whom they have relations.

* * * *

Article XII.

In execution of the stipulations of the Protocol of the 20th of February, 1830, His Majesty the Emperor of all the Russias engages to guarantee, and their Majesties the King of the United Kingdom of Great Britain and Ireland and the King of the French engage to recommend, the former to his Parliament, the latter to his Chambers, to enable their Majesties to guarantee, on the following conditions, a loan to be contracted by the Prince Otho of Bavaria, as King of Greece:—

1. The Principal of the loan to be contracted under the guarantee of the three Powers shall not exceed a total amount of sixty millions of francs.

2. The said loan shall be raised by instalments of twenty millions of francs each.

3. For the present, the first instalment only shall be raised, and the three Courts shall each become responsible for the payment of one-third of the annual amount of the interest and sinking fund of the said instalment.

4. The second and the third instalments of the said loan may also be raised, according to the necessities of the Greek State, after previous agreement between the three Courts and His Majesty the King of Greece.

5. In the event of the second and third instalments of the above-mentioned loan being raised in consequence of such an agreement, the three Courts shall each become responsible for the payment of one-third of the annual amount of the interest and sinking fund of these two instalments, as well as of the first.

6. The Sovereign of Greece and the Greek State shall be bound to appropriate to the payment of the interest and sinking fund of such instalments of the loan as may have been raised under the guarantee of the three Courts, the first revenues of the State, in such manner that the actual receipts of the Greek Treasury shall be devoted, first of all, to the payment of the said interest and sinking fund, and shall not be employed for any other purpose, until those payments on account of the instalments of the loan raised under the guarantee of the three Courts, shall have been completely secured for the current year.

The Diplomatic Representatives of the three Courts in Greece shall be specially charged to watch over the fulfilment of the last-mentioned stipulation.

Article XIII.

In case a pecuniary compensation in favor of the Ottoman Porte should result from the negotiations which the three Courts have already opened at Constantinople for the definite settlement of the limits of Greece, it is understood that the amount of such compensation shall be defrayed out of the proceeds of the loan which forms the subject of the preceding Article.

No. 15a. Covenant of the League of Nations, 1919.[1]

THE HIGH CONTRACTING PARTIES,

In order to promote international co-operation and to achieve international peace and security

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,

Agree to this Covenant of the League of Nations.

Article I.

1. The original Members of the League of Nations shall be those of the Signatories which are named in the Annex to this

[1] As published by the League Information Section; see, above, text, Chap. XVI.

Covenant and also such of those other States named in the Annex as shall accede without reservation to this Covenant. Such accession shall be effected by a Declaration deposited with the Secretariat within two months of the coming into force of the Covenant. Notice thereof shall be sent to all other Members of the League.

2. Any fully self-governing State, Dominion or Colony not named in the Annex may become a Member of the League if its admission is agreed to by two-thirds of the Assembly, provided that it shall give effective guarantees of its sincere intention to observe its international obligations, and shall accept such regulations as may be prescribed by the League in regard to its military, naval and air forces and armaments.

3. Any Member of the League may, after two years' notice of its intention so to do, withdraw from the League, provided that all its international obligations and all its obligations under this Covenant shall have been fulfilled at the time of its withdrawal.

Article II.

The action of the League under this Covenant shall be effected through the instrumentality of an Assembly and of a Council, with a permanent Secretariat.

Article III.

1. The Assembly shall consist of Representatives of the Members of the League.

2. The Assembly shall meet at stated intervals and from time to time as occasion may require at the Seat of the League or at such other place as may be decided upon.

3. The Assembly may deal at its meetings with any matter within the sphere of action of the League or affecting the peace of the world.

4. At meetings of the Assembly, each Member of the League shall have one vote, and may have not more than three Representatives.

Article IV.

1. The Council shall consist of Representatives of the Principal Allied and Associated Powers, together with Representatives of four other Members of the League. These four Members of the League shall be selected by the Assembly from time to time in its discretion. Until the appointment of the Representatives of the four Members of the League first selected by the Assembly, Representatives of Belgium, Brazil, Spain and Greece shall be members of the Council.

2. With the approval of the majority of the Assembly, the

Council may name additional Members of the League whose Representatives shall always be Members of the Council; the Council with like approval may increase the number of Members of the League to be selected by the Assembly for representation on the Council.

2*b*. The Assembly shall fix by a two-thirds majority the rules dealing with the election of the non-permanent Members of the Council, and particularly such regulations as relate to their term of office and the conditions of re-eligibility.

3. The Council shall meet from time to time as occasion may require, and at least once a year, at the Seat of the League, or at such other place as may be decided upon.

4. The Council may deal at its meetings with any matter within the sphere of action of the League or affecting the peace of the world.

5. Any Member of the League not represented on the Council shall be invited to send a Representative to sit as a member at any meeting of the Council during the consideration of matters specially affecting the interests of that Member of the League.

6. At meetings of the Council, each Member of the League represented on the Council shall have one vote, and may have not more than one Representative.

Article V.

1. Except where otherwise expressly provided in this Covenant or by the terms of the present Treaty, decisions at any meeting of the Assembly or of the Council shall require the agreement of all the Members of the League represented at the meeting.

2 All matters of procedure at meetings of the Assembly or of the Council, including the appointment of Committees to investigate particular matters, shall be regulated by the Assembly or by the Council and may be decided by a majority of the Members of the League represented at the meeting.

3. The first meeting of the Assembly and the first meeting of the Council shall be summoned by the President of the United States of America.

Article VI.

1. The permanent Secretariat shall be established at the Seat of the League. The Secretariat shall comprise a Secretary-General and such secretaries and staff as may be required.

2. The first Secretary-General shall be the person named in the Annex; thereafter the Secretary-General shall be appointed by the Council with the approval of the majority of the Assembly.

3. The secretaries and staff of the Secretariat shall be appointed by the Secretary-General with the approval of the Council.

4. The Secretary-General shall act in that capacity at all meetings of the Assembly and of the Council.

5. The expenses of the League shall be borne by the Members of the League in the proportion decided by the Assembly.

Article VII.

1. The Seat of the League is established at Geneva.

2. The Council may at any time decide that the Seat of the League shall be established elsewhere.

3. All positions under or in connection with the League, including the Secretariat, shall be open equally to men and women.

4. Representatives of the Members of the League and officials of the League when engaged on the business of the League shall enjoy diplomatic privileges and immunities.

5. The buildings and other property occupied by the League or its officials or by Representatives attending its meetings shall be inviolable.

Article VIII.

1. The Members of the League recognise that the maintainance of peace requires the reduction of national armaments to the lowest point consistent with national safety and the enforcement by common action of international obligations.

2. The Council, taking account of the geographical situation and circumstances of each State, shall formulate plans for such reduction for the consideration and action of the several Governments.

3. Such plans shall be subject to reconsideration and revision at least every ten years.

4. After these plans shall have been adopted by the several Governments, the limits of armaments therein fixed shall not be exceeded without the concurrence of the Council.

5. The Members of the League agree that the manufacture by private enterprise of munitions and implements of war is open to grave objections. The Council shall advise how the evil effects attendant upon such manufacture can be prevented, due regard being had to the necessities of those Members of the League which are not able to manufacture the munitions and implements of war necessary for their safety.

6. The Members of the League undertake to interchange full and frank information as to the scale of their armaments, their military, naval and air programmes and the condition of such of their industries as are adaptable to war-like purposes.

Article IX.

A permanent Commission shall be constituted to advise the Council on the execution of the provisions of Articles 1 and 8 and on military naval and air questions generally.

Article X.

The Members of the League undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all Members of the League. In case of any such aggression or in case of any threat or danger of such aggression the Council shall advise upon the means by which this obligation shall be fulfilled.

Article XI.

1. Any war or threat of war, whether immediately affecting any of the Members of the League or not, is hereby declared a matter of concern to the whole League, and the League shall take any action that may be deemed wise and effectual to safeguard the peace of nations. In case any such emergency should arise the Secretary-General shall on the request of any Member of the League forthwith summon a meeting of the Council.

2. It is also declared to be the friendly right of each Member of the League to bring to the attention of the Assembly or of the Council any circumstance whatever affecting international relations which threatens to disturb international peace or the good understanding between nations upon which peace depends.

Article XII.

1. The Members of the League argee that if there should arise between them any dispute likely to lead to a rupture, they will submit the matter either to arbitration or judicial settlement or to enquiry by the Council, and they agree in no case to resort to war until three months after the award by the arbitrators or the judicial decision or the report by the Council.

2. In any case under this Article the award of the arbitrators or the judicial decision shall be made within a reasonable time, and the report of the Council shall be made within six months after the submission of the dispute.

Article XIII.

1. The Members of the League agree that whenever any dispute shall arise between them which they recognise to be suitable for submission to arbitration or judicial settlement, and which cannot be satisfactorily settled by diplomacy, they will submit the whole subject-matter to arbitration or judicial settlement.

2. Disputes as to the interpretation of a treaty, as to any question of international law, as to the existence of any fact which if established would constitute a breach of any international obligation, or as to the extent and nature of the reparation to be made for any such breach, are declared to be among those which are generally suitable for submission to arbitration or judicial settlement.

3. For the consideration of any such dispute, the court to which the case is referred shall be the Permanent Court of International Justice, established in accordance with Article 14, or any tribunal agreed on by the parties to the dispute or stipulated in any convention existing between them.

4. The Members of the League agree that they will carry out in full good faith any award or decision that may be rendered, and that they will not resort to war against a Member of the League which complies therewith. In the event of any failure to carry out such an award or decision, the Council shall propose what steps should be taken to give effect thereto.

Article XIV.

The Council shall formulate and submit to the Members of the League for adoption plans for the establishment of a Permanent Court of International Justice. The Court shall be competent to hear and determine any dispute of an international character which the parties thereto submit to it. The Court may also give an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly.

Article XV.

1. If there should arise between Members of the League any dispute likely to lead to a rupture, which is not submitted to arbitration or judicial settlement in accordance with Article 13, the Members of the League agree that they will submit the matter to the Council. Any party to the dispute may effect such submission by giving notice of the existence of the dispute to the Secretary-General, who will make all necessary arrangements for a full investigation and consideration thereof.

2. For this purpose the parties to the dispute will communicate to the Secretary-General, as promptly as possible, statements of their case with all the relevant facts and papers, and the Council may forthwith direct the publication thereof.

3. The Council shall endeavour to effect a settlement of the dispute, and if such efforts are successful, a statement shall be made public giving such facts and explanations regarding the dispute

and the terms of settlement thereof as the Council may deem appropriate.

4. If the dispute is not thus settled, the Council either unanimously or by a majority vote shall make and publish a report containing a statement of the facts of the dispute and the recommendations which are deemed just and proper in regard thereto.

5. Any Member of the League represented on the Council may make public a statement of the facts of the dispute and of its conclusions regarding the same.

6. If a report by the Council is unanimously agreed to by the members thereof other than the Representatives of one or more of the parties to the dispute, the Members of the League agree that they will not go to war with any party to the dispute which complies with the recommendations of the report.

7. If the Council fails to reach a report which is unanimously agreed to by the members thereof, other than the Representatives of one or more of the parties to the dispute, the Members of the League reserve to themselves the right to take such action as they shall consider necessary for the maintenance of right and justice.

8. If the dispute between the parties is claimed by one of them, and is found by the Council, to arise out of a matter which by international law is solely within the domestic jurisdiction of that party, the Council shall so report, and shall make no recommendation as to its settlement.

9. The Council may in any case under this Article refer the dispute to the Assembly. The dispute shall be so referred at the request of either party to the dispute provided that such request be made within fourteen days after the submission of the dispute to the Council.

10. In any case referred to the Assembly, all the provisions of this Article and of Article 12 relating to the action and powers of the Council shall apply to the action and powers of the Assembly, provided that a report made by the Assembly, if concurred in by the Representatives of those Members of the League represented on the Council and of a majority of the other Members of the League, exclusive in each case of the Representatives of the parties to the dispute, shall have the same force as a report by the Council concurred in by all the members thereof other than the Representatives of one or more of the parties to the dispute.

Article XVI.

1. Should any Member of the League resort to war in disregard of its covenants under Articles 12, 13 or 15, it shall *ipso facto* be deemed to have committed an act of war against all other Members of the League, which hereby undertake immediately to subject it

to the severance of all trade or financial relations, the prohibition of all intercourse between their nationals and the nationals of the covenant-breaking State, and the prevention of all financial, commercial or personal intercourse between the nationals of the covenant-breaking State and the nationals of any other State, whether a Member of the League or not.

2. It shall be the duty of the Council in such a case to recommend to the several Governments concerned what effective military, naval or air force the Members of the League shall severally contribute to the armed forces to be used to protect the covenants of the League.

3. The Members of the League agree, further, that they will mutually support one another in the financial and economic measures which are taken under this Article, in order to minimise the loss and inconvenience resulting from the above measures, and that they will mutually support one another in resisting any special measures aimed at one of their number by the covenant-breaking State, and that they will take the necessary steps to afford passage through their territory to the forces of any of the Members of the League which are co-operating to protect the covenants of the League.

4. Any Member of the League which has violated any covenant of the League may be declared to be no longer a Member of the League by a vote of the Council concurred in by the Representatives of all the other Members of the League represented thereon.

Article XVII.

1. In the event of a dispute between a Member of the League and a State which is not a Member of the League, or betwen States not Members of the League, the State or States not Members of the League shall be invited to accept the obligations of membership in the League for the purposes of such dispute, upon such conditions as the Council may deem just. If such invitation is accepted, the provisions of Article 12 to 16 inclusive shall be applied with such modifications as may be deemed necessary by the Council.

2. Upon such invitation being given the Council shall immediately institute an inquiry into the circumstances of the dispute and recommend such action as may seen best and most effectual in the circumstances.

3. If a State so invited shall refuse to accept the obligations of membership in the League for the purposes of such dispute, and shall resort to war against a Member of the League, the provisions of Article 16 shall be applicable as against the State taking such action.

4. If both parties to the dispute when so invited refuse to accept the obligations of membership in the League for the purposes

of such dispute, the Council may take such measures and make such recommendations as will prevent hostilities and will result in the settlement of the dispute.

Article XVIII.

Every treaty or international engagement entered into hereafter by any Member of the League shall be forthwith registered with the Secretariat and shall as soon as possible be published by it. No such treaty or international engagement shall be binding until so registered.

Article XIX.

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.

Article XX.

1. The Members of the League severally agree that this Covenant is accepted as abrogating all obligations or understandings *inter se* which are inconsistent with the terms thereof, and solemnly undertake that they will not hereafter enter into any engagements inconsistent with the terms thereof.

2. In case any Member of the League shall, before becoming a Member of the League, have undertaken any obligations inconsistent with the terms of this Covenant, it shall be the duty of such Member to take immediate steps to procure its release from such obligations.

Article XXI.

Nothing in this Covenant shall be deemed to affect the validity of international engagements, such as treaties of arbitration or regional understandings like the Monroe doctrine, for securing the maintenance of peace.

Article XXII.

1. To those 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 and which are inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world, there should be applied the principle that the well-being and development of such peoples form a sacred trust of civilisation and that securities for the performance of this trust should be embodied in this Covenant.

2. The best method of giving practical effect to this principle is that the tutelage of such peoples should be entrusted to advanced nations who by reason of their resources, their experience or their geographical position can best undertake this responsibility, and who are willing to accept it, and that this tutelage should be exercised by them as Mandatories on behalf of the League.

3. The character of the mandate must differ according to the stage of the development of the people, the geographical situation of the territory, its economic conditions and other similar circumstances.

4. Certain communities formerly belonging to the Turkish Empire have reached a stage of development where their existence as independent nations can be provisionally recognised subject to the rendering of administrative advice and assistance by a Mandatory until such time as they are able to stand alone. The wishes of these communities must be a principal consideration in the selection of the Mandatory.

5. Other peoples, especially those of Central Africa, are at such a stage that the Mandatory must be responsible for the administration of territory under conditions which will guarantee freedom of conscience and religion, subject only to the maintenance of public order and morals, the prohibition of abuses such as the slave trade, the arms traffic and the liquor traffic, and the prevention of the establishment of fortifications or military and naval bases and of military training of the natives for other than police purposes and the defence of territory, and will also secure equal opportunities for the trade and commerce of other Members of the League.

6. There are territories, such as South-West Africa and certain of the South Pacific Islands, which, owing to the sparseness of their population, or their small size, or their remoteness from the centres of civilisation, or their geographical contiguity of the territory of the Mandatory, and other circumstances, can be best administered under the laws of the mandatory as integral portions of its territory, subject to the safeguards above mentioned in the interests of the indigenous population.

7. In every case of mandate, the Mandatory shall render to the Council an annual report in reference to the territory committed to its charge.

8. The degree of authority, control, or administration to be exercised by the Mandatory shall, if not previously agreed upon by the Members of the League, be explicitly defined in each case by the Council.

9. A permanent Commission shall be constituted to receive and examine the annual reports of the Mandatories and to advise the Council on all matters relating to the observance of the mandates.

Article XXIII.

Subject to and in accordance with the provisions of international conventions existing or hereafter to be agreed upon, the Members of the League:

(*a*) will endeavour to secure and maintain fair and humane conditions of labour for men, women, and children, both in their own countries and in all countries to which their commercial and industrial relations extend, and for that purpose will establish and maintain the necessary international organisations;

(*b*) undertake to secure just treatment of the native inhabitants of territories under their control;

(*c*) will entrust the League with the general supervision over the execution of agreements with regard to the traffic in women and children, and the traffic in opium and other dangerous drugs;

(*d*) will entrust the League with the general supervision of the trade in arms and ammunition with the countries in which the control of this traffic is necessary in the common interest;

(*e*) will make provision to secure and maintain freedom of communications and of transit and equitable treatment for the commerce of all Members of the League. In this connection, the special necessities of the regions devastated during the war of 1914-1918 shall be borne in mind;

(f) will endeavour to take steps in matters of international concern for the prevention and control of disease.

Article XXIV.

1. There shall be placed under the direction of the League all international bureaux already established by general treaties if the parties to such treaties consent. All such international bureaux and all commissions for the regulation of matters of international interest hereafter constituted shall be placed under the direction of the League.

2. In all matters of international interest which are regulated by general conventions but which are not placed under the control of international bureaux or commissions, the Secretariat of the League shall, subject to the consent of the Council and if desired by the parties, collect and distribute all relevant information and shall render any other assistance which may be necessary or desirable.

3. The Council may include as part of the expenses of the Secretariat the expenses of any bureau or commission which is placed under the direction of the League.

Article XXV.

The Members of the League agree to encourage and promote the establishment and co-operation of duly authorised voluntary national Red Cross organisations having as purposes the improvement of health, the prevention of disease and the mitigation of suffering throughout the world.

Article XXVI.

1. Amendments to this Covenant will take effect when ratified by the Members of the League whose Representatives compose the Council and by a majority of the Members of the League whose Representatives compose the Assembly.

2. No such amendments shall bind any Member of the League which signifies its dissent therefrom, but in that case it shall cease to be a Member of the League.

No. 15B. Statute of the Permanent Court of International Justice.

STATUTE.

Article 1. A Permanent Court of International Justice is hereby established in accordance with Article 14 of the Covenant of the League of Nations. This Court shall be in addition to the Court of Arbitration organised by the Conventions of The Hague of 1899 and 1907, and to the special Tribunals of Arbitration to which States are always at liberty to submit their disputes for settlement.

Chapter I.

Organisation of the Court.

Art. 2. The Permanent Court of International Justice shall be composed of a body of independent judges, elected regardless of their nationality from among persons of high moral character, who possess the qualifications required in their respective countries for appointment to the highest judicial offices, or are jurisconsults of recognised competence in international law.

Art. 3. The Court shall consist of fifteen members: eleven judges and four deputy-judges. The number of judges and deputy-judges may hereafter be increased by the Assembly, upon the proposal of the Council of the League of Nations, to a total of fifteen judges and six deputy-judges.

Art. 4. The members of the Court shall be elected by the Assembly and by the Council from a list of persons nominated by

the national groups in the Court of Arbitration, in accordance with the following provisions.

In the case of Members of the League of Nations not represented in the Permanent Court of Arbitration, the list of candidates shall be drawn up by national groups appointed for this purpose by their Governments under the same conditions as those prescribed for members of the Permanent Court of Arbitration by Article 44 of the Convention of The Hague of 1907 for the pacific settlement of international disputes.

Art. 5. At least three months before the date of the election, the Secretary-General of the League of Nations shall address a written request to the Members of the Court of Arbitration belonging to the States mentioned in the Annex to the Covenant or to the States which join the League subsequently, and to the persons appointed under paragraph 2 of Article 4, inviting them to undertake, within a given time, by national groups, the nomination of persons in a position to accept the duties of a member of the Court.

No group may nominate more than four persons, not more than two of whom shall be of their own nationality. In no case must the number of candidates nominated be more than double the number of seats to be filled.

Art. 6. Before making these nominations, each national group is recommended to consult its Highest Court of Justice, its Legal Faculties and Schools of Law, and its National Academies and national sections of International Academies devoted to the study of Law.

Art. 7. The Secretary-General of the League of Nations shall prepare a list in alphabetical order of all the persons thus nominated. Save as provided in Article 12, paragraph 2, these shall be the only persons eligible for appointment.

The Secretary-General shall submit this list to the Assembly and to the Council.

Art. 8. The Assembly and the Council shall proceed independently of one another to elect, firstly the judges, then the deputy-judges.

Art. 9. At every election, the electors shall bear in mind that not only should all the persons appointed as members of the Court possess the qualifications required, but the whole body also should represent the main forms of civilisation and the principal legal systems of the world.

Art. 10. Those candidates who obtain an absolute majority of votes in the Assembly and in the Council shall be considered as elected.

In the event of more than one national of the same Member of the League being elected by the votes of both the Assembly and the Council, the eldest of these only shall be considered as elected.

Art. 11. If, after the first meeting held for the purpose of the election, one or more seats remain to be filled, a second and, if necessary, a third meeting shall take place.

Art. 12. If, after the third meeting, one or more seats still remain unfilled, a joint conference consisting of six members, three appointed by the Assembly and three by the Council, may be formed, at any time, at the request of either the Assembly or the Council, for the purpose of choosing one name for each seat still vacant, to submit to the Assembly and the Council for their respective acceptance.

If the Conference is unanimously agreed upon any person who fulfils the required conditions, he may be included in its list, even though he was not included in the list of nominations referred to in Articles 4 and 5.

If the joint conference is satisfied that it will not be successful in procuring an election, those members of the Court who have already been appointed shall, within a period to be fixed by the Council, proceed to fill the vacant seats by selection from among those candidates who have obtained votes either in the Assembly or in the Council.

In the event of an equality of votes among the judges, the eldest judge shall have a casting vote.

Art. 13. The members of the Court shall be elected for nine years.

They may be re-elected.

They shall continue to discharge their duties until their places have been filled. Though replaced, they shall finish any cases which they may have begun.

Art. 14. Vacancies which may occur shall be filled by the same method as that laid down for the first election. A member of the Court elected to replace a member whose period of appointment had not expired will hold the appointment for the remainder of his predecessor's term.

Art. 15. Deputy-judges shall be called upon to sit in the order laid down in a list.

This list shall be prepared by the Court and shall have regard firstly to priority of election and secondly to age.

Art. 16 The ordinary Members of the Court may not exercise any political or administrative function. This provision does not apply to the deputy-judges except when performing their duties on the Court.

Any doubt on this point is settled by the decision of the Court.

Art. 17. No Member of the Court can act as agent, counsel or advocate in any case of an international nature. This provision only applies to the deputy-judges as regards cases in which they are called upon to exercise their functions on the Court.

No member may participate in the decision of any case in which he has previously taken an active part, as agent, counsel or advocate for one of the contesting parties, or as a Member of a national or international Court, or of a Commission of inquiry, or in any other capacity.

Any doubt on this point is settled by the decision of the Court.

Art. 18. A member of the Court can not be dismissed unless, in the unanimous opinion of the other members, he has ceased to fulfil the required conditions.

Formal notifications thereof shall be made to the Secretary-General of the League of Nations, by the Registrar.

This notification makes the place vacant.

Art. 19. The members of the Court, when engaged on the business of the Court, shall enjoy diplomatic privileges and immunities.

Art. 20. Every member of the Court shall, before taking up his duties, make a solemn declaration in open Court that he will exercise his powers impartially and conscientiously.

Art. 21. The Court shall elect its President and Vice-President for three years; they may be re-elected.

It shall appoint its Registrar.

The duties of Registrar of the Court shall not be deemed incompatible with those of the Secretary-General of the Permanent Court of Arbitration.

Art. 22. The seat of the Court shall be established at The Hague.

The President and Registrar shall reside at the seat of the Court.

Art. 23. A session of the Court shall be held every year.

Unless otherwise provided by rules of Court, this session shall begin on the 15th of June, and shall continue for so long as may be deemed necessary to finish the cases on the list.

The President may summon an extraordinary session of the Court whenever necessary.

Art. 24. If, for some special reason, a member of the Court considers that he should not take part in the decision of a particular case, he shall so inform the President.

If the President considers that for some special reason one of the members of the Court should not sit on a particular case, he shall give him notice accordingly.

If in any such case the member of the Court and the President disagree, the matter shall be settled by the decision of the Court.

Art. 25. The full Court shall sit except when it is expressly provided otherwise.

If eleven judges can not be present, the number shall be made up by calling on deputy-judges to sit.

If, however, eleven judges are not available, a quorum of nine judges shall suffice to constitute the Court.

Art. 26. Labour cases, particularly cases referred to in Part XIII (Labour) of the Treaty of Versailles and the corresponding portion of the other Treaties of Peace, shall be heard and determined by the Court under the following conditions:

The Court will appoint every three years a special chamber of five judges, selected so far as possible with due regard to the provisions of Article 9. In addition, two judges shall be selected for the purpose of replacing a judge who finds it impossible to sit. If the parties so demand, cases will be heard and determined by this chamber. In the absence of any such demand, the Court will sit with the number of judges provided for in Article 25. On all occasions the judges will be assisted by four technical assessors sitting with them, but without the right to vote, and chosen with a view to insuring a just representation of the competing interests.

If there is a national of one only of the parties sitting as a judge in the chamber referred to in the preceding paragraph, the President will invite one of the other judges to retire in favour of a judge chosen by the other party in accordance with Article 31.

The technical assessors shall be chosen for each particular case in accordance with rules of procedure under Article 30 from a list of "Assessors for Labour cases" composed of two persons nominated by each Member of the League of Nations and an equivalent number nominated by the Governing Body of the Labour Office. The Governing Body will nominate, as to one half, representatives of the workers, and as to one half, representatives of employers from the list referred to in Article 412 of the Treaty of Versailles and the corresponding Articles of the other Treaties of Peace.

In Labour cases the International Labour Office shall be at liberty to furnish the Court with all relevant information, and for this purpose the Director of that Office shall receive copies of all the written proceedings.

Art. 27. Cases relating to transit and communications, particularly cases referred to in Part XII (Ports, Waterways and Railways) of the Treaty of Versailles and the corresponding portions of the other Treaties of Peace shall be heard and determined by the Court under the following conditions:

The Court will appoint every three years a special chamber of five judges, selected so far as possible with due regard to the provisions of Article 9. In addition, two judges shall be selected for the purpose of replacing a judge who finds it impossible to sit. If the parties so demand, cases will be heard and determined by this chamber. In the absence of any such demand, the Court will sit with the number of judges provided for in Article 25. When desired by the parties or decided by the Court, the judges will be

assisted by four technical assessors sitting with them, but without the right to vote.

If there is a national of one only of the parties sitting as a judge in the chamber referred to in the preceding paragraph, the President will invite one of the other judges in favour of a judge chosen by the other party in accordance with Article 31.

The technical assessors shall be chosen for each particular case in accordance with rules of procedure under Article 30 from a list of "Assessors for Transit and Communication cases" composed of two persons nominated by each Member of the League of Nations.

Art. 28. The special chambers provided for in Articles 26 and 27 may, with the consent of the parties to the dispute, sit elsewhere than at The Hague.

Art. 29. With a view to the speedy dispatch of business, the Court shall form annually a chamber composed of three judges who, at the request of the contesting parties, may hear and determine cases by summary procedure.

Art. 30. The Court shall frame rules for regulating its procedure. In particular, it shall lay down rules for summary procedure.

Art. 31. Judges of the nationality of each contesting party shall retain their right to sit in the case before the Court.

If the Court includes upon the Bench a judge of the nationality of one of the parties only, the other party may select from among the deputy-judges a judge of its nationality, if there be one. If there should not be one, the party may choose a judge, preferably from among those persons who have been nominated as candidates as provided in Articles 4 and 5.

If the Court includes upon the Bench no judge of the nationality of the contesting parties, each of these may proceed to select or choose a judge as provided in the preceding paragraph.

Should there be several parties in the same interest, they shall, for the purpose of the preceding provisions, be reckoned as one party only. Any doubt upon this point is settled by the decision of the Court.

Judges selected or chosen as laid down in paragraphs 2 and 3 of this Article shall fulfil the conditions required by Articles 2, 16, 17, 20, 24 of this Statute. They shall take part in the decision on an equal footing with their colleagues.

Art. 32. The judges shall receive an annual indemnity to be determined by the Assembly of the League of Nations upon the proposal of the Council. This indemnity must not be decreased during the period of a judge's appointment.

The President shall receive a special grant for his period of office, to be fixed in the same way.

The Vice-Presidents, judges and deputy-judges shall receive a grant for the actual performance of their duties, to be fixed in the same way.

Travelling expenses incurred in the performance of their duties shall be refunded to judges and deputy-judges who do not reside at the seat of the Court.

Grants due to judges selected or chosen as provided in Article 31 shall be determined in the same way.

The salary of the Registrar shall be decided by the Council upon the proposal of the Court.

The Assembly of the League of Nations shall lay down, on the proposal of the Council, a special regulation fixing the conditions under which retiring pensions may be given to the personnel of the Court.

Art. 33. The expenses of the Court shall be borne by the League of Nations, in such a manner as shall be decided by the Assembly upon the proposal of the Council.

CHAPTER II.

Competence of the Court.

Art. 34. Only States or Members of the League of Nations can be parties in cases before the Court.

Art. 35. The Court shall be open to the Members of the League and also to States mentioned in the Annex to the Covenant.

The conditions under which the Court shall be open to other States shall, subject to the special provisions contained in treaties in force, be laid down by the Council, but in no case shall such provisions place the parties in a position of inequality before the Court.

When a State which is not a Member of the League of Nations is a party to a dispute, the Court will fix the amount which the party is to contribute toward the expenses of the Court.

Art. 36. The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in Treaties and Conventions in force.

The Members of the League of Nations and the States mentioned in the Annex to the Covenant may, either when signing or ratifying the protocol to which the present Statute is adjoined, or at a later moment, declare that they recognise as compulsory, *ipso facto* and without special agreement, in relation to any other Member or State accepting the same obligation, the jurisdiction of the Court in all or any of the classes of legal disputes concerning:

(*a*) The interpretation of a Treaty.

(*b*) Any question of International Law.

(*c*) The existence of any fact which, if established, would constitute a breach of an international obligation.

(*d*) The nature or extent of the reparation to be made for the breach of an international obligation.

The declaration referred to above may be made unconditionally or on condition of reciprocity on the part of several or certain Members or States, or for a certain time.

In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court.

Art. 37. When a treaty or convention in force provides for the reference of a matter to a tribunal to be instituted by the League of Nations, the Court will be such tribunal.

Art. 38. The Court shall apply.

1. International conventions, whether general or particular, establishing rules expressly recognised by the contesting States;

2. International custom, as evidence of a general practice accepted as law;

3. The general principles of law recognised by civilised nations;

4. Subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

This provision shall not prejudice the power of the Court to decide a case *ex aequo et bono*, if the parties agree thereto.

CHAPTER III.

Procedure.

Art. 39. The official languages of the Court shall be French and English. If the parties agree that the case shall be conducted in French, the judgment will be delivered in French. If the parties agree that the case shall be conducted in English, the judgment will be delivered in English.

In the absence of an agreement as to which language shall be employed, each party may, in the pleadings, use the language which it prefers; the decision of the Court will be given in French and English. In this case the Court will at the same time determine which of the two texts shall be considered as authoritative.

The Court may, at the request of the parties, authorise a language other than French or English to be used.

Art. 40. Cases are brought before the Court, as the case may be, either by the notification of the special agreement or by a written application addressed to the Registrar. In either case the subject of the dispute and the contesting parties must be indicated.

The Registrar shall forthwith communicate the application to all concerned.

He shall also notify the Members of the League of Nations through the Secretary-General.

Art. 41. The Court shall have the power to indicate, if it considers that circumstances so require, any provisional measures which ought to be taken to reserve the respective rights of either party.

Pending the final decision, notice of the measures suggested shall forthwith be given to the parties and the Council.

Art. 42. The parties shall be represented by Agents.

They may have the assistance of Counsel or Advocates before the Court.

Art. 43. The procedure shall consist of two parts: written and oral.

The written proceedings shall consist of the communication to the judges and to the parties of cases, counter-cases and, if necessary, replies; also all papers and documents in support.

These communications shall be made through the Registrar, in the order and within the time fixed by the Court.

A certified copy of every document produced by one party shall be communicated to the other party.

The oral proceedings shall consist of the hearing by the Court of witnesses, experts, agents, counsel and advocates.

Art. 44. For the service of all notices upon persons other than the agents, counsel and advocates, the Court shall apply direct to the Government of the State upon whose territory the notice has to be served.

The same provision shall apply whenever steps are to be taken to procure evidence on the spot.

Art. 45. The hearing shall be under the control of the President or, in his absence, of the Vice-President; if both are absent, the senior judge shall preside.

Art. 46. The hearing in Court shall be public, unless the Court shall decide otherwise, or unless the parties demand that the public be not admitted.

Art. 47. Minutes shall be made at each hearing, and signed by the Registrar and the President.

These minutes shall be the only authentic record.

Art. 48. The Court shall make orders for the conduct of the case, shall decide the form and time in which each party must conclude its arguments, and make all arrangements connected with the taking of evidence.

Art. 49. The Court may, even before the hearing begins, call upon the agents to produce any document or to supply any explanations. Formal note shall be taken of any refusal.

Art. 50. The Court may, at any time, intrust any individual, body, bureau, commission or other organisation that it may select, with the task of carrying out an inquiry or giving an expert opinion.

Art. 51. During the hearing any relevant questions are to be put to the witnesses and experts under the conditions laid down by the Court in the rules of procedure referred to in Article 30.

Art. 52. After the Court has received the proofs and evidence within the time specified for the purpose, it may refuse to accept any further oral or written evidence that one party may desire to present unless the other side consents.

Art. 53. Whenever one of the parties shall not appear before the Court, or shall fail to defend his case, the other party may call upon the Court to decide in favour of his claim.

The Court, must before doing so, satisfy itself, not only that it has jurisdiction in accordance with Articles 36 and 37, but also that the claim is well founded in fact and law.

Art. 54. When, subject to the control of the Court, the agents, advocates and counsel have completed their presentation of the case, the President shall declare the hearing closed.

The Court shall withdraw to consider the judgment.

The deliberations of the Court shall take place in private and remain secret.

Art. 55. All questions shall be decided by a majority of the judges present at the hearing.

In the event of an equality of votes, the President or his deputy shall have a casting vote.

Art. 56. The judgment shall state the reasons on which it is based.

It shall contain the names of the judges who have taken part in the decision.

Art. 57. If the judgment does not represent in whole or in part the unanimous opinion of the judges, dissenting judges are entitled to deliver a separate opinion.

Art. 58. The judgment shall be signed by the President and by the Registrar. It shall be read in open Court, due notice having been given to the agents.

Art. 59. The decision of the Court has no binding force except between the parties and in respect of that particular case.

Art. 60. The judgment is final and without appeal. In the event of dispute as to the meaning or scope of the judgment, the Court shall construe it upon the request of any party.

Art. 61. An application for revision of a judgment can be made only when it is based upon the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judgment was given, unknown to the Court and also to the party

claiming revision, always provided that such ignorance was not due to negligence.

The proceedings for revision will be opened by a judgment of the Court expressly recording the existence of the new fact, recognising that it has such a character as to lay the case open to revision, and declaring the application admissible on this ground.

The Court may require previous compliance with the terms of the judgment before it admits proceedings in revision.

The application for revision must be made at latest within six months of the discovery of the new fact.

No application for revision may be made after the lapse of ten years from the date of the sentence.

Art. 62. Should a State consider that it has an interest of a legal nature which may be affected by the decision in the case, it may submit a request to the Court to be permitted to intervene as a third party.

It will be for the Court to decide upon this request.

Art. 63. Whenever the construction of a convention to which States other than those concerned in the case are parties is in question, the Registrar shall notify all such States forthwith.

Every State so notified has the right to intervene in the proceedings; but if it uses this right, the construction given by the judgment will be equally binding upon it.

Art. 64. Unless otherwise decided by the Court, each party shall bear its own costs.

No. 15c. Constitution of the International Labour Organisation.

Section I.

ORGANISATION OF LABOUR.

Whereas the League of Nations has for its object the establishment of universal peace and such a peace can be established only if it is based upon social justice;

And 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 imperiled; and an improvement of those conditions is urgently required: as, for example, by the regulation of the hours of work, including the establishment of a maximum working day and week, the regulation of the labour supply, the prevention of unemployment, the provision of an adequate living wage, the protection of

the worker against sickness, disease and injury arising out of his employment, the protection of children, young persons and women, provision for old age and injury, protection of the interests of workers when employed in countries other than their own, recognition of the principle of freedom of association, the organisation of vocational and technical education and other measures;

Whereas also the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries;

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, agree to the following:

CHAPTER I.

Organisation.

Article I.

A permanent organisation is hereby established for the promotion of the objects set forth in the Preamble.

The original Members of the League of Nations shall be the original Members of this organisation, and hereafter membership of the League of Nations shall carry with it membership of the said organisation.

Article II.

The permanent organisation shall consist of:

(1) a General Conference of Representatives of the Members, and,

(2) an International Labour Office controlled by the Governing Body described in Article VII.

Article III.

The meetings of the General Conference of Representatives of the Members shall be held from time to time as occasion may require, and at least once in every year. It shall be composed of four Representatives of each of the Members, of whom two shall be Government Delegates and the two others shall be Delegates representing respectively the employers and the workpeople of each of the Members.

Each Delegate may be accompanied by advisers, who shall not exceed two in number for each item on the agenda of the meeting. When questions specially affecting women are to be considered by the Conference, one at least of the advisers should be a woman.

The Members undertake to nominate non-Government Delegates

and advisers chosen in agreement with the industrial organisations, if such organisations exist, which are most representative of employers or workpeople, as the case may be, in their respective countries.

Advisers shall not speak except on a request made by the Delegate whom they accompany and by the special authorisation of the President of the Conference, and may not vote.

A Delegate may by notice in writing addressed to the President appoint one of his advisers to act as his deputy, and the adviser, while so acting, shall be allowed to speak and vote.

The names of the Delegates and their advisers will be communicated to the International Labour Office by the Government of each of the Members.

The credentials of Delegates and their advisers shall be subject to scrutiny by the Conference, which may, by two-thirds of the votes cast by the Delegates present, refuse to admit any Delegate or adviser whom it deems not to have been nominated in accordance with this Article.

Article IV.

Every Delegate shall be entitled to vote individually on all matters which are taken into consideration by the Conference.

If one of the Members fails to nominate one of the non-Government Delegates whom it is entitled to nominate, the other non-Government Delegate shall be allowed to sit and speak at the Conference, but not to vote.

If in accordance with Article 389 (3) the Conference refuses admission to a Delegate of one of the Members, the provisions of the present Article shall apply as if that Delegate had not been nominated.

Article V.

The meetings of the Conference shall be held at the seat of the League of Nations, or at such other place as may be decided by the Conference at a previous meeting by two-thirds of the votes cast by the Delegates present.

Article VI.

The International Labour Office shall be established at the seat of the League of Nations as part of the organisation of the League.

Article VII.

The International Labour Office shall be under the control of a Governing Body consisting of twenty-four persons, appointed in accordance with the following provisions:

The Governing Body of the International Labour Office shall be constituted as follows:

Twelve persons representing the Governments;

Six persons elected by the Delegates to the Conference representing the employers;

Six persons elected by the Delegates to the Conference representing the workers.

Of the twelve persons representing the Governments eight shall be nominated by the Members which are of the chief industrial importance, and four shall be nominated by the Members selected for the purpose by the Government Delegates to the Conference, excluding the Delegates of the eight Members mentioned above.

Any question as to which are the Members of the chief industrial importance shall be decided by the Council of the League of Nations.

The periodic office of the Members of the Governing Body will be three years. The method of filling vacancies and other similar questions may be determined by the Governing Body subject to the approval of the Conference.

The Governing Body shall, from time to time, elect one of its members to act as its Chairman, shall regulate its own procedure and shall fix its own times of meeting. A special meeting shall be held if a written request to that effect is made by at least ten members of the Governing Body.

Article VIII.

There shall be a Director of the International Labour Office, who shall be appointed by the Governing Body, and, subject to the instructions of the Governing Body, shall be responsible for the efficient conduct of the International Labour Office and for such other duties as may be assigned to him.

The Director or his deputy shall attend all meetings of the Governing Body.

Article IX.

The staff of the International Labour Office shall be appointed by the Director, who shall, so far as is possible with due regard to the efficiency of the work of the Office, select persons of different nationalities. A certain number of these persons shall be women.

Article X.

The functions of the International Labour Office shall include the collection and distribution of information on all subjects relating to the international adjustment of conditions of industrial life and labour, and particularly the examination of subjects which it

is proposed to bring before the Conference with a view to the conclusion of international conventions, and the conduct of such special investigations as may be ordered by the Conference.

It will prepare the agenda for the meetings of the Conference.

It will carry out the duties required of it by the provisions of this Part of the present Treaty in connection with international disputes.

It will edit and publish in French and English, and in such other languages as the Governing Body may think desirable, a periodical paper dealing with problems of industry and employment of international interest.

Generally, in addition to the functions set out in this Article, it shall have such other powers and duties as may be assigned to it by the Conference.

Article XI.

The Government Departments of any of the Members which deal with questions of industry and employment may communicate directly with the Director through the Representative of their Government on the Governing Body of the International Labour Office, or failing any such Representative, through such other qualified official as the Government may nominate for the purpose.

Article XII.

The International Labour Office shall be entitled to the assistance of the Secretary-General of the League of Nations in any matter in which it can be given.

Article XIII.

Each of the Members will pay the travelling and subsistence expenses of its Delegates and their advisers and of its Representatives attending the meetings of the Conference or Governing Body, as the case may be.

All other expenses of the International Labour Office and of the meetings of the Conference or Governing Body shall be paid to the Director by the Secretary-General of the League of Nations out of the general funds of the League.

The Director shall be responsible to the Secretary-General of the League for the proper expenditure of all moneys paid to him in pursuance of this Article.

CHAPTER II.

Procedure.

Article XIV.

The agenda for all meetings of the Conference will be settled by the Governing Body, who shall consider any suggestion as to the agenda that may be made by the Government of any of the Members or by any representative organisation recognised for the purpose of Article III.

Article XV.

The Director shall act as the Secretary of the Conference, and shall transmit the agenda so as to reach the Members four months before the meeting of the Conference, and, through them, the non-Government Delegates when appointed.

Article XVI.

Any of the Governments of the Members may formally object to the inclusion of any item or items in the agenda. The grounds for such objection shall be set forth in a reasoned statement addressed to the Director, who shall circulate it to all the Members of the Permanent Organisation.

Items to which such objection has been made shall not, however, be excluded from the agenda, if at the Conference a majority of two-thirds of the votes cast by the Delegates present is in favour of considering them.

If the Conference decides (otherwise than under the preceding paragraph) by two-thirds of the votes cast by the Delegates present that any subject shall be considered by the Conference, that subject shall be included in the agenda for the following meeting.

Article XVII.

The Conference shall regulate its own procedure, shall elect its own President and may appoint committees to consider and report on any matter.

Except as otherwise expressly provided in this Part of the present Treaty, all matters shall be decided by a simple majority of the vote cast by the Delegates present.

The voting is void unless the total number of votes cast is equal to half the number of the Delegates attending the Conference.

Article XVIII.

The Conference may add to any committees which it appoints technical experts, who shall be assessors without power to vote.

Article XIX.

When the Conference has decided on the adoption of proposals with regard to an item in the agenda, it will rest with the Conference to determine whether these proposals should take the form: (*a*) of a recommendation to be submitted to the Members for consideration with a view to effect being given to it by national legislation or otherwise, or (*b*) of a draft international convention for ratification by the Members.

In either case a majority of two-thirds of the votes cast by the Delegates present shall be necessary on the final vote for the adoption of the recommendation or draft convention, as the case may be, by the Conference.

In framing any recommendation or draft convention of general application the Conference shall have due regard to those countries in which climatic conditions, the imperfect development of industrial organisation or other special circumstances make the industrial conditions substantially different and shall suggest the modifications, if any, which it considers may be required to meet the case of such countries.

A copy of the recommendation or draft convention shall be authenticated by the signature of the President of the Conference and of the Director and shall be deposited with the Secretary-General of the League of Nations. The Secretary-General will communicate a certified copy of the recommendation or draft convention to each of the Members.

Each of the Members undertakes that it will, within the period of one year at most from the closing of the session of the Conference, or if it is impossible owing to exceptional circumstances to do so within the period of one year, then at the earliest practicable moment and in no case later than eighteen months from the closing of the session of the Conference, bring the recommendation or draft convention before the authority or authorities within whose competence the matter lies, for the enactment of legislation or other action.

In the case of recommendation, the Members will inform the Secretary-General of the action taken.

In the case of a draft convention, the Member will, if it obtains the consent of the authority or authorities within whose competence the matter lies, communicate the formal ratification of the convention to the Secretary-General and will take such action as

may be necessary to make effective the provisions of such convention.

If on a recommendation no legislative or other action is taken to make a recommendation effective, or if the draft convention fails to obtain the consent of the authority or authorities within whose competence the matter lies, no further obligation shall rest upon the Member.

In the case of a federal State, the power of which to enter into conventions on labour matters is subject to limitations, it shall be in the discretion of that Government to treat a draft convention to which such limitations apply as a recommendation only, and the provisions of this Article with respect to recommendations shall apply in such case.

The above Article shall be interpreted in accordance with the following principle:

In no case shall any Member be asked or required, as a result of the adoption of any recommendation or draft convention by the Conference, to lessen the protection afforded by its existing legislation to the workers concerned.

Article XX.

Any convention so ratified shall be registered by the Secretary-General of the League of Nations, but shall only be binding upon the Members which ratify it.

Article XXI.

If any convention coming before the Conference for final consideration fails to secure the support of two-thirds of the votes cast by the Delegates present, it shall nevertheless be within the right of any of the Members of the Permanent Organisation to agree to such convention among themselves.

Any convention so agreed to shall be communicated by the Governments concerned to the Secretary-General of the League of Nations, who shall register it.

Article XXII.

Each of the Members agrees to make an annual report to the International Labour Office on the measures which it has taken to give effect to the provisions of conventions to which it is a party. These reports shall be made in such form and shall contain such particulars as the Governing Body may request. The Director shall lay a summary of these reports before the next meeting of the Conference.

Article XXIII.

In the event of any representation being made to the International Labour Office by an industrial association of employers or of workers that any of the Members has failed to secure in any respect the effective observance within its jurisdiction of any convention to which it is a party, the Governing Body may communicate this representation to the Government against which it is made and may invite that Government to make such statement on the subject as it may think fit.

Article XXIV.

If no statement is received within a reasonable time from the Government in question, or if the statement when received is not deemed to be satisfactory by the Governing Body, the latter shall have the right to publish the representation and the statement, if any, made in reply to it.

Article XXV.

Any of the Members shall have the right to file a complaint with the International Labour Office if it is not satisfied that any other Member is securing the effective observance of any convention which both have ratified in accordance with the foregoing Articles.

The Governing Body may, if it thinks fit, before referring such a complaint to a Commission of Inquiry, as hereinafter provided for, communicate with the Government in question in the manner described in Article XXIII.

If the Governing Body does not think it necessary to communicate the complaint to the Government in question, or if, when they have made such communication, no statement in reply has been received within a reasonable time which the Governing Body considers to be satisfactory, the Governing Body may apply for the appointment of a Commission of Inquiry to consider the complaint and to report thereon.

The Governing Body may adopt the same procedure either of its own motion or on receipt of a complaint from a Delegate to the Conference.

When any matter arising out of Articles XXV or XXIV is being considered by the Governing Body, the Government in question shall, if not already represented thereon, be entitled to send a representative to take part in the proceedings of the Governing Body while the matter is under consideration. Adequate notice of the date on which the matter will be considered shall be given to the Government in question.

Article XXVI.

The Commission of Inquiry shall be constituted in accordance with the following provisions:

Each of the Members agrees to nominate within six months of the date on which the present Treaty comes into force three persons of industrial experience, of whom one shall be a representative of employers, one a representative of workers, and one a person of independent standing, who shall together form a panel from which the Members of the Commission of Inquiry shall be drawn.

The qualifications of the persons so nominated shall be subject to scrutiny by the Governing Body, which may by two-thirds of the votes cast by the representatives present refuse to accept the nomination of any person whose qualifications do not in its opinion comply with the requirements of the present Article.

Upon the application of the Governing Body, the Secretary-General of the League of Nations shall nominate three persons, one from each section of this panel, to constitute the Commission of Inquiry, and shall designate one of them as the President of the Commission. None of these three persons shall be a person nominated to the panel by any Member directly concerned in the complaint.

Article XXVII.

The Members agree that, in the event of the reference of a complaint to a Commission of Inquiry under Article XXV they will each, whether directly concerned in the complaint or not, place at the disposal of the Commission all the information in their possession which bears upon the subject-matter of the complaint.

Article XXVIII.

When the Commission of Inquiry has fully considered the complaint, it shall prepare a report embodying its findings on all questions of fact relevant to determining the issue between the parties and containing such recommendations as it may think proper as to the steps which should be taken to meet the complaint and the time within which they should be taken.

It shall also indicate in this report the measures, if any, of an economic character against a defaulting Government which it considers to be appropriate, and which it considers other Governments would be justified in adopting.

Article XXIX.

The Secretary-General of the League of Nations shall communicate the report of the Commission of Inquiry to each of the Gov-

ernments concerned in the complaint, and shall cause it to be published.

Each of these Governments shall within one month inform the Secretary-General of the League of Nations whether or not it accepts the recommendations contained in the report of the Commission; and if not, whether it proposes to refer the complaint to the Permanent Court of International Justice of the League of Nations.

Article XXX.

In the event of any Member failing to take the action required by Article XIX with regard to a recommendation or draft Convention, any other Member shall be entitled to refer the matter to the Permanent Court of International Justice.

Article XXXI.

The decision of the Permanent Court of International Justice in regard to a complaint or matter which has been referred to it in pursuance of Article XIX or Article XXX shall be final.

Article XXXII.

The Permanent Court of International Justice may affirm, vary or reverse any of the findings or recommendations of the Commission of Inquiry, if any, and shall in its decision indicate the measures, if any, of an economic character which it considers to be appropriate, and which other Governments would be justified in adopting against a defaulting Government.

Article XXXIII.

In the event of any Member failing to carry out within the time specified the recommendations, if any, contained in the report of the Commission of Inquiry, or in the decision of the Permanent Court of International Justice, as the case may be, any other Member may take against that Member the measures of an economic character indicated in the report of the Commission or in the decision of the Court as appropriate to the case.

Article XXXIV.

The defaulting Government may at any time inform the Governing Body that it has taken the steps necessary to comply with the recommendations of the Commission of Inquiry or with those in the decision of the Permanent Court of International Justice,

as the case may be, and may request it to apply to the Secretary-General of the League to constitute a Commission of Inquiry to verify its contention. In this case the provisions of Articles XXVI, XXVII, XXVIII, XXIX, XXXI and XXXII shall apply, and if the report of the Commission of Inquiry or the decision of the Permanent Court of International Justice is in favour of the defaulting Government, the other Governments shall forthwith discontinue the measures of an economic character that they have taken against the defaulting Government.

Chapter III.

General.

Article XXXV.

The Members engage to apply conventions which they have ratified in accordance with the provisions of this Part of the present Treaty to their colonies, protectorates and possessions which are not fully self-governing:

(1) Except where owing to the local conditions the convention is inapplicable, or

(2) Subject to such modifications as may be necessary to adapt the convention to local conditions.

And each of the Members shall notify to the International Labour Office the action taken in respect of each of its colonies, protectorates and possessions which are not fully self-governing.

Article XXXVI.

Amendments to this Part of the present Treaty which are adopted by the Conference by a majority of two-thirds of the votes cast by the Delegates present shall take effect when ratified by the States whose representatives compose the Council of the League of Nations and by three-fourths of the Members.

Article XXXVII.

Any question or dispute relating to the interpretation of this Part of the present Treaty or of any subsequent convention concluded by the Members in pursuance of the provisions of this Part of the present Treaty shall be referred for decision to the Permanent Court of International Justice.

CHAPTER IV.

Transitory Provisions.

Article XXXVIII.

The first meeting of the Conference shall take place in October, 1919. The place and agenda for this meeting shall be as specified in the Annex hereto.

Arrangements for the convening and the organisation of the first meeting of the Conference will be made by the Government designated for the purpose in the said Annex. That Government shall be assisted in the preparation of the documents for submission to the Conference by an International Committee constituted as provided in the said Annex.

The expenses of the first meeting and of all subsequent meetings held before the League of Nations has been able to establish a general fund, other than the expenses of Delegates and their advisers, will be borne by the Members in accordance with the apportionment of the expenses of the International Bureau of the Universal Postal Union.

Article XXXIX.

Until the League of Nations has been constituted all communications which under the provisions of the foregoing Articles should be addressed to the Secretary-General of the League will be preserved by the Director of the International Labour Office, who will transmit them to the Secretary-General of the League.

Article XL.

Pending the creation of a Permanent Court of International Justice disputes which in accordance with this Part of the present Treaty would be submitted to it for decision will be referred to a tribunal of three persons appointed by the Council of the League of Nations.

ANNEX.

FIRST MEETING OF ANNUAL LABOUR CONFERENCE, 1919.

The place of meeting will be Washington.

The Government of the United States of America is requested to convene the Conference.

The International Organising Committee will consist of seven Members, appointed by the United States of America, Great Brit-

ain, France, Italy, Japan, Belgium and Switzerland. The Committee may, if it thinks necessary, invite other Members to appoint representatives.

Agenda:

(1) Application of principle of the 8-hours day or of the 48-hours week.

(2) Question of preventing or providing against unemployment.

(3) Women's employment:
  (*a*) Before and after child-birth, including the question of maternity benefit;
  (*b*) During the night;
  (*c*) In unhealthy processes.

(4) Employment of children:
  (*a*) Minimum age of employment;
  (*b*) During the night;
  (*c*) In unhealthy processes.

(5) Extension and application of the International Conventions adopted at Bern in 1906 on the prohibition of night work for women employed in industry and the prohibition of the use of white phosphorus in the manufacture of matches.

Section II.

GENERAL PRINCIPLES.

The High Contracting Parties, recognising that the well-being, physical, moral and intellectual, of industrial wage-earners is of supreme international importance, have framed, in order to further this great end, the permanent machinery provided for in Section I and associated with that of the League of Nations.

They recognise that differences of climate, habits and customs, of economic opportunity and industrial tradition, make strict uniformity in the conditions of labour difficult of immediate attainment. But, holding as they do, that labour should not be regarded merely as an article of commerce, they think that there are methods and principles for regulating labour conditions which all industrial communities should endeavour to apply, so far as their special circumstances will permit.

Among these methods and principles, the following seem to the High Contracting Parties to be of special and urgent importance:

First.—The guiding principle above enunciated that labour should not be regarded merely as a commodity or article of commerce.

Second.—The right of association for all lawful purposes by the employed as well as by the employers.

Third.—The payment to the employed of a wage adequate to maintain a reasonable standard of life as this is understood in their time and country.

Fourth.—The adoption of an eight hours' day or a forty-eight hours' week as the standard to be aimed at where it has not already been attained.

Fifth.—The adoption of a weekly rest of at least twenty-four hours, which should include Sunday wherever practicable.

Sixth.—The abolition of child labour and the imposition of such limitations on the labour of young persons as shall permit the continuation of their education and assure their proper physical development.

Seventh.—The principle that men and women should receive equal remuneration for work of equal value.

Eighth.—The standard set by law in each country with respect to the conditions of labour should have due regard to the equitable economic treatment of all workers lawfully resident therein.

Ninth.—Each State should make provision for a system of inspection in which women should take part, in order to insure the enforcement of the laws and regulations for the protection of the employed.

Without claiming that these methods and principles are either complete or final, the High Contracting Parties are of opinion that they are well fitted to guide the policy of the League of Nations; and that, if adopted by the industrial communities who are members of the League, and safeguarded in practice by an adequate system of such inspection, they will confer lasting benefits upon the wage-earners of the world.