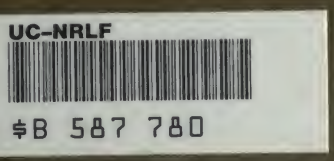
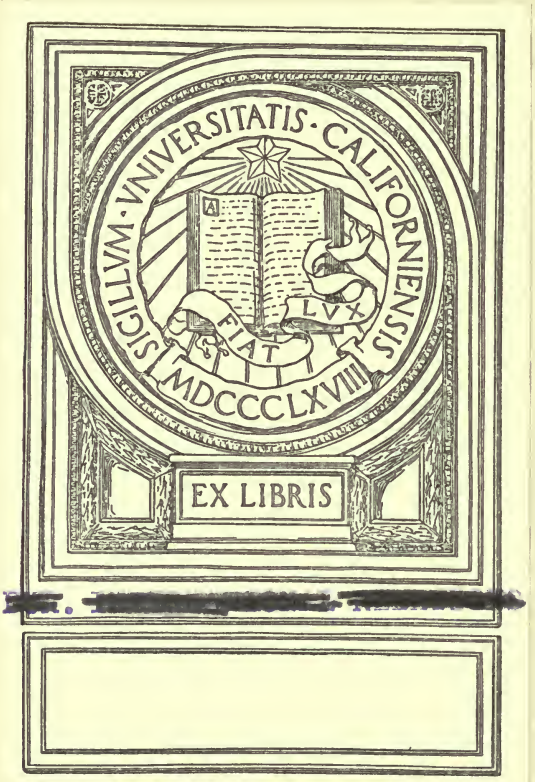


Carnegie Endowment for International Peace

DIVISION OF INTERCOURSE AND EDUCATION

Publication No. 17

AMERICAN FOREIGN POLICY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Carnegie Endowment for International Peace

DIVISION OF INTERCOURSE AND EDUCATION

Publication No. 17

AMERICAN FOREIGN POLICY

Based upon
Statements of Presidents and Secretaries of State of the United States
and of Publicists of the American Republics

WITH AN INTRODUCTION BY
NICHOLAS MURRAY BUTLER

SECOND EDITION

WASHINGTON, D. C.
1920

INTRODUCTION

The public discussions which preceded and attended the entry of the United States into the great war and, more particularly, the discussions in the Senate and in the public press concerning the terms and conditions of peace, have served to awaken new and widespread interest in matters of foreign policy. There have been frequent clashes of opinion as to what are the principles and traditions of American foreign policy. As a result many persons find themselves confused and uncertain in regard to those principles and purposes which have been announced and accepted as controlling the administration of the foreign policy of the government of the United States.

The present Publication has been planned by the Division of Intercourse and Education for the purpose of meeting a clear and obvious need for exact information. There are here brought together those official statements by successive Presidents and Secretaries of State which, having been formally or tacitly accepted by the American people, do in effect constitute the foundation of American foreign policy.

As Mr. Root has pointed out, not everything said or written by Secretaries of State or even by Presidents, constitutes a national policy. It is the substance of the thing to which the nation holds which constitutes its policy. The declarations contained in this Publication constitute the substance of the thing to which the American nation holds. They are the classic declarations of policy which, taken together, present a record of which the American people may well be proud.

It is quite customary to overlook or to minimize the important constructive work of the two Hague Conferences of 1899 and 1907 and the important part played therein by the United States. It is true that the great war appeared to brush rudely aside the definite assurances and the high hopes which were the result of those two conferences; but as that war itself recedes into the distance it will be seen that the work of the Hague Conferences remains as the surest foundation for any new plan of international cooperation that is really practicable. A re-study by Americans of the work of the two Hague Conferences is vitally important, since it is from that work that the new task of construction must start.

Fortunately, in the Recommendations of Habana concerning international organization, adopted by the American Institute of International Law after the great war had been in progress more than two and a half years, there is provided a platform upon which all American governments and peoples can stand. Representative jurists from many different American republics united in formulating and in publishing this impressive Declaration. It may now be offered to the peoples of Europe and of Asia as America's positive contribution to the solution of the problem of providing a form of international cooperation which will avoid the creation of a super-government and rest international cooperation upon respect and reverence for law. This is the path of progress to which the traditions of American foreign policy point and this is the path upon which the Government of the United States may well invite other nations speedily to enter.

The Division of Intercourse and Education is indebted for the compilation of the material included in this publication to the Director of the Division of International Law, Mr. James Brown Scott, whose luminous commentary on the Recommendations of Habana (pages 105-119), is a marked addition to the value of the present Publication.

NICHOLAS MURRAY BUTLER,
Acting Director.

April 15, 1920.

DEP. INTERNATIONAL RELATIONS

CONTENTS

I

George Washington, President of the United States, 1789-1797

EXTRACT FROM THE FAREWELL ADDRESS[1]

SEPTEMBER 17, 1796

Observe good faith and justice toward all nations. Cultivate peace and harmony with all. Religion and morality enjoin this conduct. And can it be that good policy does not equally enjoin it? It will be worthy of a free, enlightened, and at no distant period a great nation to give to mankind the magnanimous and too novel example of a people always guided by an exalted justice and benevolence. Who can doubt that in the course of time and things the fruits of such a plan would richly repay any temporary advantages which might be lost by a steady adherence to it? Can it be that Providence has not connected the permanent felicity of a nation with its virtue? The experiment, at least, is recommended by every sentiment which ennobles human nature. Alas! is it rendered impossible by its vices?

In the execution of such a plan nothing is more essential than that permanent, inveterate antipathies against particular nations and passionate attachments for others should be excluded, and that in place of them just and amicable feelings toward all should be cultivated. The nation which indulges toward another an habitual hatred or an habitual fondness is in some degree a slave. It is a slave to its animosity or to its affection, either of which is sufficient to lead it astray from its duty and its interest. Antipathy in one nation against another disposes each more readily to offer insult and injury, to lay hold of slight causes of umbrage, and to be haughty and intractable when accidental or trifling occasions of dispute occur.

Hence frequent collisions, obstinate, envenomed, and bloody contests. The nation prompted by ill-will and resentment sometimes impels to war the Government contrary to the best calculations of policy. The Government sometimes participates in the national propensity, and adopts through passion what reason would reject. At other times it makes the animosity of the nation subservient to projects of hostility, instigated by pride, ambition, and other sinister and pernicious motives. The peace often, sometimes perhaps the liberty, of nations has been the victim.

So, likewise, a passionate attachment of one nation for another produces a variety of evils. Sympathy for the favorite nation, facilitating the illusion of an

[1] Richardson, James D., *A Compilation of the Messages and Papers of the Presidents*. 1789-1897 (Washington, Government Printing Office, 1896-1899), vol. 1, pp. 221-223.

imaginary common interest in cases where no real common interest exists, and infusing into one the enmities of the other, betrays the former into a participation in the quarrels and wars of the latter without adequate inducement or justification. It leads also to concessions to the favorite nation of privileges denied to others, which is apt doubly to injure the nation making the concessions by unnecessarily parting with what ought to have been retained, and by exciting jealousy, ill will, and a disposition to retaliate in the parties from whom equal privileges are withheld; and it gives to ambitious, corrupted, or deluded citizens (who devote themselves to the favorite nation) facility to betray or sacrifice the interests of their own country without odium, sometimes even with popularity, gilding with the appearances of a virtuous sense of obligation, a commendable deference for public opinion, or a laudable zeal for public good the base or foolish compliances of ambition, corruption, or infatuation.

As avenues to foreign influence in innumerable ways, such attachments are particularly alarming to the truly enlightened and independent patriot. How many opportunities do they afford to tamper with domestic factions, to practice the arts of seduction, to mislead public opinion, to influence or awe the public councils! Such an attachment of a small or weak toward a great and powerful nation dooms the former to be the satellite of the latter. Against the insidious wiles of foreign influence (I conjure you to believe me, fellow-citizens) the jealousy of a free people ought to be *constantly* awake, since history and experience prove that foreign influence is one of the most baneful foes of republican Government. But that jealousy, to be useful, must be impartial, else it becomes the instrument of the very influence to be avoided, instead of a defense against it. Excessive partiality for one foreign nation and excessive dislike of another cause those whom they actuate to see danger only on one side, and serve to veil and even second the arts of influence on the other. Real patriots who may resist the intrigues of the favorite are liable to become suspected and odious, while its tools and dupes usurp the applause and confidence of the people to surrender their interests.

The great rule of conduct for us in regard to foreign nations is, in extending our commercial relations to have with them as little *political* connection as possible. So far as we have already formed engagements let them be fulfilled with perfect good faith. Here let us stop.

Europe has a set of primary interests which to us have none or a very remote relation. Hence she must be engaged in frequent controversies, the causes of which are essentially foreign to our concerns. Hence, therefore, it must be unwise in us to implicate ourselves by artificial ties in the ordinary vicissitudes of her politics or the ordinary combinations and collisions of her friendships or enmities.

Our detached and distant situation invites and enables us to pursue a differ-

ent course. If we remain one people, under an efficient Government, the period is not far off when we may defy material injury from external annoyance; when we may take such an attitude as will cause the neutrality we may at any time resolve upon to be scrupulously respected; when belligerent nations, under the impossibility of making acquisitions upon us, will not lightly hazard the giving us provocation; when we may choose peace or war, as our interest, guided by justice, shall counsel.

Why forego the advantages of so peculiar a situation? Why quit our own to stand upon foreign ground? Why, by interweaving our destiny with that of any part of Europe, entangle our peace and prosperity in the toils of European ambition, rivalship, interest, humor, or caprice?

It is our true policy to steer clear of permanent alliances with any portion of the foreign world, so far, I mean, as we are now at liberty to do it; for let me not be understood as capable of patronizing infidelity to existing engagements. I hold the maxim no less applicable to public than to private affairs that honesty is always the best policy. I repeat, therefore, let those engagements be observed in their genuine sense. But in my opinion it is unecessary and would be unwise to extend them.

Taking care always to keep ourselves by suitable establishments on a respectable defensive posture, we may safely trust to temporary alliances for extraordinary emergencies.

II

Thomas Jefferson, President of the United States, 1801-1809

EXTRACT FROM THE FIRST INAUGURAL ADDRESS[1]

MARCH 4, 1801

About to enter, fellow-citizens, on the exercise of duties which comprehend everything dear and valuable to you, it is proper you should understand what I deem the essential principles of our Government, and consequently those which ought to shape its Administration. I will compress them within the narrowest compass they will bear, stating the general principle, but not all its limitations. Equal and exact justice to all men, of whatever State or persuasion, religious or political; peace, commerce, and honest friendship with all nations, entangling alliances with none; the support of the State governments in all their rights, as the most competent administrations for our domestic concerns and the surest bulwarks against antirepublican tendencies; the preservation of the General Government in its whole constitutional vigor, as the sheet anchor of our peace at home and safety abroad; a jealous care of the right of election by the people—a mild and safe corrective of abuses which are lopped by the sword of revolution where peaceable remedies are unprovided; absolute acquiescence in the decisions of the majority, the vital principle of republics, from which is no appeal but to force, the vital principle and immediate parent of despotism; a well-disciplined militia, our best reliance in peace and for the first moments of war, till regulars may relieve them; the supremacy of the civil over the military authority; economy in the public expense, that labor may be lightly burthened; the honest payment of our debts and sacred preservation of the public faith; encouragement of agriculture, and of commerce as its handmaid; the diffusion of information and arraignment of all abuses at the bar of the public reason; freedom of religion; freedom of the press, and freedom of person under the protection of the habeas corpus, and trial by juries impartially selected. These principles form the bright constellation which has gone before us and guided our steps through an age of revolution and reformation. The wisdom of our sages and blood of our heroes have been devoted to their attainment. They should be the creed of our political faith, the text of civic instruction, the touchstone by which to try the services of those we trust; and should we wander from them in moments of error or of alarm, let us hasten to retrace our steps and to regain the road which alone leads to peace, liberty, and safety.

[1] Richardson, *Messages and Papers of the Presidents,* vol. 1, pp. 323-324.

III

James Monroe, President of the United States, 1817-1825

EXTRACTS FROM THE SEVENTH ANNUAL MESSAGE[1]

DECEMBER 2, 1823

At the proposal of the Russian Imperial Government, made through the minister of the Emperor residing here, a full power and instructions have been transmitted to the Minister of the United States at St. Petersburg, to arrange, by amicable negotiation, the respective rights and interests of the two nations on the north-west coast of this continent. A similar proposal had been made by His Imperial Majesty to the Government of Great Britain, which has likewise been acceded to. The Government of the United States has been desirous, by this friendly proceeding, of manifesting the great value which they have invariably attached to the friendship of the Emperor, and their solicitude to cultivate the best understanding with his Government. In the discussions to which this interest has given rise and in the arrangements by which they may terminate, the occasion has been judged proper for asserting, as a principle in which the rights and interests of the United States are involved, that the American continents, by the free and independent condition which they have assumed and maintain, are henceforth not to be considered as subjects for future colonization by any European powers. . . .

The citizens of the United States cherish sentiments the most friendly in favor of the liberty and happiness of their fellowmen on that side of the Atlantic. In the wars of the European Powers, in matters relating to themselves, we have never taken any part, nor does it comport with our policy so to do. It is only when our rights are invaded or seriously menaced that we resent injuries or make preparation for our defense. With the movements in this hemisphere we are of necessity more immediately connected, and by causes which must be obvious to all enlightened and impartial observers. The political system of the allied Powers is essentially different in this respect from that of America. This difference proceeds from that which exists in their respective Governments; and to the defense of our own, which has been achieved by the loss of so much blood and treasure, and matured by the wisdom of their most enlightened citizens, and under which we have enjoyed unexampled felicity, this whole nation is devoted. We owe it, therefore, to candor and to the amicable relations existing between the

[1] Richardson, *Messages and Papers of the Presidents,* vol. 2, pp. 209, 218, 219.

United States and those Powers to declare that we should consider any attempt on their part to extend their system to any portion of this hemisphere as dangerous to our peace and safety. With the existing colonies or dependencies of any European Power we have not interfered and shall not interfere. But with the Governments who have declared their independence and maintained it, and whose independence we have, on great consideration and on just principles, acknowledged, we could not view any interposition for the purpose of oppressing them, or controlling in any other manner their destiny, by any European Power, in any other light than as the manifestation of an unfriendly disposition towards the United States. . . .

Our policy in regard to Europe, which was adopted at an early stage of the wars which have so long agitated that quarter of the globe, nevertheless remains the same, which is, not to interfere in the internal concerns of any of its Powers; to consider the Government *de facto* as the legitimate Government for us; to cultivate friendly relations with it, and to preserve those relations by a frank, firm, and manly policy, meeting in all instances the just claims of every Power, submitting to injuries from none. But in regard to those continents circumstances are eminently and conspicuously different. It is impossible that the allied powers should extend their political system to any portion of either continent without endangering our peace and happiness; nor can anyone believe that our southern brethren, if left to themselves, would adopt it of their own accord. It is equally impossible, therefore, that we should behold such interposition in any form with indifference.

IV

James K. Polk, President of the United States, 1845-1849

EXTRACT FROM THE FIRST ANNUAL MESSAGE[1]

DECEMBER 2, 1845

It is well known to the American people and to all nations that this Government has never interfered with the relations subsisting between other Governments. We have never made ourselves parties to their wars or their alliances; we have not sought their territories by conquest; we have not mingled with parties in their domestic struggles; and believing our own form of government to be the best, we have never attempted to propagate it by intrigues, by diplomacy, or by force. We may claim on this continent a like exemption from European interference. The nations of America are equally sovereign and independent with those of Europe. They possess the same rights, independent of all foreign interposition, to make war, to conclude peace, and to regulate their internal affairs. The people of the United States can not, therefore, view with indifference attempts of European Powers to interfere with the independent action of the nations on this continent. The American system of government is entirely different from that of Europe. Jealousy among the different sovereigns of Europe, lest any one of them might become too powerful for the rest, has caused them anxiously to desire the establishment of what they term the "balance of power." It can not be permitted to have any application on the North American continent, and especially to the United States. We must ever maintain the principle that the people of this continent alone have the right to decide their own destiny. Should any portion of them, constituting an independent State, propose to unite themselves with our Confederacy, this will be a question for them and us to determine without any foreign interposition. We can never consent that European powers shall interfere to prevent such a union because it might disturb the "balance of power" which they may desire to maintain upon this continent. Near a quarter of a century ago the principle was distinctly announced to the world, in the annual message of one of my predecessors, that—

> The American continents, by the free and independent condition which they have assumed and maintain, are henceforth not to be considered as subjects for future colonization by any European Powers.

[1] Richardson, *Messages and Papers of the Presidents,* vol. 4, pp. 398-399.

This principle will apply with greatly increased force should any European Power attempt to establish any new colony in North America. In the existing circumstances of the world the present is deemed a proper occasion to reiterate and reaffirm the principle avowed by Mr. Monroe and to state my cordial concurrence in its wisdom and sound policy. The reassertion of this principle, especially in reference to North America, is at this day but the promulgation of a policy which no European Power should cherish the disposition to resist. Existing rights of every European nation should be respected, but it is due alike to our safety and our interests that the efficient protection of our laws should be extended over our whole territorial limits, and that it should be distinctly announced to the world as our settled policy that no future European colony or dominion shall with our consent be planted or established on any part of the North American continent.

V

James K. Polk, President of the United States

SPECIAL MESSAGE TO THE SENATE AND HOUSE OF REPRESENTATIVES[1]

APRIL 29, 1848

I submit for the consideration of Congress several communications received at the Department of State from Mr. Justo Sierra, commissioner of Yucatan, and also a communication from the Governor of that State, representing the condition of extreme suffering to which their country has been reduced by an insurrection of the Indians within its limits, and asking the aid of the United States.

These communications present a case of human suffering and misery which can not fail to excite the sympathies of all civilized nations. From these and other sources of information it appears that the Indians of Yucatan are waging a war of extermination against the white race. In this civil war they spare neither age nor sex, but put to death, indiscriminately, all who fall within their power. The inhabitants, panic stricken and destitute of arms, are flying before their savage pursuers toward the coast, and their expulsion from their country or their extermination would seem to be inevitable unless they can obtain assistance from abroad.

In this condition they have, through their constituted authorities, implored the aid of this Government to save them from destruction, offering in case this should be granted to transfer the "dominion and sovereignty of the pensinsula" to the United States. Similar appeals for aid and protection have been made to the Spanish and the English Governments.

Whilst it is not my purpose to recommend the adoption of any measure with a view to the acquisition of the "dominion and sovereignty" over Yucatan, yet, according to our established policy, we could not consent to a transfer of this "dominion and sovereignty" either to Spain, Great Britain, or any other European power. In the language of President Monroe in his message of December, 1823:

> We should consider any attempt on their part to extend their system to any portion of this hemisphere as dangerous to our peace and safety.

In my annual message of December, 1845, I declared that—

[1] Richardson, *Messages and Papers of the Presidents,* vol. 4, pp. 581-583.

> Near a quarter of a century ago the principle was distinctly announced to the world, in the annual message of one of my predecessors, that "the American continents, by the free and independent condition which they have assumed and maintain, are henceforth not to be considered as subjects for future colonization by any European powers." This principle will apply with greatly increased force should any European power attempt to establish any new colony in North America. In the existing circumstances of the world, the present is deemed a proper occasion to reiterate and reaffirm the principle avowed by Mr. Monroe, and to state my cordial concurrence in its wisdom and sound policy. The reassertion of this principle, especially in reference to North America, is at this day but the promulgation of a policy which no European power should cherish the disposition to resist. Existing rights of every European nation should be respected, but it is due alike to our safety and our interests that the efficient protection of our laws should be extended over our whole territorial limits, and that it should be distinctly announced to the world as our settled policy that no future European colony or dominion shall with our consent be planted or established on any part of the North American continent.

Our own security requires that the established policy thus announced should guide our conduct, and this applies with great force to the peninsula of Yucatan. It is situate in the Gulf of Mexico, on the North American continent, and, from its vicinity to Cuba, to the capes of Florida, to New Orleans, and, indeed, to our whole southwestern coast, it would be dangerous to our peace and security if it should become a colony of any European nation.

We have now authentic information that if the aid asked from the United States be not granted such aid will probably be obtained from some European power, which may hereafter assert a claim to "dominion and sovereignty" over Yucatan.

Our existing relations with Yucatan are of a peculiar character, as will be perceived from the note of the Secretary of State to their commissioner dated on the 24th of December last, a copy of which is herewith transmitted. Yucatan has never declared her independence, and we treated her as a State of the Mexican Republic. For this reason we have never officially received her commissioner; but whilst this is the case, we have to a considerable extent recognized her as a neutral in our war with Mexico. Whilst still considering Yucatan as a portion of Mexico, if we had troops to spare for this purpose I would deem it proper, during the continuance of the war with Mexico, to occupy and hold military possession of her territory and to defend the white inhabitants against the incursions of the Indians, in the same way that we have employed our troops in other States of the Mexican Republic in our possession in repelling the attacks of savages upon the inhabitants who have maintained their neutrality in the war. But, unfortunately, we can not at the present time, without serious danger, withdraw our forces from other portions of the Mexican territory now in our occupation and send them to Yucatan. All that can be done under existing circum-

stances is to employ our naval forces in the Gulf not required at other points to afford them relief; but it is not to be expected that any adequate protection can thus be afforded, as the operations of such naval forces must of necessity be confined to the coast.

I have considered it proper to communicate the information contained in the accompanying correspondence, and I submit to the wisdom of Congress to adopt such measures as in their judgment may be expedient to prevent Yucatan from becoming a colony of any European power, which in no event could be permitted by the United States, and at the same time to rescue the white race from extermination or expulsion from their country.

VI

James Buchanan, President of the United States, 1857-1861

EXTRACT FROM THE SECOND ANNUAL MESSAGE[1]

DECEMBER 6, 1858

Our position in relation to the independent States south of us on this continent, and especially those within the limits of North America, is of a peculiar character. The northern boundary of Mexico is coincident with our own southern boundary from ocean to ocean, and we must necessarily feel a deep interest in all that concerns the well-being and the fate of so near a neighbor. We have always cherished the kindest wishes for the success of that Republic, and have indulged the hope that it might at last, after all its trials, enjoy peace and prosperity under a free and stable government. We have never hitherto interfered, directly or indirectly, with its internal affairs, and it is a duty which we owe to ourselves to protect the integrity of its territory against the hostile interference of any other Power. Our geographical position, our direct interest in all that concerns Mexico, and our well-settled policy in regard to the North American continent render this an indispensable duty.

[1] Richardson, *Messages and Papers of the Presidents,* vol. 5, p. 511.

VII

Ulysses S. Grant, President of the United States, 1869-1877

EXTRACT FROM SPECIAL MESSAGE TO THE SENATE[1]

MAY 31, 1870

I transmit to the Senate, for consideration with a view to its ratification, an additional article to the treaty of the 29th of November last, for the annexation of the Dominican Republic to the United States, stipulating for an extension of the time for exchanging the ratifications thereof, signed in this city on the 14th instant by the plenipotentiaries of the parties.

It was my intention to have also negotiated with the plenipotentiary of San Domingo amendments to the treaty of annexation to obviate objections which may be urged against the treaty as it is now worded; but on reflection I deem it better to submit to the Senate the propriety of their amending the treaty as follows: First, to specify that the obligations of this Government shall not exceed the $1,500,000 stipulated in the treaty; secondly, to determine the manner of appointing the agents to receive and disburse the same; thirdly, to determine the class of creditors who shall take precedence in the settlement of their claims; and, finally, to insert such amendments as may suggest themselves to the minds of Senators to carry out in good faith the conditions of the treaty submitted to the Senate of the United States in January last, according to the spirit and intent of that treaty. From the most reliable information I can obtain, the sum specified in the treaty will pay every just claim against the Republic of San Domingo and leave a balance sufficient to carry on a Territorial Government until such time as new laws for providing a Territorial revenue can be enacted and put in force.

I feel an unusual anxiety for the ratification of this treaty, because I believe it will redound greatly to the glory of the two countries interested, to civilization, and to the extirpation of the institution of slavery.

The doctrine promulgated by President Monroe has been adhered to by all political parties, and I now deem it proper to assert the equally important principle that hereafter no territory on this continent shall be regarded as subject of transfer to a European Power.

The Government of San Domingo has voluntarily sought this annexation. It is a weak Power, numbering probably less than 120,000 souls, and yet possessing one of the richest territories under the sun, capable of supporting a population of 10,000,000 people in luxury. The people of San Domingo are not capable of maintaining themselves in their present condition, and must look for outside support.

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[1] Richardson, *Messages and Papers of the Presidents*, vol. 7, p. 61. The Senate rejected the treaty June 30, 1870, and the movement toward annexation became generally unpopular.

VIII

James G. Blaine, Secretary of State of the United States, 1881, 1889-1892

CALL FOR THE FIRST INTERNATIONAL AMERICAN CONFERENCE[1]

NOVEMBER 29, 1881

[The Pan American Conference was proposed by Secretary of State Blaine, in 1881, as appears from his circular note of November 29, 1881. The invitation was generally accepted, but Mr. Blaine's resignation from office, international complications in South America and other causes prevented the meeting of the Conference until Mr. Blaine was again Secretary of State under President Harrison. The Conference met in Washington on October 2, 1889, and was formally opened by Secretary Blaine, in person, who delivered the opening address. He was its President, and delivered the closing address, in which, adverting to its recommendation of a uniform treaty of arbitration, he used the happy phrase "this new Magna Charta, which abolishes war and substitutes arbitration between the American republics." The Conference recommended also conventions on literary and artistic property, on patents and on trade-marks and other subjects.

This Conference, due to Secretary Blaine's foresight and perseverance, brought the official representatives of America together and furnished a precedent for the Hague Conference which was held ten years later, and which, like it, met in time of peace to discuss the means of preserving peace, instead of meeting in time of war to end war and only incidentally to discuss problems of a kind calculated to keep peace. The Conference agreed upon a union and established the International Bureau of the American Republics, whose name was changed at a later conference to The Pan American Union, in which every American Republic is represented by its diplomatic agent, accredited to Washington, under the presidency of the Secretary of State of the United States. The second meeting was held in the city of Mexico in 1901-2, and among very important measures, approved the Hague Conventions of 1899 and prepared *the way for participation* of all Latin America in the Second Hague Conference. The third conference was held at Rio de Janeiro in 1906, which Elihu Root, then Secretary of State, attended in person. It drew up conventions on naturalization, pecuniary claims, industrial property and international law. The fourth conference was held at Buenos Aires in 1910, and adopted four conventions.

The first Pan American Conference, as has been said, antedated the first Hague Peace Conference. The form of organization—in which each State maintains its absolute independence, is represented upon a footing of absolute equality, organizing the New World—furnishes a precedent for an organization based upon like principles of the other continents.]

DEPARTMENT OF STATE,
WASHINGTON, *November 29, 1881.*

SIR: The attitude of the United States with respect to the question of general peace on the American continent is well known through its persistent efforts for years past to avert the evils of warfare, or, these efforts failing, to bring positive conflicts to an end through pacific counsels or the advocacy of impartial arbitration.

[1] Circular instruction to the diplomatic representatives of the United States in the capitals of Latin America. *International American Conference* (Washington, 1890), vol. 4, p. 255.

This attitude has been consistently maintained, and always with such fairness as to leave no room for imputing to our Government any motive except the humane and disinterested one of saving kindred States of the American continent from the burdens of war. The position of the United States as the leading Power of the New World might well give to its Government a claim to authoritative utterance for the purpose of quieting discord among its neighbors, with all of whom the most friendly relations exist. Nevertheless, the good offices of this Government are not and have not at any time been tendered with a show of dictation or compulsion, but only as exhibiting the solicitous good-will of a common friend.

For some years past a growing disposition has been manifested by certain States of Central and South America to refer disputes affecting grave questions of international relationship and boundaries to arbitration rather than to the sword. It has been on several such occasions a source of profound satisfaction to the Government of the United States to see that this country is in a large measure looked to by all the American powers as their friend and mediator. The just and impartial counsel of the President in such cases has never been withheld, and his efforts have been rewarded by the prevention of sanguinary strife or angry contentions between peoples whom we regard as brethren.

The existence of this growing tendency convinces the President that the time is ripe for a proposal that shall enlist the good-will and active cooperation of all the States of the Western Hemisphere, both north and south, in the interest of humanity and for the common weal of nations. He conceives that none of the governments of America can be less alive than our own to the dangers and horrors of a state of war, and especially of war between kinsmen. He is sure that none of the chiefs of Governments on the continent can be less sensitive than he is to the sacred duty of making every endeavor to do away with the chances of fratricidal strife. And he looks with hopeful confidence to such active assistance from them as will serve to show the broadness of our common humanity and the strength of the ties which bind us all together as a great and harmonious system of American commonwealths.

Impressed by these views, the President extends to all the independent countries of North and South America an earnest invitation to participate in a general congress, to be held in the city of Washington on the 24th day of November, 1882, for the purpose of considering and discussing the methods of preventing war between the nations of America. He desires that the attention of the congress shall be strictly confined to this one great object; that its sole aim shall be to seek a way of permanently averting the horrors of cruel and bloody combat between countries, oftenest of one blood and speech, or the even worse calamity of internal commotion and civil strife; that it shall regard the burdensome and far-reaching consequences of such struggles, the legacies of exhausted finances,

of oppressive debt, of onerous taxation, of ruined cities, of paralyzed industries, of devastated fields, of ruthless conscription, of the slaughter of men, of the grief of the widow and the orphan, of embittered resentments, that long survive those who provoked them and heavily afflict the innocent generations that come after.

The President is especially desirous to have it understood that in putting forth this invitation the United States does not assume the position of counseling, or attempting, through the voice of the congress, to counsel any determinate solution of existing questions which may now divide any of the countries of America. Such questions can not properly come before the congress. Its mission is higher. It is to provide for the interests of all in the future, not to settle the individual differences of the present. For this reason especially the President has indicated a day for the assembling of the congress so far in the future as to leave good ground for hope that by the time named the present situation on the South Pacific coast will be happily terminated, and that those engaged in the contest may take peaceable part in the discussion and solution of the general question affecting in an equal degree the well-being of all.

It seems also desirable to disclaim in advance any purpose on the part of the United States to prejudge the issues to be presented to the congress. It is far from the intent of this Government to appear before the congress as in any sense the protector of its neighbors or the predestined and necessary arbitrator of their disputes. The United States will enter into the deliberations of the congress on the same footing as the other Powers represented, and with the loyal determination to approach any proposed solution, not merely in its own interest or with a view to asserting its own power, but as a single member among many coordinate and coequal States. So far as the influence of this Government may be potential it will be exerted in the direction of conciliating whatever conflicting interests of blood, or government, or historical tradition may necessarily come together in response to a call embracing such vast and diverse elements.

You will present these views to the minister of foreign relations of the . . . enlarging, if need be, in such terms as will readily occur to you, upon the great mission which it is within the power of the proposed congress to accomplish in the interest of humanity, and upon the firm purpose of the United States to maintain a position of the most absolute and impartial friendship towards all. You will thereupon, in the name of the President of the United States, tender to His Excellency the President of . . . a formal invitation to send two commissioners to the congress, provided with such powers and instructions on behalf of their Government as will enable them to consider the questions brought before that body within the limit of submission contemplated by this invitation. The United States, as well as the other powers, will in like manner be represented by two commissioners, so that equality and impartiality will be amply secured in the proceedings of the congress.

In delivering this invitation through the minister of foreign affairs you will read this dispatch to him and leave with him a copy, intimating that an answer is desired by this Government as promptly as the just consideration of so important a proposition will permit.

I am, etc.,

JAMES G. BLAINE.

ADDRESS OF WELCOME TO THE CONFERENCE[1]

GENTLEMEN OF THE INTERNATIONAL AMERICAN CONFERENCE: Speaking for the Government of the United States, I bid you welcome to this capital. Speaking for the people of the United States, I bid you welcome to every section and to every State of the Union. You come in response to an invitation extended by the President on the special authorization of Congress. Your presence here is no ordinary event. It signifies much to the people of all America today. It may signify far more in the days to come. No conference of nations has ever assembled to consider the welfare of territorial possessions so vast and to contemplate the possibilities of a future so great and so inspiring. Those now sitting within these walls are empowered to speak for nations whose borders are on both the great oceans, whose northern limits are touched by the Arctic waters for a thousand miles beyond the Straits of Behring and whose southern extension furnishes human habitations farther below the equator than is elsewhere possible on the globe.

The aggregate territorial extent of the nations here represented falls but little short of 12,000,000 of square miles—more than three times the area of all Europe, and but little less than one-fourth part of the globe; while in respect to the power of producing the articles which are essential to human life and those which minister to life's luxury, they constitute even a larger proportion of the entire world. These great possessions today have an aggregate population approaching 120,000,000, but if peopled as densely as the average of Europe, the total number would exceed 1,000,000,000. While considerations of this character must inspire Americans, both South and North, with the liveliest anticipations of future grandeur and power, they must also impress them with a sense of the gravest responsibility touching the character and development of their respective nationalities.

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[1] Delivered October 2, 1889. *International American Conference: Reports of Committees and Discussions Thereon,* vol. 1, p. 39.

The Delegates I am addressing can do much to establish permanent relations of confidence, respect, and friendship between the nations which they represent. They can show to the world an honorable, peaceful conference of eighteen independent American Powers, in which all shall meet together on terms of absolute equality; a conference in which there can be no attempt to coerce a single Delegate against his own conception of the interests of his nation; a conference which will permit no secret understanding on any subject, but will frankly publish to the world all its conclusions; a conference which will tolerate no spirit of conquest, but will aim to cultivate an American sympathy as broad as both continents; a conference which will form no selfish alliance against the older nations from which we are proud to claim inheritance—a conference, in fine, which will seek nothing, propose nothing, endure nothing that is not, in the general sense of all the Delegates, timely and wise and peaceful.

And yet we can not be expected to forget that our common fate has made us inhabitants of the two continents which, at the close of four centuries, are still regarded beyond the seas as the New World. Like situations beget like sympathies and impose like duties. We meet in firm belief that the nations of America ought to be and can be more helpful, each to the other, than they now are, and that each will find advantage and profit from an enlarged intercourse with the others.

We believe that we should be drawn together more closely by the highways of the sea, and that at no distant day the railway systems of the north and south will meet upon the isthmus and connect by land routes the political and commercial capitals of all America.

We believe that hearty co-operation, based on hearty confidence, will save all American States from the burdens and evils which have long and cruelly afflicted the older nations of the world.

We believe that a spirit of justice, of common and equal interest between the American States, will leave no room for an artificial balance of power like unto that which has led to wars abroad and drenched Europe in blood.

We believe that friendship, avowed with candor and maintained with good faith, will remove from American States the necessity of guarding boundary lines between themselves with fortifications and military force.

We believe that standing armies, beyond those which are needful for public order and the safety of internal administration, should be unknown on both American continents.

We believe that friendship and not force, the spirit of just law and not the violence of the mob, should be the recognized rule of administration between American nations and in American nations.

To these subjects, and those which are cognate thereto, the attention of this Conference is earnestly and cordially invited by the Government of the United

States. It will be a great gain when we shall acquire that common confidence on which all international friendship must rest. It will be a greater gain when we shall be able to draw the people of all American nations into close acquaintance with each other, an end to be facilitated by more frequent and more rapid intercommunication. It will be the greatest gain when the personal and commercial relations of the American States, South and North, shall be so developed and so regulated that each shall acquire the highest possible advantage from the enlightened and enlarged intercourse of all.

Before the Conference shall formally enter upon the discussion of the subjects to be submitted to it I am instructed by the President to invite all the Delegates to be the guests of the Government during a proposed visit to various sections of the country, with the double view of showing to our friends from abroad the condition of the United States, and of giving to our people in their homes the privilege and pleasure of extending the warm welcome of Americans to Americans.

CLOSING ADDRESS[1]

GENTLEMEN: I withhold for a moment the word of final adjournment, in order that I may express to you the profound satisfaction with which the Government of the United States regards the work that has been accomplished by the International American Conference. The importance of the subjects which have claimed your attention, the comprehensive intelligence and watchful patriotism which you have brought to their discussion, must challenge the confidence and secure the admiration of the Governments and peoples whom you represent; while that larger patriotism which constitutes the fraternity of nations has received from you an impulse such as the world has not before seen.

The extent and value of all that has been worthily achieved by your Conference can not be measured today. We stand too near it. Time will define and heighten the estimate of your work; experience will confirm our present faith; final results will be your vindication and your triumph.

If, in this closing hour, the Conference had but one deed to celebrate, we should dare call the world's attention to the deliberate, confident, solemn dedication of two great continents to peace, and to the prosperity which has peace for its foundation. We hold up this new Magna Charta, which abolishes war and substitutes arbitration between the American Republics, as the first and great

[1] Delivered April 19, 1890. *International American Conference: Reports of Committees and Discussions Thereon,* vol. 2, p. 1166.

fruit of the International American Conference. That noblest of Americans, the aged poet and philanthropist, Whittier, is the first to send his salutation and his benediction, declaring,

> If in the spirit of peace the American Conference agrees upon a rule of arbitration which shall make war in this hemisphere well-nigh impossible, its sessions will prove one of the most important events in the history of the world.

I am instructed by the President to express the wish that before the members of the Conference shall leave for their distant homes, they will accept the hospitality of the United States in a visit to the Southern section of the Union, similar to the one they have already made to the Eastern and Western sections. The President trusts that the tour will not only be a pleasant incident of your farewell to the country, but that you will find advantage in a visit to so interesting and important a part of our Republic.

May I express to you, gentlemen, my deep appreciation of the honor you did me in calling me to preside over your deliberations. Your kindness has been unceasing, and for your formal words of approval I offer you my sincerest gratitude.

Invoking the blessing of Almighty God upon the patriotic and fraternal work which has been here begun for the good of mankind, I now declare the American International Conference adjourned without day.

IX

Grover Cleveland, President of the United States, 1885-1889, 1893-1897

EXTRACT FROM THE THIRD ANNUAL MESSAGE[1]

DECEMBER 2, 1895

It being apparent that the boundary dispute between Great Britain and the Republic of Venezuela concerning the limits of British Guiana was approaching an acute stage, a definite statement of the interest and policy of the United States as regards the controversy seemed to be required both on its own account and in view of its relations with the friendly Powers directly concerned. In July last, therefore, a dispatch was addressed to our ambassador at London for communication to the British Government in which the attitude of the United States was fully and distinctly set forth. The general conclusions therein reached and formulated are in substance that the traditional and established policy of this Government is firmly opposed to a forcible increase by any European Power of its territorial possessions on this continent; that this policy is as well founded in principle as it is strongly supported by numerous precedents; that as a consequence the United States is bound to protest against the enlargement of the area of British Guiana in derogation of the rights and against the will of Venezuela; that considering the disparity in strength of Great Britain and Venezuela the territorial dispute between them can be reasonably settled only by friendly and impartial arbitration, and that the resort to such arbitration should include the whole controversy, and is not satisfied if one of the Powers concerned is permitted to draw an arbitrary line through the territory in debate and to declare that it will submit to arbitration only the portion lying on one side of it. In view of these conclusions, the dispatch in question called upon the British Government for a definite answer to the question whether it would or would not submit the territorial controversy between itself and Venezuela in its entirety to impartial arbitration. The answer of the British Government has not yet been received, but is expected shortly, when further communication on the subject will probably be made to the Congress.

[1] Richardson, *Messages and Papers of the Presidents,* vol. 9, p. 632.

X

John Hay, Secretary of State of the United States, 1898-1905

MEMORANDUM TO THE IMPERIAL GERMAN EMBASSY[1]

DECEMBER 16, 1901

The President in his message of the 3d of December, 1901, used the following language: "The Monroe Doctrine is a declaration that there must be no territorial aggrandizement by any non-American Power at the expense of any American Power on American soil. It is in no wise intended as hostile to any nation in the Old World." The President further said: "This doctrine has nothing to do with the commercial relations of any American Power, save that it in truth allows each of them to form such as it desires. . . . We do not guarantee any State against punishment if it misconducts itself, provided that punishment does not take the form of the acquisition of territory by any non-American Power."

His Excellency the German Ambassador, on his recent return from Berlin, conveyed personally to the President the assurance of the German Emperor that His Majesty's Government had no purpose or intention to make even the smallest acquisition of territory on the South American Continent or the islands adjacent. This voluntary and friendly declaration was afterwards repeated to the Secretary of State, and was received by the President and the people of the United States in the frank and cordial spirit in which it was offered. In the memorandum of the 11th of December, His Excellency the German Ambassador repeats these assurances as follows: "We declare especially that under no circumstances do we consider in our proceedings the acquisition or the permanent occupation of Venezuelan territory."

In the said memorandum of the 11th of December, the German Government informs that of the United States that it has certain just claims for money and for damages wrongfully withheld from German subjects by the Government of Venezuela, and that it proposes to take certain coercive measures described in the memorandum to enforce the payment of these just claims.

The President of the United States, appreciating the courtesy of the German Government in making him acquainted with the state of affairs referred to, and not regarding himself as called upon to enter into the consideration of the claims in question, believes that no measures will be taken in this matter by the agents of the German Government which are not in accordance with the well-known purpose, above set forth, of His Majesty the German Emperor.

[1] *Foreign Relations of the United States,* 1901, vol. 1, p. 195.

XI

Theodore Roosevelt, President of the United States, 1901-1909

EXTRACT FROM THE FOURTH ANNUAL MESSAGE[1]

DECEMBER 6, 1904

It is not true that the United States feels any land hunger or entertains any projects as regards the other nations of the Western Hemisphere save such as are for their welfare. All that this country desires is to see the neighboring countries stable, orderly, and prosperous. Any country whose people conduct themselves well can count upon our hearty friendship. If a nation shows that it knows how to act with reasonable efficiency and decency in social and political matters, if it keeps order and pays its obligations, it need fear no interference from the United States. Chronic wrong-doing, or an impotence which results in a general loosening of the ties of civilized society, may in America, as elsewhere, ultimately require intervention by some civilized nation, and in the Western Hemisphere the adherence of the United States to the Monroe Doctrine may force the United States, however reluctantly, in flagrant cases of such wrong-doing or impotence, to the exercise of an international police power. If every country washed by the Caribbean Sea would show the progress in stable and just civilization which with the aid of the Platt amendment Cuba has shown since our troops left the island, and which so many of the republics in both Americas are constantly and brilliantly showing, all question of interference by this nation with their affairs would be at an end. Our interests and those of our southern neighbors are in reality identical. They have great natural riches, and if within their borders the reign of law and justice obtains, prosperity is sure to come to them. While they thus obey the primary laws of civilized society they may rest assured that they will be treated by us in a spirit of cordial and helpful sympathy. We would interfere with them only in the last resort, and then only if it became evident that their inability or unwillingness to do justice at home and abroad had violated the rights of the United States or had invited foreign aggression to the detriment of the entire body of American nations. It is a mere truism to say that every nation, whether in America or anywhere else, which desires to maintain its freedom, its independence, must ultimately realize that the right of such independence cannot be separated from the responsibility of making good use of it.

[1] *Foreign Relations of the United States,* 1904, p. xli.

XII

Theodore Roosevelt, President of the United States

EXTRACTS FROM SPECIAL MESSAGE TO THE SENATE[1]

FEBRUARY 15, 1905

I submit herewith a protocol[2] concluded between the Dominican Republic and the United States.

The conditions in the Republic of Santo Domingo have been growing steadily worse for many years. There have been many disturbances and revolutions, and debts have been contracted beyond the power of the Republic to pay. Some of these debts were properly contracted and are held by those who have a legitimate right to their money. Others are without question improper or exorbitant, constituting claims which should never be paid in full and perhaps only to the extent of a very small portion of their nominal value.

Certain foreign countries have long felt themselves aggrieved because of the nonpayment of debts due their citizens. The only way by which foreign creditors could ever obtain from the Republic itself any guaranty of payment would be either by the acquisition of territory outright or temporarily, or else by taking possession of the custom-houses, which would of course in itself in effect, be taking possession of a certain amount of territory.

It has for some time been obvious that those who profit by the Monroe Doctrine must accept certain responsibilities along with the rights which it confers; and that the same statement applies to those who uphold the doctrine. It cannot be too often and too emphatically asserted that the United States has not the slightest desire for territorial aggrandizement at the expense of any of its southern neighbors, and will not treat the Monroe Doctrine as an excuse for such aggrandizement on its part. We do not propose to take any part of Santo Domingo, or exercise any other control over the island save what is necessary to its financial rehabilitation in connection with the collection of revenue, part of which will be turned over to the Government to meet the necessary expense of running it, and part of which will be distributed *pro rata* among the creditors of the Republic upon a basis of absolute equity. The justification for the United States taking this burden and incurring this responsibility is to be found in the fact that it is incompatible with international equity for the United States to refuse to allow

[1] *Foreign Relations of the United States,* 1905, pp. 334, 335, 336, 341, 342.

[2] The protocol accompanying this message was not ratified. Another convention was concluded February 8, 1907, ratification was advised by the Senate, February 25, 1907, and ratifications were exchanged July 8, 1907.

other Powers to take the only means at their disposal of satisfying the claims of their creditors and yet to refuse, itself, to take any such steps.

An aggrieved nation can without interfering with the Monroe Doctrine take what action it sees fit in the adjustment of its disputes with American States, provided that action does not take the shape of interference with their form of government or of the despoilment of their territory under any disguise. But, short of this, when the question is one of a money claim, the only way which remains, finally, to collect it is a blockade, or bombardment, or the seizure of the custom-houses, and this means, as has been said above, what is in effect a possession, even though only a temporary possession, of territory. The United States then becomes a party in interest, because under the Monroe Doctrine it cannot see any European Power seize and permanently occupy the territory of one of these Republics; and yet such seizure of territory, disguised or undisguised, may eventually offer the only way in which the Power in question can collect any debts, unless there is interference on the part of the United States.

One of the difficult and increasingly complicated problems, which often arise in Santo Domingo, grows out of the violations of contracts and concessions, sometimes improvidently granted, with valuable privileges and exemptions stipulated for upon grossly inadequate considerations which were burdensome to the State, and which are not infrequently disregarded and violated by the governing authorities. Citizens of the United States and of other Governments holding these concessions and contracts appeal to their respective Governments for active protection and intervention. Except for arbitrary wrong, done or sanctioned by superior authority, to persons or to vested property rights, the United States Government, following its traditional usage in such cases, aims to go no further than the mere use of its good offices, a measure which frequently proves ineffective. On the other hand, there are Governments which do sometimes take energetic action for the protection of their subjects in the enforcement of merely contractual claims, and thereupon American concessionaries, supported by powerful influences, make loud appeal to the United States Government in similar cases for similar action. They complain that in the actual posture of affairs their valuable properties are practically confiscated, that American enterprize is paralyzed, and that unless they are fully protected, even by the enforcement of their merely contractual rights, it means the abandonment to the subjects of other Governments of the interests of American trade and commerce through the sacrifice of their investments by excessive taxes imposed in violation of contract, and by other devices, and the sacrifice of the output of their mines and other industries, and even of their railway and shipping interests, which they have established in connection with the exploitation of their concessions. Thus the attempted solution of the complex problem by the ordinary methods of diplomacy reacts injuriously upon the United States Government itself, and in a measure paralyzes the action of the Executive in the direction of a sound and consistent policy. The United

States Government is embarrassed in its efforts to foster American enterprise and the growth of our commerce through the cultivation of friendly relations with Santo Domingo, by the irritating effects on those relations, and the consequent injurious influence upon that commerce, of frequent interventions. As a method of solution of the complicated problem arbitration has become nugatory, inasmuch as, in the condition of its finances, an award against the Republic is worthless unless its payment is secured by the pledge of at least some portion of the customs revenues. This pledge is ineffectual without actual delivery over of the custom-houses to secure the appropriation of the pledged revenues to the payment of the award. This situation again reacts injuriously upon the relations of the United States with other nations. For when an award and such security are thus obtained, as in the case of the Santo Domingo Improvement Company, some foreign Government complains that the award conflicts with its rights, as a creditor, to some portion of these revenues under an alleged prior pledge; and still other Governments complain that an award in any considerable sum, secured by pledges of the customs revenues, is prejudicial to the payment of their equally meritorious claims out of the ordinary revenues; and thus controversies are begotten between the United States and other creditor nations, because of the apparent sacrifice of some of their claims, which may be just or may be grossly exaggerated, but which the United States Government cannot inquire into without giving grounds of offense to other friendly creditor nations. Still further illustrations might easily be furnished of the hopelessness of the present situation growing out of the social disorders and the bankrupt finances of the Dominican Republic, where for considerable periods during recent years the bonds of civil society have been practically dissolved.

Under the accepted law of nations foreign Governments are within their right, if they choose to exercise it, when they actively intervene in support of the contractual claims of their subjects. They sometimes exercise this power, and on account of commercial rivalries there is a growing tendency on the part of other Governments more and more to aid diplomatically in the enforcement of the claims of their subjects. In view of the dilemma in which the Government of the United States is thus placed, it must either adhere to its usual attitude of nonintervention in such cases—an attitude proper under normal conditions, but one which in this particular kind of case results to the disadvantage of its citizens in comparison with those of other States—or else it must, in order to be consistent in its policy, actively intervene to protect the contracts and concessions of its citizens engaged in agriculture, commerce, and transportation in competition with the subjects and citizens of other States. This course would render the United States the insurer of all the speculative risks of its citizens in the public securities and franchises of Santo Domingo.

Under the plan in the protocol herewith submitted to the Senate, insuring a faithful collection and application of the revenues to the specified objects, we

are well assured that this difficult task can be accomplished with the friendly co-operation and good will of all the parties concerned, and to the great relief of the Dominican Republic.

. . . In this case, fortunately, the prudent and far-seeing statesmanship of the Dominican Government has relieved us of all trouble. At their request we have entered into the agreement herewith submitted. Under it the custom-houses will be administered peacefully, honestly, and economically, 45 per cent of the proceeds being turned over to the Dominican Government and the remainder being used by the United States to pay what proportion of the debts it is possible to pay on an equitable basis. The Republic will be secured against over-seas aggression. This in reality entails no new obligation upon us, for the Monroe Doctrine means precisely such a guaranty on our part.

It is perhaps unnecessary to state that no step of any kind has been taken by the Administration under the terms of the protocol which is herewith submitted.

The Republic of Santo Domingo has by this protocol wisely and patriotically accepted the responsibilities as well as the privileges of liberty, and is showing with evident good faith its purpose to pay all that its resources will permit of its obligations. More than this it cannot do, and when it has done this we should not permit it to be molested. We on our part are simply performing in peaceful manner, not only with the cordial aquiescence, but in accordance with the earnest request of the Government concerned, part of that international duty which is necessarily involved in the assertion of the Monroe Doctrine. We are bound to show that we perform this duty in good faith and without any intention of aggrandizing ourselves at the expense of our weaker neighbors or of conducting ourselves otherwise than so as to benefit both these weaker neighbors and those European Powers which may be brought into contact with them. It is in the highest degree necessary that we should prove by our action that the world may trust in our good faith and may understand that this international duty will be performed by us within our own sphere, in the interest not merely of ourselves, but of all other nations, and with strict justice toward all. If this is done, a general acceptance of the Monroe Doctrine will in the end surely follow; and this will mean an increase of the sphere in which peaceful measures for the settlement of international difficulties gradually displace those of a warlike character.

We can point with just pride to what we have done in Cuba as a guaranty of our good faith. We stayed in Cuba only so long as to start her aright on the road to self-government, which she has since trod with such marked and distinguished success; and upon leaving the island we exacted no conditions save such as would prevent her from ever becoming the prey of the stranger. Our purpose in Santo Domingo is as beneficent. The good that this country got from its action in Cuba was indirect rather than direct. So it is as regards Santo Domingo. The chief material advantage that will come from the action proposed to be taken will be to Santo Domingo itself and to Santo Domingo's creditors. The advantages

that will come to the United States will be indirect, but nevertheless great, for it is supremely to our interest that all the communities immediately south of us should be or become prosperous and stable, and therefore not merely in name, but in fact independent and self-governing.

I call attention to the urgent need of prompt action on this matter. We now have a great opportunity to secure peace and stability in the island, without friction or bloodshed. by acting in accordance with the cordial invitation of the governmental authorities themselves. It will be unfortunate from every standpoint if we fail to grasp this opportunity; for such failure will probably mean increasing revolutionary violence in Santo Domingo, and very possibly embarrassing foreign complications in addition. This protocol affords a practical test of the efficiency of the United States Government in maintaining the Monroe Doctrine.

XIII

Elihu Root, Secretary of State, 1905-1909, United States Senator from New York, 1909-1915

THE REAL MONROE DOCTRINE[1]

GENTLEMEN OF THE ASSOCIATION:

I ask your attention for a few minutes to some observations upon the Monroe Doctrine. If I am justified in taking your time it will be not because I say anything novel, but because there is occasion for restating well settled matters which seem to have been overlooked in some recent writings on the subject.

We are all familiar with President Monroe's famous message of December 2, 1823.

> The occasion has been judged proper for asserting as a principle in which the rights and interests of the United States are involved, that the American Continents, by the free and independent condition which they have assumed and maintain, are henceforth not to be considered as subjects for future colonization by any European Powers . . .
>
> In the wars of the European Powers in matters relating to themselves we have never taken any part, nor does it comport with our policy to do so. It is only when our rights are invaded or seriously menaced that we resent injuries or make preparation for our defense. With the movements in this hemisphere we are of necessity more immediately connected and by causes which must be obvious to all enlightened and impartial observers.
>
> We owe it, therefore, to candor, and to the amicable relations existing between the United States and those Powers, to declare that we should consider any attempt on their part to extend their system to any portion of this hemisphere as dangerous to our peace and safety. With the existing colonies or dependencies of any European Power we have not interfered and shall not interfere. But with the Governments who have declared their independence and maintained it, and whose independence we have on great consideration and on just principles, acknowledged, we could not view any interposition for the purpose of oppressing them, or controlling in any other manner, their destiny, by any European Power, in any other light than as the manifestation of an unfriendly disposition toward the United States. In the war between these new Governments and Spain we declared our neutrality at the time of their recognition, and to this we have adhered and shall continue to adhere, provided no change shall occur which, in the judgment of the competent authorities of this Government, shall make a

[1] Opening Address, as President of the American Society of International Law, at the Eighth Annual Meeting of the Society, in Washington, April 22, 1914.

> corresponding change on the part of the United States indispensable to their security. . . .
>
> It is impossible that the allied Powers should extend their political system to any portion of either continent without endangering our peace and happiness; nor can any one believe that our Southern brethren, if left to themselves, would adopt it of their own accord. It is equally impossible, therefore, that we should behold such interposition, in any form, with indifference.

The occasion for these declarations is a familiar story—The revolt of the Spanish provinces in America which Spain, unaided, was plainly unable to reduce to their former condition of dependence; the reaction against liberalism in Europe which followed the downfall of Napoleon and the restoration of the Bourbons to the throne of France; the formation of the Holy Alliance; the Agreement of its members at the Conferences of Aix-la-Chapelle and Laybach and Verona for the insurance of Monarchy against revolution; the restoration of Ferdinand the Seventh to the throne of Spain by the armed power of France pursuant to this agreement; the purpose of the Alliance to follow the restoration of monarchy in Spain by the restoration of that monarchy's control over its colonies in the New World; the claims both of Russia and of Great Britain to rights of colonization on the Northwest coast; the proposals of Mr. Canning to Richard Rush for a joint declaration of principles by England and the United States adverse to the interference of any other European Power in the contest between Spain and her former colonies; the serious question raised by this proposal as to the effect of a joint declaration upon the American policy of avoiding entangling alliances.

The form and phrasing of President Monroe's message were adapted to meet these conditions. The statements made were intended to carry specific information to the members of the Holy Alliance that an attempt by any of them to coerce the new States of South America would be not a simple expedition against weak and disunited colonies, but the much more difficult and expensive task of dealing with the formidable maritime power of the United States as well as the opposition of England, and they were intended to carry to Russia and incidentally to England the idea that rights to territory in the New World must thenceforth rest upon then existing titles, and that the United States would dispute any attempt to create rights to territory by future occupation.

It is undoubtedly true that the specific occasions for the declaration of Monroe no longer exist. The Holy Alliance long ago disappeared. The nations of Europe no longer contemplate the vindication of monarchical principles in the territory of the New World. France, the most active of the Allies, is herself a republic. No nation longer asserts the right of colonization in America. The general establishment of diplomatic relations between the Powers of Europe and the American republics, if not already universal, became so when, pursuant to the formal assent of the Powers, all the American republics were received into

the Second Conference at The Hague and joined in the conventions there made, upon the footing of equal sovereignty, entitled to have their territory and independence respected under that law of nations which formerly existed for Europe alone.

The declaration, however, did more than deal with the specific occasion which called it forth. It was intended to declare a general principle for the future, and this is plain not merely from the generality of the terms used but from the discussions out of which they arose and from the understanding of the men who took part in the making and of their successors.

When Jefferson was consulted by President Monroe before the message was sent he replied:

> The question presented by the letters you have sent me is the most momentous which has ever been offered to my contemplation since that of independence. That made us a nation; this sets our compass and points the course which we are to steer through the ocean of time opening on us. And never could we embark upon it under circumstances more auspicious. Our first and fundamental maxim should be, never to entangle ourselves in the broils of Europe; our second, never to suffer Europe to intermeddle with cisatlantic affairs.

Three years later Daniel Webster declared that the Doctrine involved the honor of the country. He said in the House of Representatives:

> I look upon it as a part of its treasures of reputation; and, for one, I intend to guard it. . . . I will neither help to erase it or tear it out; nor shall it be, by any act of mine, blurred or blotted. It did honor to the sagacity of the Government, and will not diminish that honor.

Mr. Cleveland said in his Message of December 17, 1895:

> The doctrine upon which we stand is strong and sound because its enforcement is important to our peace and safety as a nation, and is essential to the integrity of our free institutions and the tranquil maintenance of our distinctive form of government. It was intended to apply to every stage of our national life and cannot become obsolete while our republic endures.

As the particular occasions which called it forth have slipped back into history, the declaration itself, instead of being handed over to the historian, has grown continually a more vital and insistent rule of conduct for each succeeding generation of Americans. Never for a moment have the responsible and instructed statesmen in charge of the foreign affairs of the United States failed to consider themselves bound to insist upon its policy. Never once has the public opinion of the people of the United States failed to support every just application of it as new occasion has arisen. Almost every President and Secretary of State has restated the Doctrine with vigor and emphasis in the discussion of the diplomatic affairs of his day. The Governments of Europe have gradually come to realize that the existence of the policy which Monroe declared is a

stubborn and continuing fact to be recognized in their controversies with American countries. We have seen Spain, France, England, Germany, with admirable good sense and good temper, explaining beforehand to the United States that they intended no permanent occupation of territory, in the controversy with Mexico forty years after the declaration, and in the controversy with Venezuela eighty years after. In 1903 the Duke of Devonshire declared "Great Britain accepts the Monroe Doctrine unreservedly." Mr. Hay coupled the Monroe Doctrine and the Golden Rule as cardinal guides of American diplomacy. Twice within very recent years the whole treaty-making power of the United States has given its formal approval to the policy by the reservations in the signature and in the ratification of the arbitration conventions of the Hague Conferences, expressed in these words by the Senate resolution agreeing to ratification of the Convention of 1907:

> Nothing contained in this convention shall be so construed as to require the United States of America to depart from its traditional policy of not intruding upon, interfering with, or entangling itself in the political questions of policy or internal administration of any foreign State, nor shall anything contained in the said convention be construed to imply a relinquishment by the United States of its traditional attitude towards purely American questions.

It seems fair to assume that a policy with such a history as this has some continuing and substantial reason underlying it; that it is not outworn or meaningless or a purely formal relic of the past, and it seems worth while to consider carefully what the Doctrine is and what it is not.

No one ever pretended that Mr. Monroe was declaring a rule of international law or that the Doctrine which he declared has become international law. It is a declaration of the United States that certain acts would be injurious to the peace and safety of the United States and that the United States would regard them as unfriendly. The declaration does not say what the course of the United States will be in case such acts are done. That is left to be determined in each particular instance. Mr. Calhoun said, in the Senate debate on the Yucatan Bill, in 1848:

> Whether you will resist or not and the measure of your resistance—whether it shall be by negotiation, remonstrance, or some intermediate measure or by a resort to arms; all this must be determined and decided on the merits of the question itself. This is the only wise course. . . . There are cases of interposition where I would resort to the hazard of war with all its calamities. Am I asked for one? I will answer. I designate the case of Cuba.

In particular instances indeed the course which the United States would follow has been very distinctly declared, as when Mr. Seward said, in 1865:

It has been the President's purpose that France should be respectfully informed upon two points; namely, first, that the United States earnestly desire to continue and to cultivate sincere friendship with France. Secondly, that this policy would be brought in imminent jeopardy unless France could deem it consistent with her honor to desist from the prosecution of armed intervention in Mexico to overthrow the domestic republican Government existing there and to establish upon its ruins the foreign monarchy which has been attempted to be inaugurated in the capital of that country.

So Secretary Buchanan said, in 1848:

The highest and first duty of every independent nation is to provide for its own safety; and acting upon this principle, we should be compelled to resist the acquisition of Cuba by any powerful maritime State, with all means which Providence has placed at our command.

And Secretary Clayton said, in 1849:

The news of the cession of Cuba to any foreign Power would in the United States be the instant signal for war. No foreign Power would attempt to take it that did not expect a hostile collision with us as an inevitable consequence.

The Doctrine is not international law but it rests upon the right of self protection and that right is recognized by international law. The right is a necessary corollary of independent sovereignty. It is well understood that the exercise of the right of self protection may and frequently does extend in its effect beyond the limits of the territorial jurisdiction of the State exercising it. The strongest example probably would be the mobilization of an army by another Power immediately across the frontier. Every act done by the other Power may be within its own territory. Yet the country threatened by the state of facts is justified in protecting itself by immediate war. The most common exercise of the right of self protection outside of a State's own territory and in time of peace is the interposition of objection to the occupation of territory, of points of strategic military or maritime advantage, or to indirect accomplishment of this effect by dynastic arrangement. For example, the objection of England in 1911 to the occupation of a naval station by Germany on the Atlantic Coast of Morocco; the objection of the European Powers generally to the vast force of Russia extending its territory to the Mediterranean; the revision of the Treaty of San Stefano by the Treaty of Berlin; the establishment of buffer States; the objection to the succession of a German prince to the throne of Spain; the many forms of the eastern question; the centuries of struggle to preserve the balance of power in Europe; all depend upon the very same principle which underlies the Monroe Doctrine; that is to say, upon the right of every sovereign State to protect itself by preventing a condition of affairs in which

it will be too late to protect itself. Of course each State must judge for itself when a threatened act will create such a situation. If any State objects to a threatened act and the reasonableness of its objection is not assented to, the efficacy of the objection will depend upon the power behind it.

It is doubtless true that in the adherence of the American people to the original declaration there was a great element of sentiment and of sympathy for the people of South America who were struggling for freedom, and it has been a source of great satisfaction to the United States that the course which it took in 1823 concurrently with the action of Great Britain played so great a part in assuring the right of self government to the countries of South America. Yet it is to be observed that in reference to the South American Governments as in all other respects, the international right upon which the declaration expressly rests is not sentiment or sympathy or a claim to dictate what kind of government any other country shall have, but the safety of the United States. It is because the new Governments cannot be overthrown by the allied Powers "without endangering our peace and happiness"; that "the United States cannot behold such interposition in any form with indifference."

We frequently see statements that the Doctrine has been changed or enlarged; that there is a new or different Doctrine since Monroe's time. They are mistaken. There has been no change. One apparent extension of the statement of Monroe was made by President Polk in his messages of 1845 and 1848, when he included the acquisition of territory by a European Power through cession as dangerous to the safety of the United States. It was really but stating a corollary to the Doctrine of 1823 and asserting the same right of self-protection against the other American States as well as against Europe.

This corollary has been so long and uniformly agreed to by the Government and the people of the United States that it may fairly be regarded as being now a part of the Doctrine.

But, all assertions to the contrary notwithstanding, there has been no other change or enlargement of the Monroe Doctrine since it was first promulgated. It must be remembered that not everything said or written by secretaries of state or even by presidents constitutes a national policy or can enlarge or modify or diminish a national policy.

It is the substance of the thing to which the nation holds and that is and always has been that the safety of the United States demands that American territory shall remain American.

The Monroe Doctrine does not assert or imply or involve any right on the part of the United States to impair or control the independent sovereignty of any American State. In the lives of nations as of individuals, there are many rights unquestioned and universally conceded. The assertion of any particular

right must be considered, not as excluding all others but as coincident with all others which are not inconsistent. The fundamental principle of international law is the principle of independent sovereignty. Upon that all other rules of international law rest. That is the chief and necessary protection of the weak against the power of the strong. Observance of that is the necessary condition to the peace and order of the civilized world. By the declaration of that principle the common judgment of civilization awards to the smallest and weakest State the liberty to control its own affairs without interference from any other power, however great.

The Monroe Doctrine does not infringe upon that right. It asserts the right. The declaration of Monroe was that the rights and interests of the United States were involved in maintaining a condition, and the condition to be maintained was the independence of all the American countries. It is "the free and independent condition which they have assumed and maintained" which is declared to render them not subject to future colonization. It is "the Governments who have declared their independence and maintained it and whose independence we have on great consideration and on just principles acknowledged" that are not to be interfered with. When Mr. Canning's proposals for a joint declaration were under consideration by the Cabinet in the month before the famous message was sent, John Quincy Adams, who played the major part in forming the policy, declared the basis of it in these words:

> Considering the South Americans as independent nations, they themselves and no other nation had the right to dispose of their condition. We have no right to dispose of them either alone or in conjunction with other nations. Neither have any other nations the right of disposing of them without their consent.

In the most critical and momentous application of the Doctrine Mr. Seward wrote to the French Minister:

> France need not for a moment delay her promised withdrawal of military forces from Mexico and her putting the principle of non-intervention into full and complete practice in regard to Mexico through any apprehension that the United States will prove unfaithful to the principles and policy in that respect which on their behalf it has been my duty to maintain in this now very lengthened correspondence. The practice of this Government from its beginning is a guarantee to all nations of the respect of the American people for the free sovereignty of the people in every other State. We received the instruction from Washington. We applied it sternly in our early intercourse even with France. The same principle and practice have been uniformly inculcated by all our statesmen, interpreted by all our jurists, maintained by all our Congresses, and acquiesced in without practical dissent on all occasions by the American people. It is in reality the chief element of foreign intercourse in our history.

In his message to Congress of December 3, 1906, President Roosevelt said:

> In many parts of South America there has been much misunderstanding of the attitude and purposes of the United States toward the other American Republics. An idea had become prevalent that our assertion of the Monroe Doctrine implied or carried with it an assumption of superiority and of a right to exercise some kind of protectorate over the countries to whose territory that Doctrine applies. Nothing could be farther from the truth.

He quoted the words of the Secretary of State then in office to the recent Pan American Conference at Rio Janeiro:

> We deem the independence and equal rights of the smallest and weakest member of the family of nations entitled to as much respect as those of the greatest empire and we deem the observance of that respect the chief guaranty of the weak against the oppression of the strong. We neither claim nor desire any rights or privileges or powers that we do not freely concede to every American Republic.

And the President then proceeded to say of these statements:

> They have my hearty approval, as I am sure they will have yours, and I cannot be wrong in the conviction that they correctly represent the sentiments of the whole American people. I cannot better characterize the true attitude of the United States in its assertion of the Monroe Doctrine than in the words of the distinguished former minister of foreign affairs of Argentina, Doctor Drago . . . the traditional policy of the United States without accentuating superiority or seeking preponderance condemned the oppression of the nations of this part of the world and the control of their destinies by the great Powers of Europe.

Curiously enough, many incidents and consequences of that independent condition itself which the United States asserted in the Monroe Doctrine have been regarded in some quarters as infringements upon independence resulting from the Monroe Doctrine. Just as the personal rights of each individual free citizen in the State are limited by the equal rights of every other free individual in the same State, so the sovereign rights of each independent State are limited by the equal sovereign rights of every other independent State. These limitations are not impairments of independent sovereignty. They are the necessary conditions to the existence of independent sovereignty. If the Monroe Doctrine had never been declared or thought of, the sovereign rights of each American republic would have been limited by the equal sovereign rights of every other American republic, including the United States. The United States would have had a right to demand from every other American State observance of treaty obligations and of the rules of international law. It would have had the right to insist upon due protection for the lives and property of its citizens within the territory of every other American State, and upon the treatment of its citizens in that territory

according to the rules of international law. The United States would have had the right as against every other American State to object to acts which the United States might deem injurious to its peace and safety just as it had the right to object to such acts as against any European Power and just as all European and American Powers have the right to object to such acts as against each other. All these rights which the United States would have had as against other American States it has now. They are not in the slightest degree affected by the Monroe Doctrine. They exist now just as they would have existed if there had been no Monroe Doctrine. They are neither greater nor less because of that Doctrine. They are not rights of superiority, they are rights of equality. They are the rights which all equal independent States have as against each other. And they cover the whole range of peace and war.

It happens, however, that the United States is very much bigger and more powerful than most of the other American Republics. And when a very great and powerful State makes demands upon a very small and weak State it is difficult to avoid a feeling that there is an assumption of superior authority involved in the assertion of superior power, even though the demand be based solely upon the right of equal against equal. An examination of the various controversies which the United States has had with other American Powers will disclose the fact that in every case the rights asserted were rights not of superiority but of equality. Of course it cannot be claimed that great and powerful States shall forego their just rights against smaller and less powerful States. The responsibilities of sovereignty attach to the weak as well as to the strong, and a claim to exemption from those responsibilities would imply not equality but inferiority. The most that can be said concerning a question between a powerful State and a weak one is that the great State ought to be especially considerate and gentle in the assertion and maintenance of its position; ought always to base its acts not upon a superiority of force, but upon reason and law; and ought to assert no rights against a small State because of its weakness which it would not assert against a great State notwithstanding its power. But in all this the Monroe Doctrine is not concerned at all.

The scope of the Doctrine is strictly limited. It concerns itself only with the occupation of territory in the New World to the subversion or exclusion of a preexisting American Government. It has not otherwise any relation to the affairs of either American or European States. In good conduct or bad, observance of rights or violations of them, agreement or controversy, injury or reprisal, coercion or war, the United States finds no warrant in the Monroe Doctrine for interference. So Secretary Cass wrote, in 1858:

> With respect to the causes of war between Spain and Mexico, the United States have no concern, and do not undertake to judge them. Nor do they claim to interpose in any hostilities which may take place. Their policy of observation and interference is limited to the permanent subjugation of any

portion of the territory of Mexico, or of any other American State to any European Power whatever.

So Mr. Seward wrote, in 1861, concerning the allied operation against Mexico:

> As the undersigned has heretofore had the honor to inform each of the plenipotentiaries now addressed, the President does not feel at liberty to question, and does not question, that the sovereigns represented have undoubted right to decide for themselves the fact whether they have sustained grievances, and to resort to war against Mexico for the redress thereof, and have a right also to levy the war severally or jointly.

So when Germany, Great Britain and Italy united to compel by naval force a response to their demands on the part of Venezuela and the German Government advised the United States that it proposed to take coercive measures to enforce its claims for damages and for money against Venezuela, adding, "We declare especially that under no circumstances do we consider in our proceedings the acquisition or permanent occupation of Venezuelan territory," Mr. Hay replied:

> That the Government of the United States, although it "regretted that European Powers should use force against Central and South American countries, could not object to their taking steps to obtain redress for injuries suffered by their subjects, provided that no acquisition of territory was contemplated."

Quite independently of the Monroe Doctrine, however, there is a rule of conduct among nations under which each nation is deemed bound to render the good offices of friendship to the others when they are in trouble. The rule has been crystallized in the provisions of the Hague Convention for the pacific settlement of international disputes. Under the head of "The Maintenance of General Peace" in that Convention substantially all the Powers of the world have agreed:

> 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 ensure the pacific settlement of international differences.
>
> 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.
>
> 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 . . . The exercise of this right can never be regarded by either of the parties in dispute as an unfriendly act.
>
> 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.

The United States has frequently performed this duty in controversies between American Republics among themselves and between American Republics and European States. So in the controversy last referred to, the United States used its good offices to bring about a series of arbitrations which superseded the resort to force determined upon by the allied Powers against Venezuela. She did this upon the request of Venezuela. She did it in the performance of no duty and the exercise of no right whatever except the duty and the right of friendship between equal sovereign States. The Monroe Doctrine has nothing whatever to do with acts of this description; yet many times censorious critics, unfamiliar with the facts and uninstructed in the customs and rules of action of the international world, have accused the United States in such cases of playing the rôle of school master, of assuming the superiority of guardianship, of aiming at a protectorate.

As the Monroe Doctrine neither asserts nor involves any right of control by the United States over any American nation, it imposes upon the United States no duty towards European Powers to exercise such a control. It does not call upon the United States to collect debts or coerce conduct or redress wrongs or revenge injuries. If matters ever come to a point where in any American country the United States intervenes by force to prevent or end an occupation of territory to the subversion or exclusion of an American Government, doubtless new rights and obligations will arise as a result of the acts done in the course of the intervention. Unless such a situation shall have arisen there can be no duty on the part of the United States beyond the exercise of good offices as between equal and independent nations.

There are indeed special reasons why the United States should perform that duty of equal friendship to the full limit of international custom and international ethics as declared in the Hague Convention, whenever occasion arises in controversy between American and European Powers. There is a motive for that in the special sympathy and friendship for the gradually developing republics of the south which the American people have always felt since the days of Monroe and John Quincy Adams and Richard Rush and Henry Clay. There is a motive in the strong desire of our Government that no controversy between a European and an American State shall ever come to the point where the United States may be obliged to assert by force the rule of national safety declared by Monroe. And there is a motive in the proper desire of the United States that no friendly nation of Europe or America shall be injured or hindered in the prosecution of its rights in any way or to any extent that can possibly be avoided because that nation respects the rule of safety which Mr. Monroe declared and we maintain. None of these reasons for the exercise of the good offices of equality justifies nor do all of them together justify the United States in infringing upon the independence or ignoring the equal rights of the smallest American State.

Nor has the United States ever in any instance during the period of almost

a century which has elapsed, made the Monroe Doctrine or the motives which lead us to support it the ground or excuse for overstepping the limits which the rights of equal sovereignty set between equal sovereign States.

Since the Monroe Doctrine is a declaration based upon this nation's right of self protection, it cannot be transmuted into a joint or common declaration by American States or any number of them. If Chile or Argentina or Brazil were to contribute the weight of her influence toward a similar end, the right upon which that nation would rest its declaration would be its own safety, not the safety of the United States. Chile would declare what was necessary for the safety of Chile. Argentina would declare what was necessary for the safety of Argentina. Brazil, what was necessary for the safety of Brazil. Each nation would act for itself and in its own right and it would be impossible to go beyond that except by more or less offensive and defensive alliances. Of course such alliances are not to be considered.

It is plain that the building of the Panama Canal greatly accentuates the practical necessity of the Monroe Doctrine as it applies to all the territory surrounding the Caribbean or near the Bay of Panama. The plainest lessons of history and the universal judgment of all responsible students of the subject concur in teaching that the potential command of the route to and from the Canal must rest with the United States and that the vital interests of the nation forbid that such command shall pass into other hands. Certainly no nation which has acquiesced in the British occupation of Egypt will dispute this proposition. Undoubtedly as one passes to the south and the distance from the Caribbean increases, the necessity of maintaining the rule of Monroe becomes less immediate and apparent. But who is competent to draw the line? Who will say, "To this point the rule of Monroe should apply; beyond this point, it should not?" Who will say that a new national force created beyond any line that he can draw will stay beyond it and will not in the long course of time extend itself indefinitely?

The danger to be apprehended from the immediate proximity of hostile forces was not the sole consideration leading to the declaration. The need to separate the influences determining the development and relation of States in the New World from the influences operating in Europe played an even greater part. The familiar paragraphs of Washington's Farewell Address upon this subject were not rhetoric. They were intensely practical rules of conduct for the future guidance of the country.

> Europe has a set of primary interests which to us have none or a very remote relation. Hence, she must be engaged in frequent controversies, the causes of which are essentially foreign to our concerns. Hence, therefore, it must be unwise in us to implicate ourselves, by artificial ties, in the ordinary vicissitudes of her politics, or the ordinary combinations and collisions of her friendships or enmities. Our detached and distant situation invites and enables us to pursue a different course.

It was the same instinct which led Jefferson, in the letter to Monroe already quoted, to say:

> Our first and fundamental maxim should be, never to entangle ourselves in the broils of Europe; our second, never to suffer Europe to intermeddle with cisatlantic affairs.

The concurrence of Washington and Hamilton and Jefferson in the declaration of this principle of action entitles it to great respect. They recalled the long period during which every war waged in Europe between European Powers and arising from European causes of quarrel was waged also in the New World. English and French and Spanish and Dutch killed and harried each other in America, not because of quarrels between the settlers in America but because of quarrels between the European Powers having dominion over them. Separation of influences as absolute and complete as possible was the remedy which the wisest of Americans agreed upon. It was one of the primary purposes of Monroe's declaration to insist upon this separation, and to accomplish it he drew the line at the water's edge. The problem of national protection in the distant future is one not to be solved by the first impressions of the casual observer, but only by profound study of the forces which, in the long life of nations, work out results. In this case the results of such a study by the best men of the formative period of the United States are supported by the instincts of the American democracy holding steadily in one direction for almost a century. The problem has not changed essentially. If the declaration of Monroe was right when the message was sent, it is right now. South America is no more distant today than it was then. The tremendous armaments and international jealousies of Europe afford little assurance to those who think we may now abandon the separatist policy of Washington. That South American States have become too strong for colonization or occupation is cause for satisfaction. That Europe has no purpose or wish to colonize American territory is most gratifying. These facts may make it improbable that it will be necessary to apply the Monroe Doctrine in the southern parts of South America; but they furnish no reason whatever for retracting or denying or abandoning a declaration of public policy, just and reasonable when it was made, and which, if occasion for its application shall arise in the future, will still be just and reasonable.

A false conception of what the Monroe Doctrine is, of what it demands and what it justifies, of its scope and of its limits, has invaded the public press and affected public opinion within the past few years. Grandiose schemes of national expansion invoke the Monroe Doctrine. Interested motives to compel Central or South American countries to do or refrain from doing something by which individual Americans may profit invoke the Monroe Doctrine. Clamors for national glory from minds too shallow to grasp at the same time a sense of national duty invoke the Monroe Doctrine. The intolerance which demands that

control over the conduct and the opinions of other peoples which is the essence of tyranny invoke the Monroe Doctrine. Thoughtless people who see no difference between lawful right and physical power assume that the Monroe Doctrine is a warrant for interference in the internal affairs of all weaker nations in the New World. Against this supposititious doctrine, many protests both in the United States and in South America have been made, and justly made. To the real Monroe Doctrine these protests have no application

XIV

The First Hague Peace Conference, 1899: American Instructions and Report

Circular Note of Count Mouravieff, Russian Minister for Foreign Affairs, Proposing the First Peace Conference.—St. Petersburg, August 12, 1898.

The maintenance of general peace and a possible reduction of the excessive armaments which weigh upon all nations present themselves, in the existing condition of the whole world, as the ideal towards which the endeavors of all Governments should be directed.

The humanitarian and magnanimous views of His Majesty the Emperor, my august master, are in perfect accord with this sentiment.

In the conviction that this lofty aim is in conformity with the most essential interests and the legitimate aspirations of all Powers, the Imperial Government believes that the present moment would be very favorable for seeking, by means of international discussion, the most effective means of ensuring to all peoples the benefits of a real and lasting peace, and above all of limiting the progressive development of existing armaments.

In the course of the last twenty years the longings for a general state of peace have become especially pronounced in the consciences of civilized nations. The preservation of peace has been put forward as the object of international policy. In its name great States have formed powerful alliances; and for the better guaranty of peace they have developed their military forces to proportions hitherto unknown and still continue to increase them without hesitating at any sacrifice.

All these efforts nevertheless have not yet led to the beneficent results of the desired pacification.

The ever-increasing financial charges strike and paralyze public prosperity at its source; the intellectual and physical strength of the nations, their labor and capital, are for the most part diverted from their natural application and unproductively consumed; hundreds of millions are spent in acquiring terrible engines of destruction, which though to-day regarded as the last word of science are destined to-morrow to lose all value in consequence of some fresh discovery in the same field. National culture, economic progress, and the production of wealth are either paralyzed or perverted in their development.

Moreover, in proportion as the armaments of each Power increase, so do they less and less attain the object aimed at by the Governments. Economic crises, due in great part to the system of amassing armaments to the point of exhaustion, and the continual danger which lies in this accumulation of war material, are transforming the armed peace of our days into a crushing burden which the peoples have more and more difficulty in bearing. It appears evident, then, that if this state of affairs be prolonged, it will inevitably lead to the very cataclysm which it is desired to avert, and the impending horrors of which are fearful to every human thought.

In checking these increasing armaments and in seeking the means of averting the calamities which threaten the entire world lies the supreme duty to-day resting upon all States.

Imbued with this idea, His Majesty has been pleased to command me to propose to all the Governments which have accredited representatives at the Imperial Court the holding of a conference to consider this grave problem.

This conference would be, by the help of God, a happy presage for the century about to open. It would converge into a single powerful force the efforts of all the States which sincerely wish the great conception of universal peace to triumph over the elements of disturbance and discord. It would at the same time cement their agreement by a solemn avowal of the principles of equity and law, upon which repose the security of States and the welfare of peoples.

INSTRUCTIONS TO THE AMERICAN DELEGATES TO THE HAGUE CONFERENCE OF 1899[1]

Mr. Hay to Hon. Andrew D. White, Hon. Seth Low, Hon. Stanford Newel, Capt. Alfred T. Mahan, U. S. N., Capt. William Crozier, U. S. A., delegates on the part of the President of the United States.

DEPARTMENT OF STATE,
Washington, April 18, 1899.

GENTLEMEN: You have been appointed by the President to constitute a commission to represent him at an international conference called by His Imperial Majesty the Emperor of Russia to meet at The Hague, at a time to be indicated by the Government of the Netherlands, for the purpose of discussing the most efficacious means of assuring to all peoples the "benefits of a real and durable peace."

Upon your arrival at The Hague you will effect an organization of your commission, whose records will be kept by your secretary, Hon. Frederick W. Holls. All reports and communications will be made through this Department, according to its customary forms, for preservation in the archives.

The program of topics suggested by the Russian Minister of Foreign Affairs for discussion at the Conference in his circular of December 30, 1898, is as follows:

1. An understanding stipulating the non-augmentation, for a term to be agreed upon, of the present effective armed land and sea forces, as well as the war budgets pertaining to them; preliminary study of the ways in which

[1] *Foreign Relations of the United States,* 1899, p. 511.

even a reduction of the aforesaid effectives and budgets could be realized in the future.

2. Interdiction of the employment in armies and fleets of new firearms of every description and of new explosives, as well as powder more powerful than the kinds used at present, both for guns and cannons.

3. Limitation of the use in field fighting of explosives of a formidable power, such as now in use, and prohibition of the discharge of any kind of projectiles or explosives from balloons or by similar means.

4. Prohibition of the use in naval battles of submarine or diving torpedo boats, or of other engines of destruction of the same nature; agreement not to construct in the future war-ships armed with rams.

5. Adaptation to naval war of the stipulation of the Geneva Convention of 1864, on the base of the additional articles of 1868.

6. Neutralization, for the same reason, of boats or launches employed in the rescue of the shipwrecked during or after naval battles.

7. Revision of the Declaration concerning the laws and customs of war elaborated in 1874 by the Conference of Brussels, and not yet ratified.

8. Acceptance, in principle, of the use of good offices, mediation, and voluntary arbitration, in cases where they are available, with the purpose of preventing armed conflicts between nations; understanding in relation to their mode of application and establishment of a uniform practice in employing them.

It is understood that all questions concerning the political relations of States and the order of things established by treaties, as in general all the questions which shall not be included directly in the program adopted by the cabinets, should be absolutely excluded from the deliberations of the Conference.

The first article, relating to the non-augmentation and future reduction of effective land and sea forces, is, at present, so inapplicable to the United States that it is deemed advisable for the delegates to leave the initiative upon this subject to the representatives of those Powers to which it may properly belong. In comparison with the effective forces, both military and naval, of other nations, those of the United States are at present so far below the normal quota that the question of limitation could not be profitably discussed.

The second, third, and fourth articles, relating to the non-employment of firearms, explosives, and other destructive agents, the restricted use of existing instruments of destruction, and the prohibition of certain contrivances employed in naval warfare, seem lacking in practicability, and the discussion of these propositions would probably prove provocative of divergence rather than unanimity of view. It is doubtful if wars are to be diminished by rendering them less destructive, for it is the plain lesson of history that the periods of peace have been longer protracted as the cost and destructiveness of war have increased. The expediency of restraining the inventive genius of our people in the direction of devising means of defense is by no means clear, and considering the temptations to which men and nations may be exposed in a time of conflict, it is doubtful if an

international agreement to this end would prove effective. The dissent of a single powerful nation might render it altogether nugatory. The delegates are, therefore, enjoined not to give the weight of their influence to the promotion of projects the realization of which is so uncertain.

The fifth, sixth, and seventh articles, aiming in the interest of humanity to succor those who by the chance of battle have been rendered helpless, thus losing the character of effective combatants, or to alleviate their sufferings, or to insure the safety of those whose mission is purely one of peace and beneficence, may well awake the cordial interest of the delegates, and any practicable propositions based upon them should receive their earnest support.

The eighth article, which proposes the wider extension of good offices, mediation and arbitration, seems likely to open the most fruitful field for discussion and future action. "The prevention of armed conflicts by pacific means," to use the words of Count Mouravieff's circular of December 30, is a purpose well worthy of a great international convention, and its realization in an age of general enlightenment should not be impossible. The duty of sovereign States to promote international justice by all wise and effective means is only secondary to the fundamental necessity of preserving their own existence. Next in importance to their independence is the great fact of their interdependence. Nothing can secure for human government and for the authority of law which it represents so deep a respect and so firm a loyalty as the spectacle of sovereign and independent States, whose duty it is to prescribe the rules of justice and impose penalties upon the lawless, bowing with reverence before the august supremacy of those principles of right which give to law its eternal foundation.

The proposed conference promises to offer an opportunity thus far unequaled in the history of the world for initiating a series of negotiations that may lead to important practical results. The long-continued and widespread interest among the people of the United States in the establishment of an international court, as evidenced in the historical *résumé* attached to these instructions as Annex A,[1] gives assurance that the proposal of a definite plan of procedure by this Government for the accomplishment of this end would express the desires and aspirations of this nation. The delegates are, therefore, enjoined to propose, at an opportune moment, the plan for an international tribunal, hereunto attached as Annex B,[2] and to use their influence in the conference in the most effective manner possible to procure the adoption of its substance or of resolutions directed to the same purpose. It is believed that the disposition and aims of the United States in relation to the other sovereign Powers could not be expressed more truly or opportunely than by an effort of the delegates of this Government to concentrate the attention of the world upon a definite plan for the promotion of international justice.

[1] *Post*, p. 44.
[2] *Post*, p. 48.

Since the Conference has its chief reason of existence in the heavy burdens and cruel waste of war, which nowhere affect innocent private persons more severely or unjustly than in the damage done to peaceable trade and commerce, especially at sea, the question of exempting private property from destruction or capture on the high seas would seem to be a timely one for consideration.

As the United States has for many years advocated the exemption of all private property not contraband of war from hostile treatment, you are authorized to propose to the Conference the principle of extending to strictly private property at sea the immunity from destruction or capture by belligerent Powers which such property already enjoys on land as worthy of being incorporated in the permanent law of civilized nations.

I am, etc.,

JOHN HAY.

[*Annex A*]

HISTORICAL RÉSUMÉ

From time to time in the history of the United States, propositions have been made for the establishment of a system of peaceful adjustment of differences arising between nations. As early as February, 1832, the Senate of Massachusetts adopted, by a vote of 19 to 5, a resolution expressing the opinion that "some mode should be established for the amicable and final adjustment of all international disputes instead of resorting to war."

A similar resolution was unanimously passed by the house of representatives of the same State in 1837, and by the senate by a vote of 35 to 5.

A little prior to 1840 there was much popular agitation regarding the convocation of a congress of nations for the purpose of establishing an international tribunal. This idea was commended by resolutions adopted by the legislature of Massachusetts in 1844 and by the legislature of Vermont in 1852.

In February, 1851, Mr. Foote, from the Committee on Foreign Relations, reported to the Senate of the United States a resolution that "in the judgment of this body it would be proper and desirable for the Government of these United States whenever practicable to secure in its treaties with other nations a provision for referring to the decision of umpires all future misunderstandings that can not be satisfactorily adjusted by amicable negotiations in the first instance, befor a resort to hostilities shall be had."

Two years later Senator Underwood, from the same committee, reported a resolution of advice to the President suggesting a stipulation in all treaties hereafter entered into with other nations referring the adjustment of any misunderstanding or controversy to the decision of disinterested and impartial arbitrators to be mutually chosen.

May 31, 1872, Mr. Sumner introduced in the Senate a resolution in which,

after reviewing the historical development of municipal law and the gradual suppression of private war, and citing the progressive action of the Congress of Paris with regard to neutrals, he proposed the establishment of a tribunal to be clothed with such authority as to make it a "complete substitute for war," declaring a refusal to abide by its judgment hostile to civilization, to the end that "war may cease to be regarded as a proper form of trial between nations."

In 1874 a resolution favoring general arbitration was passed by the House of Representatives.

April 1, 1883, a confidential inquiry was addressed to Mr. Frelinghuysen, Secretary of State, by Colonel Frey, then Swiss Minister to the United States, regarding the possibility of concluding a general treaty of arbitration between the two countries. Mr. Frelinghuysen, citing the general policy of this country in past years, expressed his disposition to consider the proposition with favor. September 5, 1883, Colonel Frey submitted a draft of a treaty, the reception of which was acknowledged by Mr. Frelinghuysen on the 26th of the same month. This draft, adopted by the Swiss Federal Council July 24, 1883, presented a short plan of arbitration. These negotiations were referred to in the President's Annual Message for 1883, but were not concluded.

In 1888, a communication having been made to the President and Congress of the United States by two hundred and thirty-five members of the British Parliament, urging the conclusion of a treaty of arbitration between the United States and Great Britain, and reenforced by petitions and memorials from multitudes of individuals and associations from Maine to California, great enthusiasm was exhibited in its reception by eminent citizens of New York. As a result of this movement, on June 13, 1888, Mr. Sherman, from the Committee on Foreign Relations, reported to the Senate a joint resolution requesting the President "to invite, from time to time, as fit occasions may arise, negotiations with any Government with which the United States has or may have diplomatic relations, to the end that the differences or disputes arising between the two Governments which can not be adjusted by diplomatic agency may be referred to arbitration, and be peaceably adjusted by such means."

November 29, 1881, Mr. Blaine, Secretary of State, invited the Governments of the American nations to participate in a Congress to be held in the city of Washington, November 24, 1882, "for the purpose of considering and discussing the methods of preventing war between the nations of America." For special reasons the enterprise was temporarily abandoned, but was afterwards revived and enlarged in Congress, and an act was passed authorizing the calling of the International American Conference, which assembled in Washington in the autumn of 1889. On April 18, 1890, referring to this plan of arbitration, Mr. Blaine said:

> If, in this closing hour, the Conference had but one deed to celebrate, we should dare call the world's attention to the deliberate, confident, solemn dedication of two great continents to peace, and to the prosperity which has peace for its foundation. We hold up this new *Magna Charta,* which abolishes war and substitutes arbitration between the American republics, as the first and great fruit of the "International American Conference."

The Senate of the United States on February 14, 1890, and the House of Representatives on April 3, 1890, adopted a concurrent resolution in the language reported by Mr. Sherman to the Senate in June, 1888.

July 8, 1895, the French Chamber of Deputies unanimously resolved:

> The Chamber invites the Government to negotiate as soon as possible a permanent treaty of arbitration between the French Republic and the Republic of the United States of America.

July 16, 1893, the British House of Commons adopted the following resolution:

> *Resolved,* That this House has learnt with satisfaction that both Houses of the United States Congress have, by resolution, requested the President to invite, from time to time, as fit occasions may arise, negotiations with any Government with which the United States have or may have diplomatic relations, to the end that any differences or disputes arising between the two Governments which can not be adjusted by diplomatic agency may be referred to arbitration and peaceably adjusted by such means; and that this House, cordially sympathizing with the purpose in view, expresses the hope that Her Majesty's Government will lend their ready coöperation to the Government of the United States upon the basis of the foregoing resolution.

December 4, 1893, President Cleveland referred to the foregoing resolution of the British House of Commons as follows:

> It affords me signal pleasure to lay this parliamentary resolution before the Congress and to express my sincere gratification that the sentiment of two great and kindred nations is thus authoritatively manifested in favor of the rational and peaceable settlement of international quarrels by honorable resort to arbitration.

These resolutions led to the exchange of communications regarding the conclusion of a permanent treaty of arbitration, suspended from the spring of 1895 to March 5, 1898, when negotiations were resumed which resulted in the signature of a treaty January 11, 1897, between the United States and Great Britain.

In his inaugural address, March 4, 1897, President McKinley said:

> Arbitration is the true method of settlement of international as well as local or individual differences. It was recognized as the best means of

adjustment of differences between employers and employees by the Forty-ninth Congress in 1886, and its application was extended to our diplomatic relations by the unanimous concurrence of the Senate and House of the Fifty-first Congress in 1890. The latter resolution was accepted as the basis of negotiations with us by the British House of Commons in 1893, and upon our invitation a treaty of arbitration between the United States and Great Britain was signed at Washington and transmitted to the Senate for ratification in January last.

Since this treaty is clearly the result of our own initiative, since it has been recognized as the leading feature of our foreign policy throughout our entire national history—the adjustment of difficulties by judicial methods rather than force of arms—and since it presents to the world the glorious example of reason and peace, not passion and war, controlling the relations between two of the greatest nations of the world, an example certain to be followed by others, I respectfully urge the early action of the Senate thereon, not merely as a matter of policy, but as a duty to mankind. The importance and moral influence of the ratification of such a treaty can hardly be overestimated in the cause of advancing civilization. It may well engage the best thought of the statesmen and people of every country, and I can not but consider it fortunate that it was reserved to the United States to have the leadership in so grand a work.

The Senate of the United States declined to concur in the ratification of the treaty of arbitration with Great Britain, but for reasons which might not affect a general treaty directed toward a similar end.

The publication by this Government of the exhaustive *History and Digest of the International Arbitrations to which the United States has been a Party,* by the Hon. John Bassett Moore, late Assistant Secretary of State, a work extending through six volumes, marks a new epoch in the history of arbitration. It places beyond controversy the applicability of judicial methods to a large variety of international disagreements which have been successfully adjudicated by individual arbitrators or temporary boards of arbitration chosen by the litigants for each case. It also furnishes an exceedingly valuable body of rules of organization and procedure for the guidance of future tribunals of a similar nature. But, perhaps, its highest significance is the demonstration of the superiority of a permanent tribunal over merely special and temporary boards of arbitration, with respect to economy of time and money as well as uniformity of method and procedure.

A history of the various plans for the realization of international justice shows the gradual evolution of clearer and less objectionable conceptions upon this subject. Those of Bluntschli, Lorimer, David Dudley Field, and Leone Levi have been long before the public, each containing useful suggestions, but impracticable as a whole. Certain rules for the regulation of the procedure of international tribunals of arbitration were discussed by the Institute of International Law at its sessions at Geneva in 1874, and at The Hague in 1875, and

provisional rules were finally approved. Another set of rules was proposed by a select committee of lawyers at the Universal Peace Congress, held in Chicago in 1893. Resolutions of a somewhat elaborate nature were adopted by the Interparliamentary Conference, composed of British and French members of Parliament, at Brussels in 1895. In April, 1896, the Bar Association of the State of New York, at a special meeting held at Albany, adopted a plan for the establishment of a permanent international tribunal. The almost continuous movement of thought in this direction since 1832 has been interrupted only by the late Spanish-American war.

A careful review of all the plans for an international tribunal that have thus far been proposed makes it evident that they have failed from two causes: (1) Too great elaboration and complication, involving too many debatable questions; and (2) the absence of an opportune occasion for proposing them to an authoritative international body.

The plan that is to prove successful, if a sufficient number of sovereign States be disposed to adopt any plan whatsoever for an international tribunal, must combine an adequate grasp of the conditions with an extreme simplicity, leaving much to the coöperation of others and the development of the future.

The introduction of a brief resolution at an opportune moment in the proposed Peace Conference would at least place the United States on record as the friend and promoter of peace. The resolution hereto appended [1] is intended to embody in the briefest and simplest manner the most useful suggestions of all the plans proposed.

[*Annex B*]

PLAN FOR AN INTERNATIONAL TRIBUNAL

Resolved, That in order to aid in the prevention of armed conflicts by pacific means, the representatives of the sovereign Powers assembled together in this Conference be, and hereby are, requested to propose to their respective Governments a series of negotiations for the adoption of a general treaty having for its object the following plan, with such modifications as may be essential to secure the adhesion of at least nine sovereign Powers:

1. The tribunal shall be composed of judges chosen on account of their personal integrity and learning in international law by a majority of the members of the highest court now existing in each of the adhering States, one from each sovereign State participating in the treaty, and shall hold office until their successors are appointed by the same body.

2. The tribunal shall meet for organization at a time and place to be agreed upon by the several Governments, but not later than six months after the general

[1] Annex B, *infra.*

treaty shall be ratified by nine Powers, and shall organize itself by the appointment of a permanent clerk and such other officers as may be found necessary, but without conferring any distinction upon its own members. The tribunal shall be empowered to fix its place of sessions and to change the same from time to time as the interests of justice or the convenience of the litigants may seem to require, and fix its own rules of procedure.

3. The contracting nations will mutually agree to submit to the international tribunal all questions of disagreement between them, excepting such as may relate to or involve their political independence or territorial integrity. Questions of disagreement, with the aforesaid exceptions, arising between an adherent State and a non-adhering State, or between two sovereign States not adherent to the treaty, may, with the consent of both parties in dispute, be submitted to the international tribunal for adjudication, upon the condition expressed in Article 6.

4. The tribunal shall be of a permanent character and shall be always open for the filing of cases and counter-cases, either by the contracting nations or by others that may choose to submit them, and all cases and counter-cases, with the testimony and arguments by which they are to be supported or answered, are to be in writing. All cases, counter-cases, evidence, arguments, and opinions expressing judgment are to be accessible, after a decision is rendered, to all who desire to pay the necessary charges for transcription.

5. A bench of judges for each particular case shall consist of not less than three nor more than seven, as may be deemed expedient, appointed by the unanimous consent of the tribunal, and not to include a member who is either a native, subject, or citizen of the State whose interests are in litigation in that case.

6. The general expenses of the tribunal are to be divided equally between the adherent Powers, but those arising from each particular case shall be provided for as may be directed by the tribunal. The presentation of a case wherein one or both of the parties may be a non-adherent State shall be admitted only upon condition of a mutual agreement that the State against which judgment may be found shall pay, in addition to the judgment, a sum to be fixed by the tribunal for the expenses of the adjudication.

7. Every litigant before the international tribunal shall have the right to make an appeal for reëxamination of a case within three months after notification of the decision, upon presentation of evidence that the judgment contains a substantial error of fact or law.

8. This treaty shall become operative when nine sovereign States, whereof at least six shall have taken part in the Conference of The Hague, shall have ratified its provisions.

REPORT TO THE SECRETARY OF STATE OF THE DELEGATES TO THE FIRST HAGUE CONFERENCE[1]

THE HAGUE, *July 31, 1899.*

THE HONORABLE JOHN HAY,
SECRETARY OF STATE.

SIR: On May 17, 1899, the American Commission to the Peace Conference of The Hague met for the first time at the house of the American Minister, the Honorable Stanford Newel, the members, in the order named in the instructions from the State Department being Andrew D. White, Seth Low, Stanford Newel, Captain Alfred T. Mahan of the United States Navy, Captain William Crozier of the United States Army, and Frederick W. Holls, secretary. Mr. White was elected president, and the instructions from the Department of State were read.

On the following day the Conference was opened at the palace known as "The House in the Wood," and delegates from the following countries, twenty-six in number, were found to be present: Germany, the United States of America, Austria-Hungary, Belgium, China, Denmark, Spain, France, Great Britian and Ireland, Greece, Italy, Japan, Luxemburg, Mexico, Montenegro, the Netherlands, Persia, Portugal, Roumania, Russia, Servia, Siam, Sweden and Norway, Switzerland, Turkey, and Bulgaria.

The opening meeting was occupied mainly by proceedings of a ceremonial nature, including a telegram to the Emperor of Russia, and a message of thanks to the Queen of the Netherlands, with speeches by Mr. de Beaufort, the Netherlands Minister of Foreign Affairs, and Mr. de Staal, representing Russia.

At the second meeting a permanent organization of the Conference was effected. Mr. de Staal being chosen president, Mr. de Beaufort honorary president, and Mr. van Karnebeek, a former Netherlands Minister of Foreign Affairs, vice-president. A sufficient number of secretaries was also named.

The work of the Conference was next laid out with reference to the points stated in the Mouravieff circular of December 30, 1898, and divided between three great committees as follows:

The first of these committees was upon the limitation of armaments and war budgets, the interdiction or discouragement of sundry arms and explosives which had been or might be hereafter invented, and the limitation of the use of sundry explosives, projectiles, and methods of destruction, both on land and sea, as contained in Articles 1 to 4 of the Mouravieff circular.

The second great committee had reference to the extension of the Geneva Red Cross rules of 1864 and 1868 to maritime warfare, and the revision of the Brussels Declaration of 1874 concerning the laws and customs of war, as contained in Articles 5 to 7 of the same circular.

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[1] *Foreign Relations of the United States,* 1899, p. 513.

The third committee had as its subjects, mediation, arbitration, and other methods of preventing armed conflicts between nations, as referred to in Article 8 of the Mouravieff circular.

The American members of these three committees were as follows: of the first committee, Messrs. White, Mahan, Crozier; of the second committee, Messrs. White, Newel, Mahan, Crozier; of the third committee, Messrs. White, Low and Holls.

In aid of these three main committees subcommittees were appointed as follows:

The first committee referred questions of a military nature to the first subcommittee, of which Captain Crozier was a member, and questions of a naval nature to the second subcommittee, of which Captain Mahan was a member.

The second committee referred Articles 5 and 6, having reference to the extension of the Geneva rules to maritime warfare, to a subcommittee of which Captain Mahan was a member, and Article 7, concerning the revision of the laws and customs of war, to a subcommittee of which Captain Crozier was a member.

The third committee appointed a single subcommittee of "examination," whose purpose was to scrutinize plans, projects, and suggestions of arbitration, and of this committee Mr. Holls was a member.

The main steps in the progress of the work wrought by these agencies, and the part taken in it by our commission are detailed in the accompanying reports,[1] made to the American commission by the American members of the three committees of the Conference. It will be seen from these that some of the most important features finally adopted were the result of American proposals and suggestions.

As to that portion of the work of the first committee of the Conference which concerned the non-augmentation of armies, navies, and war budgets for a fixed term, and the study of the means for eventually diminishing armies and war budgets, namely, Article 1, the circumstances of the United States being so different from those which obtain in other parts of the world, and especially in Europe, we thought it best, under our instructions, to abstain from taking any active part. In this connection the following declaration was made:

> The delegation of the United States of America has concurred in the conclusions upon the first clause of the Russian letter of December 30, 1898, presented to the Conference by the first commission, namely, that the proposals of the Russian representatives for fixing the amounts of effective forces and of budgets, military and naval, for periods of five and three years, can not now be accepted, and that a more profound study upon the part of each State concerned is to be desired. But, while thus supporting what seemed to be the only practicable solution of a question submitted to the

[1] Only the report of the American Commission is printed. The reports made by the members are omitted.

Conference by the Russian letter, the delegation wishes to place upon the record that the United States, in so doing, does not express any opinion as to the course to be taken by the States of Europe.

This declaration is not meant to indicate mere indifference to a difficult problem, because it does not affect the United States immediately, but expresses a determination to refrain from enunciating opinions upon matters into which, as concerning Europe alone, the United States has no claim to enter. The words drawn up by M. Bourgeois, and adopted by the first commission, received also the hearty concurrence of this delegation, because in so doing it expresses the cordial interest and sympathy with which the United States, while carefully abstaining from anything that might resemble interference, regards all movements that are thought to tend to the welfare of Europe. The military and naval armaments of the United States are at present so small, relatively to the extent of territory and to the number of the population, as well as in comparison with those of other nations, that their size can entail no additional burden of expense upon the latter, nor can even form a subject for profitable mutual discussion.

As to that portion of the work of the first committee which concerned the limitations of invention and the interdiction of sundry arms, explosives, mechanical agencies, and methods heretofore in use or which might possibly be hereafter adopted, as regards warfare by land and sea, namely, Articles 2, 3, and 4, the whole matter having been divided between Captains Mahan and Crozier so far as technical discussion was concerned, the reports made by them from time to time to the American commission formed the basis of its final action on these subjects in the first committee and in the Conference at large.

The American commission approached the subject of the limitation of invention with much doubt. They had been justly reminded in their instructions of the fact that by the progress of invention, as applied to the agencies of war, the frequency, and, indeed, the exhausting character of war had been, as a rule, diminished rather than increased. As to details regarding missiles and methods, technical and other difficulties arose which obliged us eventually, as will be seen, to put ourselves on record in opposition to the large majority of our colleagues from other nations on sundry points. While agreeing with them most earnestly as to the end to be attained, the difference in regard to some details was irreconcilable. We feared falling into evils worse than those from which we sought to escape. The annexed reports of Captains Mahan and Crozier will exhibit very fully these difficulties and the decisions thence arising.

As to the work of the second great committee of the Conference, the matters concerned in Articles 5 and 6, which related to the extension to maritime warfare of the Red Cross rules regarding care for the wounded, adopted in the Geneva Convention of 1864 and 1868, were, as already stated, referred, as regards the discussion of technical questions in the committee and subcommittee, to Captain Mahan, and the matters concerned in Article 7, on the revision of the laws and

customs of war, were referred to Captain Crozier. On these technical questions Captains Mahan and Crozier reported from time to time to the American commission, and these reports, having been discussed both in regard to their general and special bearings, became the basis of the final action of the entire American commission, both in the second committee and in the Conference at large.

As to the first of these subjects, the extension of the Geneva Red Cross rules to maritime warfare, while the general purpose of the articles adopted elicited the especial sympathy of the American commission, a neglect of what seemed to us a question of almost vital importance, namely, the determination of the status of men picked up by the hospital ships of neutral States or by other neutral vessels, has led us to refrain from signing the convention prepared by the Conference touching this subject, and to submit the matter with full explanations to the Department of State for decision.

As to the second of these subjects, the revision of the laws and customs of war, though the code adopted and embodied in the third convention commends our approval, it is of such extent and importance as to appear to need detailed consideration in connection with similar laws and customs already in force in the Army of the United States, and it was thought best therefore to withhold our signature from this convention also and to refer it to the State Department with a recommendation that it be there submitted to the proper authorities for special examination and signed, unless such examination shall disclose imperfections not apparent to the commission.

As to the third great committee of the Conference, that which had in charge the matters concerned in Article 8 of the Russian circular with reference to good offices, mediation, and arbitration, the proceedings of the subcommittee above referred to became especially important.

While much interest was shown in the discussions of the first of the great committees of the Conference, and still more in those of the second, the main interest of the whole body centered more and more in the third. It was felt that a thorough provision for arbitration and its cognate subjects is the logical precursor of the limitation of standing armies and budgets, and that the true logical order is first arbitration and then disarmament.

As to subsidiary agencies, while our commission contributed much to the general work regarding good offices and mediation it contributed entirely, through Mr. Holls, the plan for "special mediation" which was adopted unanimously, first by the committee and finally by the Conference.

As to the plan for "international commissions of inquiry," which emanated from the Russian delegation, our commission acknowledged its probable value and aided in elaborating it, but added to the safeguards against any possible abuse of it, as concerns the United States, by our declaration of July 25, to be mentioned hereafter.

The functions of such commission are strictly limited to the ascertainment of facts, and it is hoped that both by giving time for passions to subside and by substituting truth for rumor they may prove useful at times in settling international disputes. The commissions of inquiry may also form a useful auxiliary both in the exercise of good offices and arbitration.

As to the next main subject, the most important of all under consideration by the third committee—the plan of a permanent court or tribunal—we were also able, in accordance with our instructions, to make contributions which we believe will aid in giving such a court dignity and efficiency.

On the assembling of the Conference the feeling regarding the establishment of an actual permanent tribunal was evidently chaotic, with little or no apparent tendency to crystallize into any satisfactory institution. The very elaborate and in the main excellent proposals relating to procedure before special and temporary tribunals, which were presented by the Russian delegation, did not at first contemplate the establishment of any such permanent institution. The American plan contained a carefully devised project for such a tribunal, which differed from that adopted mainly in contemplating a tribunal capable of meeting in full bench and permanent in the exercise of its functions, like the Supreme Court of the United States, instead of a court like the supreme court of the State of New York, which never sits as a whole, but whose members sit from time to time singly or in groups, as occasion may demand. The Court of Arbitration provided for resembles in many features the supreme court of the State of New York and courts of unlimited original jurisdiction in various other States.

In order to make this system effective a Council was established, composed of the diplomatic representatives of the various Powers at The Hague, and presided over by the Netherlands Minister of Foreign Affairs, which should have charge of the central office of the proposed Court, of all administrative details, and of the means and machinery for speedily calling a proper bench of judges together and for setting the Court in action. The reasons for our coöperation in making this plan will be found in the accompanying report. This compromise, involving the creation of a council and the selection of judges not to be in session save when actually required for international litigation, was proposed by Great Britain, and the feature of it which provided for the admission of the Netherlands, with its Minister of Foreign Affairs as President of the Council, was proposed by the American commission. The nations generally joined in perfecting other details. It may truthfully be called, therefore, the plan of the Conference.

As to the revision of the decisions by the tribunal in case of the discovery of new facts, a subject on which our instructions were explicit, we were able, in the face of determined and prolonged opposition, to secure recognition in the code of procedure for the American view.

As regards the procedure to be adopted in the International Court thus pro-

vided, the main features having been proposed by the Russian delegation, various modifications were made by other delegations, including our own. Our commission was careful to see that in this code there should be nothing which could put those conversant more especially with British and American common law and equity at a disadvantage. To sundry important features proposed by other Powers our own commission gave hearty support. This was the case especially with Article 27 proposed by France. It provides a means, through the agency of the Powers generally, for calling the attention of any nations apparently drifting into war to the fact that the tribunal is ready to hear their contention. In this provision, broadly interpreted, we acquiesced, but endeavored to secure a clause limiting to suitable circumstances the "duty" imposed by the article. Great opposition being shown to such an amendment as unduly weakening the article, we decided to present a declaration that nothing contained in the convention should make it the duty of the United States to intrude in or become entangled with European political questions or matters of internal administration or to relinquish the traditional attitude of our nation toward purely American questions. This declaration was received without objection by the Conference in full and open session.[1]

As to the results thus obtained as a whole regarding arbitration, in view of all the circumstances and considerations revealed during the sessions of the Conference, it is our opinion that the "Plan for the pacific settlement of international disputes," which was adopted by the Conference, is better than that presented by any one nation. We believe that, though it will doubtless be found imperfect and will require modification as times goes on, it will form a thoroughly practical beginning, it will produce valuable results from the outset, and it will be the germ out of which a better and better system will be gradually evolved.

As to the question between compulsory and voluntary arbitration it was clearly seen before we had been long in session that general compulsory arbitration of questions really likely to produce war could not be obtained; in fact that not one of the nations represented at the Conference was willing to embark in it, so far as the more serious questions were concerned. Even as to the questions of less moment, it was found to be impossible to secure agreement, except upon a voluntary basis. We ourselves felt obliged to insist upon the omission from the Russian list of proposed subjects for compulsory arbitration international conventions relating to rivers, to interoceanic canals, and to monetary matters. Even as so amended, the plan was not acceptable to all. As a consequence, the convention prepared by the Conference provides for voluntary arbitration only. It remains for public opinion to make this system effective. As questions arise threatening resort to arms it may well be hoped that public opinion in the nations concerned, seeing in this great international court a means of escape from the

[1]For the text of this declaration see *post*, p. 60.

increasing horrors of war, will insist more and more that the questions at issue be referred to it. As time goes on such reference will probably more and more seem to the world at large natural and normal, and we may hope that recourse to the tribunal will finally, in the great majority of serious differences between nations, become a regular means of avoiding the resort to arms. There will also be another effect worthy of consideration. This is the building up of a body of international law growing out of the decisions handed down by the judges. The procedure of the tribunal requires that reasons for such decisions shall be given, and these decisions and reasons can hardly fail to form additions of especial value to international jurisprudence.

It now remains to report the proceedings of the Conference, as well as our own action, regarding the question of the immunity of private property not contraband from seizure on the seas in time of war. From the very beginning of our sessions it was constantly insisted by leading representatives from nearly all the great Powers that the action of the Conference should be strictly limited to the matters specified in the Russian circular of December 30, 1898, and referred to in the invitation emanating from the Netherlands Ministry of Foreign Affairs.

Many reasons for such a limitation were obvious. The members of the Conference were from the beginning deluged with books, pamphlets, circulars, newspapers, broadsides, and private letters on a multitude of burning questions in various parts of the world. Considerable numbers of men and women devoted to urging these questions came to The Hague or gave notice of their coming.

It was very generally believed in the Conference that the admission of any question not strictly within the limits proposed by the two circulars above mentioned would open the door to all these proposals above referred to, and that this might lead to endless confusion, to heated debate, perhaps even to the wreck of the Conference, and consequently to a long postponement of the objects which both those who summoned it and those who entered it had directly in view.

It was at first held by very many members of the Conference that under the proper application of the above rule the proposal made by the American commission could not be received. It required much and earnest argument on our part to change this view, but finally the memorial from our commission, which stated fully the historical and actual relation of the United States to the whole subject, was received, referred to the appropriate committee, and finally brought by it before the Conference.

In that body it was listened to with close attention and the speech of the chairman of the committee, who is the eminent president of the Venezuelan arbitration tribunal now in session at Paris, paid a hearty tribute to the historical adhesion of the United States to the great principle concerned. He then moved that the subject be referred to a future Conference. This motion we accepted and seconded, taking occasion in doing so to restate the American doctrine on the subject, with its claims on all the nations represented at the Conference.

The commission was thus, as we believe, faithful to one of the oldest of American traditions, and was able at least to keep the subject before the world. The way is paved also for a future careful consideration of the subject in all its bearings and under more propitious circumstances.

The conclusions of the Peace Conference at The Hague took complete and definite shape in the Final Act laid before the delegates on July 29 for their signature. This act embodied three conventions, three declarations, and seven resolutions, as follows:

First. A Convention for the pacific settlement of international disputes. This was signed by sixteen delegations, as follows: Belgium, Denmark, Spain, United States of America, Mexico, France, Greece, Montenegro, the Netherlands, Persia, Portugal, Roumania, Russia, Siam, Sweden and Norway, and Bulgaria. There was adjoined to the signatures of the United States delegation a reference to our declaration above referred to, made in open Conference on July 25 and recorded in the proceedings of that day.[1]

Second. A Convention concerning the laws and customs of war on land. This was signed by fifteen delegations, as follows: Belgium, Denmark, Spain, Mexico, France, Greece, Montenegro, the Netherlands, Persia, Portugal, Roumania, Russia, Siam, Sweden and Norway and Bulgaria.

The United States delegation refers the matter to the Government at Washington, with the recommendation that it be there signed.

Third. A Convention for the adaptation to maritime warfare of the principles of the Geneva Conference of 1864. This was signed by fifteen delegations, as follows: Belgium, Denmark, Spain, Mexico, France, Greece, Montenegro, the Netherlands, Persia, Portugal, Roumania, Russia, Siam, Sweden and Norway, and Bulgaria.

The United States representatives refer it, without recommendation, to the Government at Washington.

The three Declarations were as follows:

First. A Declaration prohibiting the throwing of projectiles and explosives from balloons or by other new analogous means, such prohibition to be effective during five years. This was signed by seventeen delegations, as follows: Belgium, Denmark, Spain, the United States of America, Mexico, France, Greece, Montenegro, the Netherlands, Persia, Portugal, Roumania, Russia, Siam, Sweden and Norway, Turkey, and Bulgaria.

Second. A Declaration prohibiting the use of projectiles having as their sole object the diffusion of asphyxiating or deleterious gases. This, for reasons given in the accompanying documents, the American delegation did not sign. It was signed by sixteen delegations, as follows: Belgium, Denmark, Spain, Mexico, France, Greece, Montenegro, the Netherlands, Persia, Portugal, Roumania, Russia, Siam, Sweden and Norway, Turkey, and Bulgaria.

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[1]For the text of this declaration, see *post,* p. 60.

Third. A Declaration prohibiting the use of bullets which expand or flatten easily in the human body, as illustrated by certain given details of construction. This, for technical reasons also fully stated in the report, the American delegation did not sign. It was signed by fifteen delegations, as follows: Belgium, Denmark, Spain, Mexico, France, Greece, Montenegro, the Netherlands, Persia, Roumania, Russia, Siam, Sweden and Norway, Turkey, and Bulgaria.

The seven resolutions were as follows:

First. A resolution that the limitation of the military charges which at present so oppress the world is greatly to be desired, for the increase of the material and moral welfare of mankind.

This ended the action of the Conference in relation to matters considered by it upon their merits. In addition the Conference passed the following resolutions, for all of which the United States delegation voted, referring various matters to the consideration of the Powers or to future conference. Upon the last five resolutions a few Powers abstained from voting.

The second resolution was as follows: The Conference taking into consideration the preliminary steps taken by the Federal Government of Switzerland for the revision of the Convention of Geneva, expresses the wish that there should be in a short time a meeting of a special Conference having for its object the revision of that convention.

This resolution was voted unanimously.

Third. The Conference expresses the wish that the question of the rights and duties of neutrals should be considered at another conference.

Fourth. The Conference expresses the wish that questions relative to muskets and marine artillery, such as have been examined by it, should be made the subject of study on the part of the Governments with a view of arriving at an agreement concerning the adoption of new types and calibers.

Fifth. The Conference expresses the wish that the Governments, taking into account all the propositions made at this Conference, should study the possibility of an agreement concerning the limitation of armed forces on land and sea and of war budgets.

Sixth. The Conference expresses the wish that a proposition having for its object the declaration of immunity of private property in war on the high seas should be referred for examination to another conference.

Seventh. The Conference expresses the wish that the proposition of regulating the question of bombardment of ports, cities, or villages by a naval force should be referred for examination to another conference.

It will be observed that the conditions upon which Powers not represented at the Conference can adhere to the Convention for the peaceful regulation of international conflicts is to "form the subject of a later agreement between the contracting Powers." This provision reflects the outcome of a three days' debate in the

drafting committee as to whether this convention should be absolutely open or open only with the consent of the contracting Powers. England and Italy strenuously supported the latter view. It soon became apparent that under the guise of general propositions the committee was discussing political questions of great importance at least to certain Powers. Under these circumstances the representatives of the United States took no part in the discussion, but supported by their vote the view that the convention, in its nature, involved reciprocal obligations; and also the conclusion that political questions had no place in the Conference, and must be left to be decided by the competent authorities of the Powers represented there.

It is to be regretted that this action excludes from immediate adherence to this convention our sister republics of Central and South America, with whom the United States is already in similar relations by the Pan American Treaty. It is hoped that an arrangement will soon be made which will enable these States, if they so desire, to enter into the same relations as ourselves with the Powers represented at the Conference.

This report should not be closed without an acknowledgment of the great and constant courtesy of the Government of the Netherlands and all its representatives to the American commission as well as to all the members of the Conference. In every way they have sought to aid us in our work and to make our stay agreeable to us. The accommodations they have provided for the Conference have enhanced its dignity and increased its efficiency.

It may also be well to put on record that from the entire Conference, without exception, we have constantly received marks of kindness, and that although so many nations with different interests were represented, there has not been in any session, whether of the Conference or of any of the committees or subcommittees, anything other than calm and courteous debate.

The text of the Final Act of the various conventions and declarations referred to therein is appended to this report.[1]

All of which is most respectfully submitted.

Andrew D. White, *President.*
Seth Low.
Stanford Newel.
A. T. Mahan.
William Crozier.
Frederick W. Holls, *Secretary.*

[1] Not printed.

XV

Reservation of the United States of America to the Convention for the Pacific Settlement of International Disputes, 1899[1]

Nothing contained in this Convention shall be so construed as to require the United States of America to depart from its traditional policy of not intruding upon, interfering with, or entangling itself in the political questions or policy or internal administration of any foreign State; nor shall anything contained in the said Convention be construed to imply a relinquishment by the United States of America of its traditional attitude toward purely American questions.

XVI

The Second Hague Peace Conference, 1907: American Instructions and Report

INSTRUCTIONS TO THE AMERICAN DELEGATES TO THE HAGUE CONFERENCE OF 1907[2]

DEPARTMENT OF STATE,
WASHINGTON, *May 31, 1907.*

To Messrs. Joseph H. Choate, Horace Porter, Uriah M. Rose, David Jayne Hill, George B. Davis, Charles S. Sperry, and William I. Buchanan.

GENTLEMEN: You have been appointed delegates plenipotentiary to represent the United States at a Second Peace Conference which is to meet at The Hague on the 15th of June, 1907.

The need of such a Conference was suggested to the Powers signatory to the acts of the Hague Conference of 1899 by President Roosevelt in a circular note by my predecessor, Mr. Hay, dated October 21, 1904, and the project met with a general expression of assent and sympathy from the Powers; but its realization was postponed because of the then existing war between Japan and Russia. The conclusion of the peace which ended that war presenting a favorable moment for further developing and systematizing the work of the First Conference, the initiative was appropriately transferred to His Imperial Majesty the Emperor

[1] *Procès-verbaux* of the First Hague Peace Conference, pt. i, p. 69. This declaration was made July 25, 1899, by the delegation of the United States of America. The reservation was reaffirmed July 29 on signing the Convention for the pacific settlement of international disputes, and was expressly maintained by the American Government when it ratified the Convention.

[2] *Foreign Relations of the United States,* 1907, pt. 2, p. 1128.

of Russia as initiator of the First Conference. The Russian Government proposed that the program of the contemplated meeting should include the following topics:

1. Improvements to be made in the provisions of the Convention relative to the peaceful 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 war-ships.

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 cases 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 also be 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.

We are advised by the Ambassador of Russia, in a note dated March 22/April 4, 1907, that all of the Powers have declared their adhesion to this tentative program. The following remarks, however, have been made in respect thereof:

The Government of the United States has reserved to itself the liberty of submitting to the Conference two additional questions, viz., the reduction or limitation of armaments and the attainment of an agreement to observe some limitations upon the use of force for the collection or ordinary public debts arising out of contracts.

The Spanish Government has expressed a desire to discuss the limitation of armaments.

The British Government has given notice that it attaches great importance to having the question of expenditures for armament discussed at the Conference, and has reserved to itself the right of raising it.

The Governments of Bolivia, Denmark, Greece, and the Netherlands have reserved to themselves, in a general way, the right to submit to the consideration of the Conference subjects not specially enumerated in the program.

Several Governments have reserved the right to take no part in any discussion which may appear unlikely to produce any useful result.

The Russian note proposing the program declared that the deliberations of the contemplated meetings should not deal with the political relations of the different States, or the condition of things established by treaties; and that neither the solution of the questions brought up for discussion, nor the order of their discussion, nor the form to be given to the decisions reached, should be determined in advance of the Conference. We understand this view to have been accepted.

In regard to the two questions which were not included in the proposed program, but which the United States has reserved the right to present to the Conference, we understand that notice of the reservation has been communicated to all the Powers by note similar to that from the Russian Ambassador dated March 22/April 4, 1907; so that each Power has had full opportunity to instruct its delegates in respect thereof. The United States understands that as to the topics included in the program the acceptance of the program involves a determination that such topics shall be considered by the Conference, subject to the reserved rights of particular Powers to refrain from discussion of any topic as to which it deems that discussion will not be useful; but that as to the two topics which we have reserved the right to present, there has been no determination one way or the other, the question whether they shall be considered by the Conference remaining for the determination of the Conference itself in case they shall be presented.

It is not expedient that you should be limited by too rigid instructions upon the various questions which are to be discussed, for such a course, if pursued generally with all the delegates, would make the discussion useless and the Conference a mere formality. You will, however, keep in mind the following observations regarding the general policy of the United States upon these questions:

1. In the discussions upon every question it is important to remember that the object of the Conference is agreement, and not compulsion. If such Conferences are to be made occasions for trying to force nations into positions which they consider against their interests, the Powers can not be expected to send representatives to them. It is important also that the agreements reached shall be genuine and not reluctant. Otherwise they will inevitably fail to receive approval when submitted for the ratification of the Powers represented. Comparison of views and frank and considerate explanation and discussion may frequently resolve doubts, obviate difficulties, and lead to real agreement upon matters which at the outset have appeared insurmountable. It is not wise, however, to carry this process to the point of irritation. After reasonable discussion, if no agreement is reached, it is better to lay the subject aside, or refer it to some future Conference in the hope that intermediate consideration may dispose of the objections. Upon some questions where an agreement by only a part of the Powers repre-

sented would in itself be useful, such an agreement may be made, but it should always be with the most unreserved recognition that the other Powers withhold their concurrence with equal propriety and right.

The immediate results of such a Conference must always be limited to a small part of the field which the more sanguine have hoped to see covered; but each successive Conference will make the positions reached in the preceding Conference its point of departure, and will bring to the consideration of further advances toward international agreement opinions affected by the acceptance and application of the previous agreements. Each Conference will inevitably make further progress and, by successive steps, results may be accomplished which have formerly appeared impossible.

You should keep always in mind the promotion of this continuous process through which the progressive development of international justice and peace may be carried on; and you should regard the work of the Second Conference, not merely with reference to the definite results to be reached in that Conference, but also with reference to the foundations which may be laid for further results in future Conferences. It may well be that among the most valuable services rendered to civilization by this Second Conference will be found the progress made in matters upon which the delegates reach no definite agreement.

With this view you will favor the adoption of a resolution by the Conference providing for the holding of further Conferences within fixed periods and arranging the machinery by which such Conferences may be called and the terms of the program may be arranged, without awaiting any new and specific initiative on the part of the Powers or any one of them.

Encouragement for such a course is to be found in the successful working of a similar arrangement for international conferences of the American republics. The second American Conference, held in Mexico in 1901-2, adopted a resolution providing that a third conference should meet within five years and committed the time and place and the program and necessary details to the Department of State and representatives of the American States in Washington. Under this authority the Third Conference was called and held in Rio de Janeiro in the summer of 1906 and accomplished results of substantial value. That Conference adopted the following resolution:

> The governing board of the International Bureau of American Republics (composed of the same official representatives in Washington) is authorized to designate the place at which the Fourth International Conference shall meet, which meeting shall be within the next five years; to provide for the drafting of the program and regulations and to take into consideration all other necessary details; and to set another date in case the meeting of the said Conference can not take place within the prescribed limit of time.

There is no apparent reason to doubt that a similar arrangement for successive general international conferences of all the civilized Powers would prove as practicable and as useful as in the case of the twenty-one American States.

2. The policy of the United States to avoid entangling alliances and to refrain from any interference or participation in the political affairs of Europe must be kept in mind, and may impose upon you some degree of reserve in respect of some of the questions which are discussed by the Conference.

In the First Conference the American delegates accompanied their vote upon the report of the committee regarding the limitation of armaments by the following declaration:

> That the United States, in so doing, does not express any opinion as to the course to be taken by the States of Europe. This declaration is not meant to indicate mere indifference to a difficult problem, because it does not affect the United States immediately, but expresses a determination to refrain from enunciating opinions upon matters into which, as concerning Europe alone, the United States has no claim to enter. The words drawn up by M. Bourgeois, and adopted by the first commission, received also the cordial interest and sympathy with which the United States, while carefully abstaining from anything that might resemble interference, regards all movements that are thought to tend to the welfare of Europe.

Before signing the arbitration convention of the First Conference the delegates of the United States put upon record the following declaration:

> Nothing contained in this Convention shall be so construed as to require the United States of America to depart from its traditional policy of not intruding upon, interfering with, or entangling itself in the political questions or policy or internal administration of any foreign State; nor shall anything contained in the said Convention be construed to imply a relinquishment by the United States of America of its traditional attitude toward purely American questions.

These declarations have received the approval of this Government, and they should be regarded by you as illustrating the caution which you are to exercise in preventing our participation in matters of general and world-wide concern from drawing us into the political affairs of Europe.

3. The attitude of the United States as to consideration of the subject of limiting armaments was stated in a letter from the Secretary of State to the Russian ambassador dated June 7, 1906. That letter, after expressing assent to the enumeration of topics in the Russian programme, proceeded to say:

> The Government of the United States is, however, so deeply in sympathy with the noble and humanitarian views which moved His Imperial Majesty to the calling of the First Peace Conference that it would greatly regret to see those views excluded from the consideration of the Second Conference. [Quoting from the call for the First Conference.]
>
> The truth and value of the sentiments thus expressed are surely independent of the special conditions and obstacles to their realization by which they may be confronted at any particular time. It is true that the First

Conference at The Hague did not find it practicable to give them effect, but long-continued and patient effort has always been found necessary to bring mankind into conformity with great ideals. It would be a misfortune if that effort, so happily and magnanimously inaugurated by His Imperial Majesty, were to be abandoned.

This Government is not unmindful of the fact that the people of the United States dwell in comparative security, partly by reason of their isolation and partly because they have never become involved in the numerous questions to which many centuries of close neighborhood have given rise in Europe. They are, therefore, free from the apprehensions of attack which are to so great an extent the cause of great armaments, and it would ill become them to be insistent or forward in a matter so much more vital to the nations of Europe than to them. Nevertheless, it sometimes happens that the very absence of a special interest in a subject enables a nation to make suggestions and urge considerations which a more deeply interested nation might hesitate to present. The Government of the United States, therefore, feels it to be its duty to reserve for itself the liberty to propose to the Second Peace Conference, as one of the subjects of consideration, the reduction or limitation of armaments, in the hope that, if nothing further can be accomplished, some slight advance may be made toward the realization of the lofty conception which actuated the Emperor of Russia in calling the First Conference.

The First Conference adopted the following resolutions:

The Conference is of opinion that the restriction of military charges, which are at present a heavy burden on the world, is extremely desirable for the increase of the material and moral welfare of mankind.

The Conference expresses the wish that the Governments, taking into consideration the proposals made at the Conference, may examine the possibility of an agreement as to the limitation of armed forces by land and sea and of war budgets.

Under these circumstances this Government has been and still is of the opinion that this subject should be regarded as unfinished business, and that the Second Conference should ascertain and give full consideration to the results of such examination as the Governments may have given to the possibility of an agreement pursuant to the wish expressed by the First Conference. We think that there should be a sincere effort to learn whether, by conference and discussion, some practicable formula may not be worked out which would have the effect of limiting or retarding the increase of armaments.

There is, however, reason to believe not only that there has been the examination by the respective Governments for which the First Conference expressed a wish, but that the discussion of its results has been forestalled by a process of direct communication between a majority of the Governments having the greatest immediate interest in the subject. These communications have been going on actively among the different Governments for nearly a year, and as a result

at least four of the European Powers have announced their unwillingness to continue the discussion in the Conference. We regret that the discussion should have taken place in this way rather than at the Conference, for we are satisfied that a discussion at the Conference would have afforded a greater probability of progress toward the desired result. The fact, however, cannot be ignored.

If any European Power proposes consideration of the subject, you will vote in favor of consideration and do everything you properly can to promote it. If, on the other hand, no European Power proposes consideration of the subject, and no new and affirmative evidence is presented to satisfy you that a useful purpose would be subserved by your making such a proposal, you may assume that the limitations above stated by way of guidance to your action preclude you from asking the Conference to consider the subject.

4. The other subject which the United States specifically reserved the right to propose for consideration is the attainment of an agreement to observe some limitation upon the use of force for the collection of ordinary public debts arising out of contract.

It has long been the established policy of the United States not to use its army and navy for the collection of ordinary contract debts due to its citizens by other Governments. This Government has not considered the use of force for such a purpose consistent with that respect for the independent sovereignty of other members of the family of nations which is the most important principle of international law and the chief protection of weak nations against the oppression of the strong. It seems to us that the practice is injurious in its general effect upon the relation of nations and upon the welfare of weak and disordered States, whose development ought to be encouraged in the interests of civilization; that it offers frequent temptation to bullying and oppression and to unnecessary and unjustifiable warfare. It is doubtless true that the non-payment of such debts may be accompanied by such circumstances of fraud and wrong-doing or violation of treaties as to justify the use of force; but we should be glad to see an international consideration of this subject which would discriminate between such cases and the simple non-performance of a contract with a private person, and a resolution in favor of reliance upon peaceful means in cases of the latter class.

The Third International Conference of the American States, held at Rio de Janeiro in August, 1906, resolved:

> To recommend to the Governments therein that they consider the point of inviting the Second Peace Conference at The Hague to examine the question of the compulsory collection of public debts, and, in general, means tending to diminish between nations conflicts having a peculiarly pecuniary origin.

You will ask for the consideration of this subject by the Conference. It is not probable that in the first instance all the nations represented at the Conference

will be willing to go as far in the establishment of limitations upon the use of force in the collection of this class of debts as the United States would like to have them go, and there may be serious objection to the consideration of the subject as a separate and independent topic. If you find such objections insurmountable, you will urge the adoption of provisions under the head of arbitration looking to the establishment of such limitations. The adoption of some such provisions as the following may be suggested, and, if no better solution seems practicable, should be urged:

> The use of force for the collection of a contract debt alleged to be due by the Government of any country to a citizen of any other country is not permissible until after—
>
> 1. The justice and amount of the debt shall have been determined by arbitration, if demanded by the alleged debtor.
>
> 2. The time and manner of payment, and the security, if any, to be given pending payment, shall have been fixed by arbitration, if demanded by the alleged debtor.

5. In the general field of arbitration two lines of advance are clearly indicated. The first is to provide for obligatory arbitration as broad in scope as now appears to be practicable, and the second is to increase the effectiveness of the system so that nations may more readily have recourse to it voluntarily.

You are familiar with the numerous expressions in favor of the settlement of international disputes by arbitration on the part both of the Congress and of the Executive of the United States.

So many separate treaties of arbitration have been made between individual countries that there is little cause to doubt that the time is now ripe for a decided advance in this direction. This condition, which brings the subject of a general treaty for obligatory arbitration into the field of practical discussion, is undoubtedly largely due to the fact that the Powers generally in the First Hague Conference committed themselves to the principle of the pacific settlement of international questions in the admirable convention for voluntary arbitration then adopted.

The Rio Conference of last summer provided for the arbitration of all pecuniary claims among the American States. This convention has been ratified by the President, with the advice and consent of the Senate.

In December, 1904, and January, 1905, my predecessor, Mr. Hay, concluded separate arbitration treaties between the United States and Great Britain, France, Germany, Spain, Portugal, Italy, Switzerland, Austria-Hungary, Sweden and Norway, and Mexico. On the 11th of February, 1905, the Senate advised and consented to the ratification of these treaties with an amendment which has had the effect of preventing the exchange of ratifications. The amendment, however, did not relate to the scope or character of the arbitration to which the President

had agreed and the Senate consented. You will be justified, therefore, in assuming that a general treaty of arbitration in the terms, or substantially in the terms, of the series of treaties which I have mentioned will meet the approval of the Government of the United States. The first article of each of these treaties was as follows:

> 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 July, 1899, provided, nevertheless, that they do not affect the vital interests, the independence, or the honor of the two contracting States, and do not concern the interests of third parties.

To this extent you may go in agreeing to a general treaty of arbitration, and to secure such a treaty you should use your best and most earnest efforts.

Such a general treaty of arbitration necessarily leaves to be determined in each particular case what the questions at issue between the two Governments are, and whether those questions come within the scope of the treaty or within the exceptions, and what shall be the scope of the Powers of the arbitrators. The Senate amendment which prevented the ratification of each of these treaties applied only to another article of the treaty which provided for special agreements in regard to these matters and involved only the question who should act for the United States in making such special agreements. To avoid having the same question arise regarding any general treaty of arbitration which you may sign at The Hague, your signature should be accompanied by an explanation substantially as follows:

> In signing the general arbitration treaty the delegates of the United States desire to have it understood that the special agreements provided for in article — of said treaty will be subject to submission to the Senate of the United States.

The method in which arbitration can be made more effective, so that nations may be more ready to have recourse to it voluntarily and to enter into treaties by which they bind themselves to submit to it, is indicated by observation of the weakness of the system now apparent. There can be no doubt that the principal objection to arbitration rests not upon the unwillingness of nations to submit their controversies to impartial arbitration, but upon an apprehension that the arbitrations to which they submit may not be impartial. It has been a very general practice for arbitrators to act, not as judges deciding questions of fact and law upon the record before them under a sense of judicial responsibility, but as negotiators effecting settlements of the questions brought before them in accordance with the traditions and usages and subject to all the considerations and influences which affect diplomatic agents. The two methods are radically different, pro-

ceed upon different standards of honorable obligation, and frequently lead to widely differing results. It very frequently happens that a nation which would be very willing to submit its differences to an impartial judicial determination is unwilling to subject them to this kind of diplomatic process. If there could be a tribunal which would pass upon questions between nations with the same impartial and impersonal judgment that the Supreme Court of the United States gives to questions arising between citizens of the different States, or between foreign citizens and the citizens of the United States, there can be no doubt that nations would be much more ready to submit their controversies to its decision than they are now to take the chances of arbitration. It should be your effort to bring about in the Second Conference a development of the Hague tribunal into a permanent tribunal composed of judges who are judicial officers and nothing else, who are paid adequate salaries, who have no other occupation, and who will devote their entire time to the trial and decision of international causes by judicial methods and under a sense of judicial responsibility. These judges should be so selected from the different countries that the different systems of law and procedure and the principal languages shall be fairly represented. The court should be made of such dignity, consideration, and rank that the best and ablest jurists will accept appointment to it, and that the whole world will have absolute confidence in its judgments.

The arbitration convention signed at the First Hague Conference contained no authority for the adherence of non-signatory Powers, but provided:

> The conditions on which the Powers who were not represented at the International Peace Conference can adhere to the present Convention shall form the subject of a separate agreement among the contracting Powers.

This left all the Central and South American States outside of the treaty. The United States has from time to time endeavored to secure an opportunity for them to adhere, and it has now been arranged that this shall be accomplished as a necessary preliminary to their taking part in the Second Conference. The method arranged is that on the day before the opening of the Conference a protocol shall be signed by the representatives of all the Powers signatory to the treaty substantially as follows:

> The representatives at the Second Peace Conference of the States signatories of the convention of 1899 relative to the peaceful settlement of international disputes, duly authorized to that effect, have agreed that in case the States that were not represented at the First Peace Conference, but have been convoked to the present Conference, should notify the Government of the Netherlands of their adhesion to the above-mentioned convention they shall be forthwith considered as having acceded thereto.

It is understood that substantially all the Central and South American States have notified the Government of the Netherlands of their adherence to the Con-

vention, and upon the signing of this protocol their notices will immediately take effect and they will become parties competent to take part in the discussions of the Second Conference looking toward the amendment and extension of the arbitration convention. You will sign the protocol in behalf of the United States pursuant to the full powers already given you.

6. You will maintain the traditional policy of the United States regarding the immunity of private property of belligerents at sea.

On the 28th of April, 1904, the Congress of the United States adopted the following resolution:

> *Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That it is the sense of the Congress of the United States that it is desirable, in the interests of uniformity of action by the maritime States of the world in time of war, that the President endeavor to bring about an understanding among the principal maritime Powers with a view of incorporating into the permanent law of civilized nations, the principle of the exemption of all private property at sea, not contraband of war, from capture or destruction by belligerents. Approved April 28, 1904.

This resolution is an expression of the view taken by the United States during its entire history. Such a provision was incorporated in the treaty of 1775 with Prussia, signed by Benjamin Franklin, Thomas Jefferson, and John Adams, and it was proposed by the United States as an amendment to be added to the privateering clause of the Declaration of Paris in 1856. The refusal of the other Powers to accompany prohibition of privateering by such a provision caused the Government of the United States to refuse its adherence to the declaration.

The Congressional resolution was in response to the recommendation of President Roosevelt's message to Congress in December, 1903, quoting and enforcing a previous message by President McKinley in December, 1898, which said:

> The United States Government has for many years advocated this humane and beneficent principle, and is now in a position to recommend it to other Powers without the imputation of selfish motives.

Whatever may be the apparent specific interest of this or any other country at the moment, the principle thus declared is of such permanent and universal importance that no balancing of the chances of probable loss or gain in the immediate future on the part of any nation should be permitted to outweigh the considerations of common benefit to civilization which call for the adoption of such an agreement.

In the First Peace Conference the subject of the immunity of private property at sea was not included in the program. Consideration of it was urged by the delegates of the United States and was supported by an able presentation on

the part of Mr. Andrew D. White. The representatives of several of the great Powers declared, however, that in the absence of instructions from their Governments they could not vote upon the subject; and, under the circumstances, we must consider that gratifying progress was made when there was included in the Final Act of the Conference a resolution expressing—

> The wish that the proposal which contemplates the declaration of the inviolability of private property in naval warfare may be referred to a subsequent Conference for consideration.

The subject has accordingly been included in the present program and the way is open for its consideration.

It will be appropriate for you to advocate the proposition formulated and presented by the American delegates to the First Conference, as follows:

> The private property of all citizens or subjects of the signatory Powers, with the exception of contraband of war, shall be exempt from capture or seizure on the high seas, or elsewhere by the armed vessels or by the military forces of any of the said signatory Powers. But nothing herein contained shall extend exemption from seizure to vessels and their cargoes which may attempt to enter a port blockaded by the naval forces of any of the said Powers.

7. Since the code of rules for the government of military operations on land was adopted by the First Peace Conference there have been occasions for its application under very severe conditions, notably in the South African war and the war between Japan and Russia. Doubtless the Powers involved in those conflicts have had occasion to observe many particulars in which useful additions or improvements might be made. You will consider their suggestions with a view to reducing, so far as is practicable, the evils of war and protecting the rights of neutrals.

As to the framing of a convention relative to the customs of maritime warfare, you are referred to the naval war code promulgated in General Orders 551 of the Navy Department of June 27, 1900, which has met with general commendation by naval authorities throughout the civilized world, and which, in general, expresses the views of the United States, subject to a few specific amendments suggested in the volume of international law discussions of the Naval War College of the year 1903, pages 91 to 97. The order putting this code into force was revoked by the Navy Department in 1904, not because of any change of views as to the rules which it contained, but because many of those rules, being imposed upon the forces of the United States by the order, would have put our naval forces at a disadvantage as against the forces of other Powers, upon whom the rules were not binding. The whole discussion of these rules contained in the volume to which I have referred is commended to your careful study.

You will urge upon the Peace Conference the formulation of international rules for war at sea and will offer the Naval War Code of 1900, with the suggested changes and such further changes as may be made necessary by other agreements reached at the Conference, as a tentative formulation of the rules which should be considered.

8. The clause of the program relating to the rights and duties of neutrals is of very great importance and in itself would furnish matter for useful discussion sufficient to occupy the time and justify the labors of the Conference.

The various subjects which the Conference may be called upon to consider are likely to bring out proposals which should be considered in their relation to each other, as standing in the following order of substantial importance:

(1) Provisions tending to prevent disagreements between nations.

(2) Provisions tending to dispose of disagreements without war.

(3) Provisions tending to preserve the rights and interests of neutrals.

(4) Provisions tending to mitigate the evils of war to belligerents.

The relative importance of these classes of provisions should always be kept in mind. No rules should be adopted for the purpose of mitigating the evils of war to belligerents which will tend strongly to destroy the right of neutrals, and no rules should be adopted regarding the rights of neutrals which will tend strongly to bring about war. It is of the highest importance that not only the rights but the duties of neutrals shall be most clearly and distinctly defined and understood, not only because the evils which belligerent nations bring upon themselves ought not to be allowed to spread to their peaceful neighbors and inflict unnecessary injury upon the rest of mankind, but because misunderstandings regarding the rights and duties of neutrals constantly tend to involve them in controversy with one or the other belligerent.

For both of these reasons, special consideration should be given to an agreement upon what shall be deemed to constitute contraband of war. There has been a recent tendency to extend widely the list of articles to be treated as contraband; and it is probable that if the belligerents themselves are to determine at the beginning of a war what shall be contraband, this tendency will continue until the list of contraband is made to include a large proportion of all the articles which are the subject of commerce, upon the ground that they will be useful to the enemy. When this result is reached, especially if the doctrine of continuous voyages is applied at the same time, the doctrine that free ships make free goods and the doctrine that blockades in order to be binding must be effective, as well as any rule giving immunity to the property of belligerents at sea, will be deprived of a large part of their effect, and we shall find ourselves going backward instead of forward in the effort to prevent every war from becoming universally disastrous. The exception of contraband of war in the Declaration of Paris will be so expanded as to very largely destroy the effect of the declaration. On the other hand, resistance to this tendency toward the expansion of the list of contraband ought

not to be left to the neutrals affected by it at the very moment when war exists, because that is the process by which neutrals become themselves involved in war. You should do all in your power to bring about an agreement upon what is to constitute contraband; and it is very desirable that the list should be limited as narrowly as possible.

With these instructions there will be furnished to you copies of the diplomatic correspondence relating to the conference, the instructions to the delegates to the First Conference which are in all respects reaffirmed and their report, the international law discussions of the Naval War College of 1903, the report of the American delegates to the Conference of the American Republics at Rio de Janeiro in 1906, and the report of the American delegates to the Geneva Conference of 1906 for the revision of the Red Cross Convention of 1864.

Following the precedent established by the commission to the First Conference, all your reports and communications to this Government will be made to the Department of State for proper consideration and eventual preservation in the archives. The record of your commission will be kept by your secretary, Mr. Chandler Hale. Should you be in doubt at any time regarding the meaning or effect of these instructions, or should you consider at any time that there is occasion for special instructions, you will communicate freely with the Department of State by telegraph. It is the President's earnest wish that you may contribute materially to the effective work of the Conference and that its deliberations may result in making international justice more certain and international peace more secure.

I am, gentlemen, your obedient servant,

ELIHU ROOT.

REPORT TO THE SECRETARY OF STATE OF THE DELEGATES OF THE UNITED STATES TO THE SECOND HAGUE CONFERENCE[1]

HON. ELIHU ROOT,

SECRETARY OF STATE.

SIR: Pursuant to a request of the Interparliamentary Union, held at St. Louis in 1904, that a future peace conference be held and that the President of the United States invite all nations to send representatives to such a conference. the late Secretary of State, at the direction of the President, instructed, on October 21, 1904, the representatives of the United States accredited to each of the signatories to the acts of the Hague Conference of 1899 to present overtures for a

[1] *Foreign Relations of the United States,* 1907, pt. 2, p. 1144.

second conference to the ministers for foreign affairs of the respective countries.

The replies received to this circular instruction of October 21, 1904, indicated that the proposition for the calling of a second conference met with general favor. At a later period it was intimated by Russia that the initiator of the First Conference was, owing to the restoration of peace in the Orient, disposed to undertake the calling of a new conference to continue as well as to supplement the work of the first. The offer of the Czar to take steps requisite to convene a second international peace conference was gladly welcomed by the President, and the Final Act of the Conference only recites in its preamble the invitation of the President.

The Russian Government thus assumed the calling of the Conference, and on April 12, 1906, submitted the following program, which was acceptable to the Powers generally and which served as the basis of the work of the Conference:

1. Improvements to be made in the provisions of the Convention relative to the peaceful 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 war-ships.

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 cases 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.

The United States, however, reserved the right to bring to discussion two matters of great importance not included in the program, namely, the reduction or limitation of armaments and restrictions or limitations upon the use of force for the collection of ordinary public debts arising out of contracts.

It was finally decided that the Conference should meet at The Hague on the 15th day of June, 1907, and thus the Conference, proposed by the President of the United States, and convoked by Her Majesty the Queen of the Netherlands

upon the invitation of the Emperor of All the Russias, assumed definite shape and form.

It will be recalled that the First Peace Conference, although international, was not universal, for only a fraction of the Powers recognizing and applying international law in their mutual relations were invited to The Hague. The fact that the uninvited might adhere to the conventions was foreseen by the Conference itself, and the conventions concerning the laws and customs of land warfare and the adaptation to maritime warfare of the principles of the Geneva Convention of the 22d of August, 1864, provided that non-signatory Powers by adhering became admitted to the privileges as well as bound by the liabilities of the various conventions. The Convention for the peaceful adjustment of international difficulties (Art. 60) suggested eventual adherence of such countries, but made this conditioned upon an understanding to be reached by the contracting Powers.

In the circulars of October 21 and December 16, 1904, it was suggested as desirable to consider and adopt a procedure by which States non-signatory to the original acts of the Hague Conference may become adhering parties. This suggestion was taken note of by the Russian Government and invitations were issued to forty-seven countries, in response to which the representatives of forty-four nations assembled at The Hague and took part in the Conference. No opposition was made to the admission of the non-signatory States to the benefits of the Convention of 1899 for the peaceful adjustment of international difficulties, and on the 14th day of June, 1907, the signatories of the First Conference formally consented under their hands and seals to the adhesion of the non-signatory States invited to the Second Conference.

The delegation of the United States to the Conference was composed of the following members:

Commissioners plenipotentiary with the rank of ambassador extraordinary: Joseph H. Choate, of New York; Horace Porter, of New York; Uriah M. Rose, of Arkansas.

Commissioner plenipotentiary: David Jayne Hill, of New York, envoy extraordinary and minister plenipotentiary of the United States to the Netherlands.

Commissioners plenipotentiary with rank of minister plenipotentiary: Brig. Gen. George B. Davis, Judge-Advocate-General, U. S. Army; Rear-Admiral Charles S. Sperry, U. S. Navy; William I. Buchanan, of New York.

Technical delegate and expert in international law: James Brown Scott, of California.

Technical delegate and expert attaché to the commission: Charles Henry Butler, of New York.

Secretary to the commission: Chandler Hale, of Maine.

Assistant secretaries to the commission: A. Bailly-Blanchard, of Louisiana: William M. Malloy, of Illinois.

The Dutch Government set aside for the use of the Conference the Binnenhof, the seat of the States-General, and on the 15th day of June, 1907, at 3 o'clock in the afternoon, the Conference was opened by his Excellency the Dutch Minister for Foreign Affairs in the presence of delegates representing forty-four nations. In the course of his remarks his Excellency offered "a tribute of gratitude to the eminent statesman who controls the destinies of the United States of America. President Roosevelt has greatly contributed to harvest the grain sown by the august initiator of the solemn international Conferences assembled to discuss and to render more exact the rules of international law which, as the States are the first to recognize, should control their relations."

At the conclusion of the address of welcome his Excellency suggested as president of the Conference his Excellency M. Nelidow, first delegate of Russia, and, with the unanimous consent of the assembly, M. Nelidow accepted the presidency and delivered an address, partly personal, in which, in addition to thanking the conference for the honor of the presidency, he called attention to the work of the First Conference and outlined in a general way the underlying purpose of the Second Conference and the hopes of the delegates assembled. At the termination of his address he proposed the personnel of the secretary-general's office.

At the next meeting of the Conference, on the 19th day of June, the president proposed that the Conference follow the procedure of the First Conference, adapting it, however, to the new conditions; for, as the Conference was so large, it seemed advisable to draw up a series of rules and regulations to facilitate the conduct of business. The president thereupon proposed the following twelve articles, which were unanimously adopted, with the exception of the third paragraph of Article 8, which was suppressed:

ARTICLE 1. The Second Peace Conference is composed of all the plenipotentiaries and technical delegates of the Powers which have signed or adhered to the conventions and acts signed at the First Peace Conference of 1899.

ART. 2. After organizing its bureau, the Conference shall appoint commissions to study the questions comprised within its program.

The plenipotentiaries of the Powers are free to register on the lists of these commissions according to their own convenience and to appoint technical delegates to take part therein.

ART. 3. The Conference shall appoint the president and vice-presidents of each commission. The commissions shall appoint their secretaries and their reporter.

ART. 4. Each commission shall have the power to divide itself into subcommissions, which shall organize their own bureau.

ART. 5. An editing committee for the purpose of coördinating the acts adopted by the Conference and preparing them in their final form shall also be appointed by the Conference at the beginning of its labors.

ART. 6. The members of the delegations are all authorized to take part in the deliberations at the plenary sessions of the Conference as well as in

the commissions of which they form part. The members of one and the same delegation may mutually replace one another.

ART. 7. The members of the Conference attending the meetings of the commissions of which they are not members shall not be entitled to take part in the deliberations without being specially authorized for this purpose by the presidents of the commissions.

ART. 8. When a vote is taken each delegation shall have only one vote.

The vote shall be taken by roll-call, in the alphabetical order of the Powers represented.

[The delegation of one Power may have itself represented by the delegation of another Power.]

ART. 9. Every proposed resolution or desire to be discussed by the Conference must, as a general rule, be delivered in writing to the president, and be printed and distributed before being taken up for discussion.

ART. 10. The public may be admitted to the plenary sessions of the Conference. Tickets shall be distributed for this purpose by the secretary general with the authorization of the president.

The bureau may at any time decide that certain sessions shall not be public.

ART. 11. The minutes of the plenary sessions of the Conference and of the commissions shall give a succinct *résumé* of the deliberations.

A proof copy of them shall be opportunely delivered to the members of the Conference and they shall not be read at the beginning of the sessions.

Each delegate shall have a right to request the insertion in full of his official declarations according to the text delivered by him to the secretary, and to make observations regarding the minutes.

The reports of the commissions and subcommissions shall be printed and distributed before being taken up for discussion.

ART. 12. The French language is recognized as the official language of the deliberations and of the acts of the Conference.

The secretary general shall, with the consent of the speaker himself, see that speeches delivered in any other language are summarized orally in French.

The president stated that the program for the work of the Conference was so elaborate that a division of the Conference into four commissions would be advisable; that in so doing the precedent of 1899 would be followed, for the First Conference apportioned the subjects enumerated in the program among three commissions. The following dispositions were thereupon proposed and agreed to:

FIRST COMMISSION

Arbitration.
International commissions of inquiry and questions connected therewith.

SECOND COMMISSION

Improvements in the system of the laws and customs of land warfare.
Opening of hostilities.
Declarations of 1899 relating thereto.
Rights and obligations of neutrals on land.

THIRD COMMISSION

Bombardment of ports, cities, and villages by a naval force.

Laying of torpedoes, etc.

The rules to which the vessels of belligerents in neutral ports would be subjected.

Additions to be made to the Convention of 1899 in order to adapt to maritime warfare the principles of the Geneva Convention of 1864, revised in 1906.

FOURTH COMMISSION

Transformation of merchant vessels into war vessels.

Private property at sea.

Delay allowed for the departure of enemy merchant vessels in enemy ports.

Contraband of war. Blockades.

Destruction of neutral prizes by *force majeure.*

Provisions regarding land warfare which would also be applicable to naval warfare.

The president thereupon proposed as presidents or chairmen of the various committees the following delegates:

First commission: M. Léon Bourgeois.

Second commission: M. Beernaert; assistant president, M. T. M. C. Asser.

Third commission: Count Tornielli.

Fourth commission: M. de Martens.

At the same time the president designated as honorary presidents of the third and second commissions Messrs. Joseph H. Choate and Horace Porter, and as a member of the correspondence committee Hon. Uriah M. Rose. The president recommended that the deliberations be kept secret, or, at least, that they be not communicated by members to the press. The recommendation was unanimously adopted, but was not universally adhered to by the delegates.

The first, second, and third commissions were subsequently divided into sub-commissions in order to reduce the numbers and to facilitate the work, and at various times committees of examination were appointed by each of the commissions in order still further to reduce membership and to present in acceptable form projects accepted in principle but not in detail by the various commissions. Finally, in order to correct the language and to assign the various projects already approved to their proper place in the Final Act, a large editing committee (*comité de rédaction*) was appointed at a meeting of the Conference and a sub-committee was appointed, consisting of eight members, to do the work of the large committee and report to it. It may be said that the American delegation was represented on almost all of these verious committees and subcommittees.

The actual work of the Conference was, therefore, done in commission and committee. The results, so far as the several commissions desired, were reported to the Conference sitting in plenary session for approval, and, after approval, sub-

mitted to the small subediting committee for final revision, which, however, affected form, not substance. The results thus reached were included in the Final Act and signed by the plenipotentiaries on the 18th day of October, 1907, upon which date the Conference adjourned.

The positive results of the Conference might be set forth, with perhaps equal propriety, in either one of two ways: First, by discussing the work of each commission and the results accomplished by each, or, secondly, by enumerating and describing the results in the order in which they appear, arranged by the Conference itself, in the Final Act. The first method would have the advantage of showing the work of each commission as a whole from the presentation of the various projects until they took final shape in the commission and were approved by the Conference in plenary session. As, however, important projects were considered by the commission, but were not voted upon by the Conference, or, if voted in a form so modified as to appear almost in the nature of original propositions, and inasmuch as the various conventions and measures adopted are arranged in the Final Act without specific reference to the commissions, it seems advisable to follow the order of the Final Act, so that each measure may occupy the place in the report which was assigned to it by the conference itself. This arrangement will bring into prominence the result rather than the means by which the result was reached, and will prevent in no slight measure repetition and duplication.

Following then the order of the Final Act, the various conventions, declarations, resolutions, and recommendations are prefaced by an apt paragraph setting forth the spirit which animated the conference:

> In a series of reunions, held from June 15 to October 18, 1907, in which the delegates aforesaid have been constantly animated by the desire to realize in the largest measure possible the generous views of the august initiator of the Conference and the intentions of their Governments, the conference adopted, to be submitted to the signatures of the plenipotentiaries, the text of the conventions and of the declaration hereinafter enumerated and annexed to the present act.

The final act then enumerates fourteen subjects, thirteen of which are conventions and one is a declaration. Of each of these in turn.

I.—CONVENTION FOR THE PEACEFUL ADJUSTMENT OF INTERNATIONAL DIFFERENCES

This convention is, both in conception and execution, the work of the First Peace Conference, of 1899, but the eight years which have elapsed since its adoption suggested many improvements and modifications and not a few additions. The extent of the changes will be evident from the mere statement that while the convention of 1899 contained sixty-one articles, the revision of 1907 contains ninety-seven articles. But these figures throw no light upon the nature and im-

portance of the changes. The structure of 1899, however, practically remains intact, the chief addition being the provision for summary procedure proposed by the French delegation and accepted by the conference. (Title IV, Chapter IV, arts. 86-90.) All important changes which tended either to enlarge the scope of the convention or to facilitate its application, thereby rendering it more useful, will be discussed in detail in the order of the convention.

Articles 2 to 8 of Title II of the revised convention deal with good offices and mediation, and in this title there is only one change of importance, namely, the insertion of the word "desirable" in Article 3, so that the extension of good offices by Powers strangers to the conflict is considered not merely useful, as in the convention of 1899, but desirable, as revised by the conference of 1907. The change is perhaps slight, but the Powers might well consider a thing useful and yet consider it undesirable. It may well be that the word "desirable" is a step toward moral duty and that in time it may give rise to legal obligation. The same may be said of the insertion of the word "desirable" in Article 9, making the recourse to the international commission of inquiry desirable as well as useful. Both additions were proposed by the American delegation and accepted unanimously by the conference. In this connection it may be advisable to note that a like change has been made upon the proposal of Austria-Hungary in the revision of Article 16 of the original convention, so that the arbitration of judicial questions and questions of interpretation and application of international conventions is declared to be not only efficacious and equitable but desirable. (Art. 38.)

Title III in both the original and revised conventions deals with international commissions of inquiry; but while the convention of 1899 contained but six articles (9-14, inclusive), the revision contains twenty-eight. A little reflection shows the reason for the great care and consideration bestowed upon the commission of inquiry by the recent conference. In 1899 an institution was created which was hoped would be serviceable. In 1907 the creation was revised and amplified in the light of practical experience, for the institution, theoretically commendable, had justified its existence at a very critical moment, namely, by the peaceful settlement of the Dogger Bank incident (1904). The provisions of 1899 were meager and insufficient to meet the needs of a practical inquiry. In 1907 the procedure actually adopted by the commission of inquiry was presented to the conference, studied, considered, and made the basis of the present rules and regulations. The nature of the commission of inquiry is, however, unchanged. It was and is an international commission charged with the duty of ascertaining the facts in an international dispute, and its duty is performed when the facts in controversy are found. It does not render a judgment, nor does it apply to the facts found a principle of law, for it is not a court. (Art. 35.)

The seat of the commission is The Hague, but the parties may provide in the agreement of submission that the commission meet elsewhere (Art. 11), or the commission may, after its formation and during its session at The Hague, trans-

port itself, with the consent of the parties, to such place or places as may seem appropriate to ascertain the facts in controversy. The parties litigant not only bind themselves to furnish to the commission of inquiry, in the largest measure possible, the means and facilities necessary for the establishment of the facts, but the contracting Powers agree to furnish information in accordance with their municipal legislation unless such information would injure their sovereignty or security.

As previously said, the First Conference created the commission of inquiry, but left it to the parties to the controversy to fix the procedure, specifying only that upon the inquiry both sides be heard. If the procedure were not established in advance by the litigating Powers, it was then to be devised by the commission. (Art. 10.) The disadvantages of this provision are apparent. The parties, inflamed by passion or ill at ease, were, upon the spur of the moment, to devise an elaborate code of procedure, a task which might well be as difficult as to ascertain the facts in dispute. In the next place, if they did not do so, the commission was to fix the procedure. That this task might well be entrusted to the commission is proved by the fact that the commission of 1904 did in fact devise a satisfactory code. But the procedure thus framed could not be known to the litigating countries in advance, and the agents and counsel were thus deprived of the opportunity of familiarizing themselves with it before entering upon the case.

The revision of 1907, therefore, aims to obviate this difficulty by establishing a careful code of procedure based upon the experience of the commission of 1904. It is practical in its nature, for it is based upon actual practice. It provides in advance the procedure of the commission, thus relieving the parties from this serious task and leaving the commission free to begin its labors without the necessity of drawing up an elaborate system of rules and regulations for the conduct of business before it. The procedure, however, is not obligatory, for the parties may, if they choose, specify in the submission the procedure to be followed (Art. 10), but the Conference recommended a code of procedure which was to be applied if the parties did not adopt other rules (Art. 17). The revision of the title devoted to international commissions of inquiry received the unanimous approval of the Conference.

The selection of commissioners is, and must always be, a matter of delicacy and difficulty. Facts as seen by one person differ from those as seen by another, and national interest tends unconsciously to warp the judgment of one whose country is involved in the controversy. But the value of the findings of fact depends upon their accuracy. If possible, they should be found by a tribunal from which nationals are excluded. The world does not seem to be ready for this ideal solution, but the conference made a serious step toward it by associating strangers to the controversy with the commissioners. Article 12 of the revised Convention for the peaceful adjustment of international differences provides that the commissioners of inquiry, in the absence of a special agreement to the con-

trary, shall be chosen in accordance with Articles 45 and 57 of the revised Convention. These articles read as follows:

> ART. 45. When the contracting Powers desire to have recourse to the Permanent Court for the settlement of a difference that has arisen between them, the arbitrators called upon to form the competent tribunal to decide this difference must be chosen from the general list of members of the Court.
>
> Failing the agreement of the parties on the composition of the arbitration tribunal, the following course shall be pursued:
>
> Each party appoints two arbitrators, of whom only one shall be its citizen or subject, or chosen from among those who have been designated by it as members of the Permanent Court. These arbitrators together choose an umpire.
>
> If the votes are equal, the choice of the umpire is entrusted 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 these two Powers have been unable to agree within a period of two months, each of them presents two candidates taken from the list of the members of the Permanent Court, outside of the members designated by the parties and not being the citizens or subjects of either of them. It shall be determined by lot which of the candidates thus presented shall be the umpire.
>
> ART. 57. The umpire is by right president of the tribunal.
>
> When the tribunal does not include an umpire, it appoints its own president.

A consideration of Article 45 discloses that at least one of the commissioners or arbitrators shall be a stranger to the controversy. Article 32 of the convention of 1899 left both commissioners or arbitrators to the free choice of the selecting Power. In the next place, it will be noted that the revised convention endeavors to secure the composition of the commission or court by providing ample machinery for the selection of the umpire. In the convention of 1899, in case of an equality of votes, the selection of the umpire was confided to a third Power designated by the common accord of the parties to the controversy. If, however, the parties failed to agree upon the third Power in question, each litigant chose a neutral Power, and these neutral Powers selected the umpire. It might well happen, however, that the agents would be as far from agreement as the principals. The revision therefore provided that in case of disagreement each litigant Power should select two members from the list of the Permanent Court, who should neither be citizens nor owe their appointment to a designating Power; that thereupon the umpire should be chosen by lot from the members of the court so designated.

It will therefore be seen that the commission or court will consist of a body of five, at least two of whose members must be strangers to the controversy.

The umpire selected by their common accord may be indifferent. If the commissioners or arbitrators fail to agree and make use of the machinery provided, it follows that the umpire selected is a stranger to the controversy, and of the commission or court consisting of five competent persons a majority, that is to say, three, would be persons having no national interest or bias in the controversy. It would seem, therefore, that the revised convention offers a guaranty for the finding of the facts as impartially as can be the case when national representatives are members of a small commission or court. As these provisions apply to the selection of arbiters for the constitution of the court at The Hague, it is not necessary to refer to them again in detail.

Article 48 of the revision of the convention of 1899 reads as follows:

> The signatory 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 conflicting parties 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.

To these two paragraphs was added the following provision:

> In case of a controversy between two Powers, one of them may always address to the International Bureau a note containing its declaration that it is willing to submit the difference to arbitration.
>
> The Bureau shall immediately make the declaration known to the other Power.

The American delegation of 1899 made the following reserve regarding this article, and the American delegation of 1907 repeated the reserve in the exact language of 1899:

> Nothing contained in this Convention shall be so construed as to require the United States of America to depart from its traditional policy of not entering upon, interfering with, or entangling itself in the political questions or internal administration of any foreign State, nor shall anything contained in the said Convention be so construed as to require the relinquishment, by the United States of America, of its traditional attitude toward purely American questions.

The changes regarding the Permanent Court of Arbitration, as in the case of the commission of inquiry, relate chiefly to procedure. In this, as in the previous case, the amendments were the result of experience gained in the actual trial of cases.

In the first place, Article 52, a revision of Article 31, provides that the agreement to arbitrate (the *compromis*) shall specify in detail the period for the

appointment of the arbitrators, the form, order, and periods within which the various documents necessary to the arbitration shall be communicated (Art. 63), the amount of money which each party shall deposit in advance to cover expenses. In addition, the agreement to arbitrate shall also, if there is occasion, determine the manner of appointment of the arbitrators, all special powers which the tribunal may have, its seat, the language which it will use and those whose use will be authorized before it, and, in general, all the conditions which the parties have agreed upon.

It is often difficult to formulate the question to be submitted to the Court, and it may well be that the parties litigant, although willing to arbitrate, may not agree upon the form of submission. In order, therefore, to aid the parties, not to coerce them, the revised convention provides a method by which the Permanent Court is competent to draw up the agreement to arbitrate if the parties agree to leave it to this Court. It may happen that one party is willing and the other is not. The convention therefore provided that in such a case the court might, upon the request of one of the parties, formulate the *compromis*. The exact language of the article follows:

> After an agreement through diplomatic channels has been attempted in vain it is likewise competent, even if the request is made by only one of the parties in case—
>
> (1) Of a difference comprised within a general arbitration treaty concluded or renewed after this convention goes into force, providing an agreement to arbitrate for each difference, and neither explicitly nor implicitly barring the competency of the Court to draw up such agreement to arbitrate. However, recourse to the Court shall not be had if the other party declares that the difference does not in its opinion belong to the category of differences to be submitted to compulsory arbitration—unless the arbitration treaty confers upon the arbitral tribunal the power to decide this preliminary question.
>
> (2) Of a difference arising from contractual debts claimed by one Power of another Power as being due to its citizens or subjects, and for the solution of which the offer of arbitration has been accepted. This provision is not applicable if the acceptance has been made contingent on the condition that the agreement to arbitrate shall be drawn up in another manner.

If the other party consents, and the moral pressure will be great, the special agreement may be reached in this manner; but as the Court is not permanently in session and would have to be constituted for the express purpose of formulating the agreement, it follows that the agreement must in reality be the result of the consent of both parties, because the Court can only be constituted by the joint act and coöperation of both parties litigant. It is supposed, however, that the presence of such a possibility may lead disputants to reach a conclusion, even although they do not care to avail themselves of the machinery provided.

It should be noted that the second section of Article 53 refers to the arbitration of differences arising from contractual debts. As the agreement to renounce the use of force depends upon arbitration, and as arbitration is impossible without the preliminary agreement of submission, it may happen that a failure to agree would destroy, in large measure, the value of the convention. It is hoped that the provisions of this article will enable the agreement to be formulated in extreme cases and thus exclude even the suggestion of force.

The other changes made in the procedure are important, but are not of a nature to cause discussion or comment, because they facilitate but do not otherwise modify the proceedings before the Court.

Chapter IV of the revised convention deals with summary arbitration proceedings. Experience shows that it is difficult to constitute the Permanent Court, and that a trial before it is lengthy as well as costly. The Conference, therefore, adopted the proposal of the French delegation to institute a court of summary procedure, consisting of three judges instead of five, with a provision that the umpire, in case of disagreement, be selected by lot from members of the permanent court strangers to the controversy. The proceedings are in writing, with the right of each litigant to require the appearance of witnesses and experts. It was hoped that a small court with a summary procedure might lead nations to submit cases of minor importance and thus facilitate recourse to arbitration and diminish its expense.

From this brief survey of the amendments to the Convention for the peaceful adjustment of international differences it will be seen that they are not in themselves fundamental, that they do not modify the intent or purpose of the original convention, but that they render the institution of 1899 more efficient in the discharge of its duties. The American delegation, therefore, assisted in the work of revision and signed the convention.

II.—CONVENTION CONCERNING THE LIMITATION OF THE EMPLOYMENT OF FORCE IN THE COLLECTION OF CONTRACT DEBTS

This convention is composed of but two paragraphs, and in simplest terms provides for the substitution of arbitration for force in the collection of contractual debts claimed of the Government of one country by the Government of another country to be due to its nationals. The renunciation of the right to use force is explicit, but to receive the full benefit of this renunciation the debtor must in good faith accept arbitration. Should the parties be unable, or should it be difficult, to formulate the special agreement necessary for the submission of the case, resort may be had to the Permanent Court for the establishment of the special agreement (*compromis*) in accordance with Article 53 of the Convention for the peaceful adjustment of international differences.

Finally, the arbitration shall determine, in the absence of agreement between

the parties, the justice and the amount of the debt, the time and the mode of payment thereof. It would seem, therefore, that this convention of but two articles will prevent a recourse to force in the future for the collection of contract debts. It should not be overlooked that the agreement to arbitrate is obligatory upon debtor as well as creditor and that the acceptance of the convention is a triumph for the cause of arbitration. It is true that the right to use force was only renounced conditioned upon an arbitration of the indebtedness, but it is not too much to say that the debtor nation may henceforth protect itself from the danger of force and that the application or non-application of force really depends upon the good faith of the debtor. This convention was introduced by the American delegation and adopted by the Conference.

III.—CONVENTION RELATIVE TO THE OPENING OF HOSTILITIES

The convention is very short and is based upon the principle that neither belligerent should be taken by surprise and that the neutral shall not be bound to the performance of neutral duties until it has received notification, even if only by telegram, of the outbreak of war. . . .

IV.—CONVENTION CONCERNING THE LAWS AND CUSTOMS OF WAR ON LAND

The Conference of 1899 codified the laws of warfare on land within the compass of sixty articles, to which was prefaced an introduction of a formal nature consisting of five articles. The recent Conference revised the convention of 1899, modified it in parts, and added various provisions in order to render the codification as complete and thorough, as accurate and scientific, as the changeable nature of the subject will permit. Following the arrangement of 1899, the revised convention contains several introductory articles, one of which will be discussed later. The various modifications and the additions of the revised convention will be briefly set forth in the order of the convention. . . .

V.—CONVENTION CONCERNING THE RIGHTS AND DUTIES OF NEUTRAL POWERS AND PERSONS IN LAND WARFARE

This convention is divided into five chapters, dealing, respectively, with the rights and duties of neutral Powers (Arts. 1–10), prisoners and wounded in neutral territory (Arts. 11–15), neutral persons (Arts. 16–18), railroad material (Art. 19), and, finally, dispositions of a formal nature. . . .

VI.—CONVENTION REGARDING THE ENEMY'S SHIPS OF COMMERCE AT THE BEGINNING OF HOSTILITIES

The uninterrupted practice of belligerent Powers since the outbreak of the Crimean war has been to allow enemy merchant vessels in their ports at the

outbreak of hostilities to depart on their return voyages. The same privilege has been accorded to enemy merchant vessels which sailed before the outbreak of hostilities, to enter and depart from a belligerent port without molestation on the homeward voyage. It was therefore the view of the American delegation that the privilege had acquired such international force as to place it in the category of obligations. Such, indeed, was the view of a majority of the Conference, but as the delegation of Great Britain adhered to the opinion that such free entry and departure was a matter of grace, or favor, and not one of strict right, the articles regard it as a delay by way of favor and refer to the practice as desirable. . . .

The foregoing convention was not signed by the delegation, and its acceptance as a conventional obligation is not recommended.

VII.—CONVENTION FOR REGULATING THE TRANSFORMATION OF VESSELS OF COMMERCE INTO VESSELS OF WAR

The delegation found no objection to the requirements of the foregoing convention in so far as its application to the transformation of purchased or chartered vessels into public armed vessels is concerned. . . .

. . . In view of the constitutional origin and nature of the right to grant letters of marque and reprisal, and in view of the fact that this right has been exercised by Congress, it seemed to the American delegation inadvisable to seek to bind the United States by conventional stipulations.

VIII.—CONVENTION IN REGARD TO THE PLACING OF SUBMARINE MINES

The question of imposing restrictions upon the employment of submarine mines gave rise to extensive discussion and was made the subject of numerous propositions. Some of these were adopted and some were rejected by the Conference. . . .

The convention as adopted by the conference in plenary session was generally acceptable to maritime Powers and was approved by the delegation of the United States.

IX.—CONVENTION CONCERNING THE BOMBARDMENT OF UNDEFENDED PORTS, CITIES, AND VILLAGES BY NAVAL FORCES IN TIME OF WAR

The question which the Conference undertook to regulate by a convention might be considered academic were it not for the fact that the possibility of the bombardment of undefended ports, cities, and villages has been suggested and fear expressed that it be carried into practice. It is therefore advisable to prevent in express terms the occurrence of such bombardments; a precedent exists, and the convention brings the rules of land and naval warfare into exact harmony. . . .

From the humanitarian standpoint the convention is desirable, and it is difficult to see how naval operations can suffer by the observance of the conventional

restrictions. The American delegation, therefore, approved and signed the convention.

X.—CONVENTION FOR THE ADAPTATION OF THE PRINCIPLES OF THE GENEVA CONVENTION TO MARITIME WAR

It is the purpose of this convention to replace the corresponding requirements of the maritime convention of July 29, 1899, in respect to the care and treatment of the sick and wounded in maritime warfare. . . .

XI.—CONVENTION WITH REGARD TO CERTAIN RESTRICTIONS UPON THE RIGHT OF CAPTURE IN MARITIME WAR

This convention marks an important step in advance, in that it confers an immunity from capture upon all postal correspondence, public or private, carried as mail on a neutral or enemy vessel. The parcels post is excepted or, to speak more correctly, is not expressly included in the conventional immunity. The carrying vessel is not exempt from seizure in a proper case, but in the event of capture the belligerent becomes charged with the duty of forwarding the mails to their destination "with the least possible delay." . . .

XII.—CONVENTION REGARDING THE ESTABLISHMENT OF AN INTERNATIONAL PRIZE COURT

The details of this convention, as would be expected in an act organizing an international prize court, are complicated. The fundamental principle, however, is simple, namely, that the court of the captor should not pass ultimately upon the propriety or impropriety of a seizure made by the national authorities of which the judge is a subject or citizen; in other words, that one should not be judge in his own cause. It is stated by judges of the highest repute, the great Lord Stowell among the number, that a prize court is an international court, although sitting within the captor's territory and established in pursuance of the rules and regulations issued by the captor; that the law administered in such a court is international law; and that the judgment of the court, in the absence of fraud, is universally binding. This may be the theory, although it seems much like a fiction, for the fact is that prize courts or courts exercising prize jurisdiction are constituted by the municipal authorities; that the judges are appointed, as other municipal judges, by the sovereign power of the State; that the law administered in the court whether it be largely international in its nature or not, is the municipal or the prize law of the appointing country, and that the judgment delivered has the essential qualities of a national judgment. Even if the court were strictly international, the judge is, nevertheless, a citizen or subject of the captor, and national prejudices, bias, or an indisposition to thwart the settled policy of his country must insensibly influence the judge in the formation of his opinion.

The presumption is in favor of the validity of the capture; upon the neutral is imposed the hard and difficult task to overcome this presumption, and the frequency with which judgments of courts of prize, even of the highest and most respectable courts, have been protested through diplomatic channels and the questions submitted anew to the examination of mixed commissions and decided adversely to the captor, would seem to establish beyond reasonable doubt that, international in theory, they are national in fact and lack the impartiality of an international tribunal. Nor are instances lacking of the submission of questions to a mixed commission which have been passed upon by the Supreme Court of the United States sitting as a court of appeal in prize cases and in which the United States has by virtue of an adverse decision of a mixed commission reimbursed the claimants. Reference is made by way of example to the well-known case of *The Circassian* ([1864] 2 Wall., 135, 160), in which the British and American mixed commission made awards in favor of all the claimants. (4 Moore's *International Arbitrations,* pp. 3911–3923.)

The purpose, then, of the convention is to substitute international for national judgment and to subject the decision of a national court to an international tribunal composed of judges trained in maritime law. It was not the intention of the framers of the convention to exclude a judge of the captor's country whose presence on the bench would ensure a careful consideration of the captor's point of view, but to make the decision of the case depend upon strangers to the controversy who, without special interest and national bias, would apply in the solution of the case international law and equity. The national judgment becomes international; the judgment of the captor yields to the judgment of the neutral, and it can not be doubted that neutral Powers are more likely to guard the rights of neutrals than any bench composed exclusively of national judges.

It is not to be presumed, however, that the judgment of the captor will be biased or, if the judgment of the court of first instance be incorrect, that its judgment will not be reversed on appeal to the higher court. It can not be supposed that a judgment of a district court of the United States, if improper, would be affirmed by the Supreme Court of the United States; and it may safely be assumed that few litigants would care to carry a case from the Supreme Court of the United States to an international court, wherever and however established. Delay and expense would militate against it, the known impartiality and the reputation of the Supreme Court would counsel against it, and it would only be an extreme case and one of great importance that would induce private suitor or National Government to seek a reexamination of the case before an international court.

The American delegation was unwilling to allow an appeal directly from the district court to the international court, as in the original German project, holding that the captor's court of appeal should be given the opportunity to correct or revise a judgment and that if a case be submitted to the international court that

court would derive inestimable benefit from a careful consideration of the judgment of the Supreme Court. The project was amended so as to permit one national appeal, out of consideration to the objections of the United States and Great Britain, and when so amended was acceptable to both.

The provisions of Article 46 are of importance in this connection. This article provides, briefly, that each party pays its own expenses; the defeated party the expenses of the procedure and in addition pays into the court 1 per cent. of the value of the object in litigation to the general expenses of the court. Finally, if the suitor be not a sovereign State, but a private individual, a bond may be exacted by the court to guarantee the expenses above mentioned as a condition of taking jurisdiction. It needs no further argument to show that a case is not likely to be presented to the international court unless the amount or principle involved justifies the submission.

Admitting, however, the possibility of appeal, it is important, in the interest of international justice as well as in the interest of the individual suitor, that there be an end of litigation and that the principle of law applicable to the concrete case be established in a judicial proceeding. It is therefore provided that the appeal from the court of first instance to the national court of appeal shall have been perfected and the case decided within two years from the date of capture, which period was acceptable to Great Britain, a joint proposer with Germany, notwithstanding the fact that the appeal might be from a British vice-admiralty court situated in a remote quarter of the globe. An examination of all the appeals taken from the judgments of district courts in cases arising out of the late Spanish-American war shows that this period of time was adequate for the ultimate disposition of those cases before the Supreme Court of the United States. The period, therefore, was satisfactory to the American delegation. But it might happen that the case was not settled either in the court of first instance or in the national court of appeal within the conventional period of two years. In such a case it is provided that the case may be transferred from the national court and submitted to the International Court of Prize at The Hague. Should these provisions commend themselves generally, cases will be decided promptly by national courts, and the ultimate decision of the International Court, if one there is to be, will be handed down before the suitor is broken in fortune and years.

The proposed Court is to consist of fifteen judges, of whom nine shall constitute the quorum necessary for the transaction of business. (Art. 14.) They are to be chosen from among jurists of recognized competency in questions of international maritime law and should possess the highest moral consideration. They are to be nominated for a period of six years, and their appointment may be renewed. Of the fifteen judges, eight countries possess the right to nominate each a judge to serve for the full period of six years. In the alphabetical order of the French names these countries are Germany, the United States of America,

Austria-Hungary, France, Great Britain, Italy, Japan, and Russia. The remaining seven judges are appointed for a like period of six years, but exercise their functions as judge within a shorter period, the length of active service depending largely upon the commercial and maritime importance of the various nations, their supposed interest in the questions likely to come before the court, and the frequency with which they may appear as suitors. The exact manner in which and the periods during which all the other judges shall be called to exercise their functions appear from the table annexed to the convention and made a part thereof. (Art. 15.) Any classification is bound to be more or less arbitrary, and its acceptance demands no little sacrifice on the part of the State which possesses less than the full representation. It was felt that the continuous presence in the Court of judges representing the eight States mentioned would form a nucleus of trained judges and that the weight and authority of these judges based upon training and experience would counterbalance the disadvantage of the changes introduced in the Court by the successive participation of representatives of different countries.

As the proposed Court is to be international and is to be established primarily to settle peaceably and by judicial methods controversies arising between State and State involving the validity of capture, the sovereign States whose interests are involved in the controversy may appear before the Prize Court just as such sovereign States in other than prize matters may and do actually appear before an arbitration tribunal. It may thus be that sovereign States will ordinarily be parties plaintiff and defendant.

It may, however, happen that a State does not wish to espouse the cause of its citizen, although convinced that an injustice has been committed. In such a case it would seem to be eminently proper that the injured individual should himself appear before the Court and litigate the question. The fourth article of the convention invests an individual claimant with such right; but, lest the exercise of the right may prove embarrassing to the State, the same article makes this right depend upon the permission of the State whereof the claimant is a subject or citizen, and acknowledges the right of such State either to prevent his appearance or to appear on behalf of such subject or citizen. It is thus seen that whether the State is party litigant or not, it reserves fully the right to control the litigation.

The jurisdiction of the proposed Court is dealt with in Article 7, the translation of which is as follows:

> If the question of law to be decided is provided for by a convention in force between the belligerent captor and the Power which is itself a party to the controversy or whose citizen or subject is a party thereto, the International Court shall conform to the stipulation of the said convention.
>
> In the absence of such stipulations, the international court shall apply the rules of international law. If generally recognized rules do not exist, the court shall decide in accordance with general principles of justice and equity.
>
> The foregoing provisions shall apply with regard to the order of admis-

sion of evidence as well as to the means which may be employed in adducing it.

If, in accordance with Article 3, No. 2 *c*, the appeal is based on the violation of a legal provision enacted by the belligerent captor, the Court shall apply this provision.

The Court may leave out of account statutes of limitation barring procedure according to the laws of the belligerent captor, in case it considers that the consequences thereof would be contrary to justice and equity.

It can not be denied that the question of the jurisdiction of the Court is not only of general interest, but of fundamental importance to the contracting parties. The first clause of the article calls attention to conventional stipulations which if establishing rules of law, shall be binding upon the Court in controversies between parties to the convention. It was hoped that the provisions of prize law likely to give rise to controversies would be codified by the Conference and that, therefore, there would be a conventional law prescribed by the Conference for the proposed Court. A general agreement was not, however, reached.

The jurisdiction of the Court, as set forth in Article 7, was proposed by Great Britain, and accepted by the Conference as interpreted by the learned and distinguished reporter, Mr. Louis Renault, from whose elaborate report the following weighty passages are quoted as the best contemporary interpretation of the article:

What rules of law will the new Prize Court apply?

This is a question of the greatest importance, the delicacy and gravity of which can not be overlooked. It has often claimed the attention of those who have thought of the establishment of an international jurisdiction on the subject we are considering.

If the laws of maritime warfare were codified, it would be easy to say that the International Prize Court, the same as the national courts, should apply international law. It would be a regular function of the international court to revise the decisions of the national courts which had wrongly applied or interpreted the international law. The international courts and the national courts would decide in accordance with the same rules, which it would be supposed ought merely to be interpreted more authoritatively and impartially by the former courts than by the latter. But this is far from being the case. On many points, and some of them very important ones, the laws on maritime warfare are still uncertain, and each nation formulates them according to its ideas and interests. In spite of the efforts made at the present Conference to diminish these uncertainties, one can not help realizing that many will continue to exist. A serious difficulty at once arises here.

It goes without saying that where there are rules established by treaty, whether they are general or are at least common to the nations concerned in the capture (the captor nation and the nation to which the vessel or cargo seized belongs), the International Court will have to conform to these rules. Even in the absence of a formal treaty, there may be a recognized customary rule which passes as a tacit expression of the will of the nations. But what will happen if the positive law, written or customary, is silent? There ap-

pears to be no doubt that the solution dictated by the strict principles of legal reasoning should prevail. Wherever the positive law has not expressed itself, each belligerent has a right to make his own regulations, and it can not be said that they are contrary to a law which does not exist. In this case, how could the decision of a national prize court be revised when it has merely applied in a regular manner the law of its country, which law is not contrary to any principle of international law? The conclusion would therefore be that in default of an international rule firmly established, the International Court shall apply the law of the captor.

Of course it will be easy to offer the objection that in this manner there would be a very changeable law, often very arbitrary and even conflicting, certain belligerents abusing the latitude left them by the positive law. This would be a reason for hastening the codification of the latter in order to remove the deficiencies and the uncertainties which are complained of and which bring about the difficult situation which has just been pointed out.

However, after mature reflection, we believe that we ought to propose to you a solution, bold to be sure, but calculated considerably to improve the practice of international law. "If generally recognized rules do not exist, the Court shall decide according to the general principles of justice and equity." It is thus called upon to create the law and to take into account other principles than those to which the national prize court was required to conform, whose decision is assailed by the International Court. We are confident that the judges chosen by the Powers will be equal to the task which is thus imposed upon them, and that they will perform it with moderation and firmness. They will interpret the rules of practice in accordance with justice without overthrowing them. A fear of their just decisions may mean the exercise of more wisdom by the belligerents and the national judges, may lead them to make a more serious and conscientious investigation, and prevent the adoption of regulations and the rendering of decisions which are too arbitrary. The judges of the international court will not be obliged to render two decisions contrary to each other by applying successively to two neutral vessels seized under the same conditions different regulations established by the two belligerents. To sum up, the situation created for the new prize court will greatly resemble the condition which has long existed in the courts of countries where the laws, chiefly customary, were still rudimentary. These courts made the law at the same time that they applied it, and their decisions constituted precedents, which become an important source of the law. The most essential thing is to have judges who inspire perfect confidence. If, in order to have a complete set of international laws, we were to wait until we had judges to apply it, the event would be a prospective one which even the youngest of us could hardly expect to see. A scientific society, such as the Institute of International Law, was able, by devoting twelve years to the work, to prepare a set of international regulations on maritime prizes in which the organization and the procedure of the international court have only a very limited scope. The community of civilized nations is more difficult to set on foot than an association of jurisconsults; it must be subject to other considerations or even other prejudices, the reconcilement of which is not so easy as that of legal opinions. Let us therefore agree that a court composed of eminent judges shall be entrusted with the task of supplying the

deficiencies of positive law until the codification of international law regularly undertaken by the Governments shall simplify their task.

The ideas which have just been set forth will be applicable with regard to the order of admission of evidence as well as to the means which may be employed in gathering it. In most countries arbitrary rules exist regarding the order of admission of evidence. To use a technical expression, upon whom does the burden of proof rest? To be rational one would have to say that it is the captor's place to prove the legality of the seizure that is made. This is especially true in case of a violation of neutrality charged against a neutral vessel. Such a violation should not be presumed. And still the captured party is frequently required to prove the nullity of the capture, and consequently its illegality, so that in case of doubt it is the captured party (the plaintiff) who loses the suit. This is not equitable and will not be imposed upon the International Court.

What has just been said regarding the order of evidence also applies to the means of gathering it, regarding which more or less arbitrary rules exist. How can the nationality, ownership, and the domicile be proven? Is it only by means of the ship's papers, or also by means of documents, produced elsewhere? We believe in allowing the Court full power to decide.

Finally, in the same spirit of broad equity, the Court is authorized not to take into account limitations of procedure prescribed by the laws of the belligerent captor, when it deems that the consequences thereof would be unreasonable. For instance, there may be provisions in the law which are too strict with regard to the period for making appeal or which enable a relinquishment of the claim to be too easily presumed, etc.

There is a case in which the International Court necessarily applies simply the law of the captor, namely, the case in which the appeal is founded on the fact that the national court has violated a legal provision enacted by the belligerent captor. This is one of the cases in which a subject of the enemy is allowed to appeal. (Art. 3, No. 2 *c*, at end.)

Article 7, which has thus been commented upon, is an obvious proof of the sentiment of justice which animates the authors of the draft, as well as of the confidence which they repose in the successful operation of the institution to be created.

The expediency of the establishment of the Prize Court must naturally be determined by those entrusted with such matters. The question of the constitutionality of the proposed international court of prize as a treaty court would seem to be precluded by the decision of the Supreme Court of the United States in *Re Ross* (140 U. S., 453). Indeed, it would seem that that may well be done generally which may be done singly or individually and that the submission of prize cases to an international court of appeal definitely constituted and in session is a wiser, safer, and more commendable practice than to submit questions of prize law to a mixed commission which may, as happened in the past, decide contrary to the Supreme Court of the United States.

In view, therefore, of the advantages of a permanent court to which an appeal may be taken, and in view of the guaranteed impartiality of an interna-

tional decision, composed as the Court would be in large majority by neutrals, and in view also of the determined policy of the United States to remain a neutral in all international conflicts, it would seem that we need scarcely fear the reversal of the decisions of our courts because such decisions presuppose a war to which we are a party. The existence of the Court offers our citizens an international forum in which to safeguard their interests as neutral buyers and carriers in all parts of the world. The American delegation, therefore, not only approved and signed the convention, but proposed it jointly with Germany, Great Britain, and France.

XIII.—CONVENTION CONCERNING THE RIGHTS AND DUTIES OF NEUTRAL POWERS IN CASE OF MARITIME WAR

This convention deals with the important subject of maritime neutrality and formulates the progress which has been made in that subject in the past half century. . . .

XIV.—DECLARATION FORBIDDING THE LAUNCHING OF PROJECTILES FROM BALLOONS

. . . The declaration was a reënactment of the analogous provision of the First Conference, which, however, being for a period of five years, had elapsed. In order to prevent the lapse of the present declaration, it was provided that it should remain in effect until the end of the Third Conference.

DECLARATION CONCERNING OBLIGATORY ARBITRATION

The Conference was unable to agree upon a general treaty of arbitration, although a large majority expressed itself in favor of a general treaty of arbitration, reserving therefrom questions concerning the independence, vital interests, and honor, and setting forth a list of concrete subjects in which the contracting Powers were willing to renounce the honor clause. The principle of obligatory arbitration was unanimously admitted in the abstract, but when it was proposed to incorporate this principle in a concrete case or series of cases insurmountable difficulties arose. Some Powers seemed willing to conclude arbitration treaties with certain other carefully selected Powers, but were unwilling to bind themselves with the remaining nations of the world. Other nations were willing to renounce the honor clause in some subjects but not in others. It seemed to the friends of arbitration feasible to do generally in a single instrument what they had agreed to do in separate treaties with various countries. The majority felt that it was desirable to conclude at The Hague a general arbitration treaty binding those who were willing to be bound, without seeking, directly or indirectly, to coerce the minority, which was unwilling to bind itself. The minority, however, refused to permit the majority to conclude such a treaty, invoking the prin-

ciple of unanimity or substantial unanimity for all conventions concluded at The Hague. In the interest of conciliation the majority yielded, although it did not share the point of view of the minority. The minority on its part recognized unequivocally and reservedly the principle of obligatory arbitration, and the following declaration was unanimously accepted and proclaimed by the Conference:

> The Conference, conforming to the spirit of good understanding and reciprocal concessions which is the very spirit of its deliberations, has drawn up the following declaration, which, while reserving to each one of the Powers represented the benefit of its votes, permits them all to affirm the principles which they consider to have been unanimously accepted.
>
> It is unanimous:
>
> 1. In accepting the principle for obligatory arbitration.
>
> 2. In declaring that certain differences, and notably those relating to the interpretation and application of international conventional stipulations, are susceptible of being submitted to obligatory arbitration without any restrictions.

The friends of arbitration were bitterly disappointed and the American delegation abstained from voting on the declaration; first, because it seemed to be an inadmissible retreat from the advanced position secured by an affirmative vote of four to one in favor of the arbitration convention, and, second, lest an affirmative vote be construed to indicate both an approval of the arguments or methods of the minority as well as of the withdrawal of the proposed treaty. It may be admitted that the establishment of the principle of obligatory arbitration is an advance. It is not, however, the great advance so earnestly desired; for a concrete treaty embodying the principle of obligatory arbitration would have been infinitely more valuable than the declaration of obligatory arbitration, however solemnly made.

RESOLUTION CONCERNING THE LIMITATION OF MILITARY CHARGES

It is familiar knowledge that the First Peace Conference was called primarily to "secure a possible reduction of the excessive armaments which weigh upon all nations," and in the program contained in the second Russian circular (January 11, 1899) one of the purposes was stated to be "to reach an understanding not to increase for a fixed period the present effective of the armed military and naval forces, and at the same time not to increase the budgets pertaining thereto, and a preliminary examination of the means by which a reduction might even be effected in the future in the forces and budgets above mentioned." The First Conference failed to agree upon a limitation or a restriction, but adopted unanimously the following resolution:

> The Conference is of opinion that the restriction of military charges, which are at present a heavy burden on the world, is extremely desirable for the increase of the material and moral welfare of mankind.

The Second Conference was equally unprepared to limit armaments, to place a restriction upon military or naval forces, or to bind the nations not to increase the budgets pertaining thereto. It will be remembered that the United States reserved the right to bring the question to discussion, although as such it did not figure on the program. Pursuant to this reservation and instructions from the Secretary of State the American delegation insisted that the subject be discussed and in and out of Conference lent it support. By general agreement a resolution was introduced, supported in an address by the first British delegate and in a letter written by the first American delegate on behalf of the delegation. The following resolution was thereupon unanimously adopted:

> The Second Peace Conference confirms the resolution adopted by the Conference of 1899 in regard to the limitation of military burdens; and in view of the fact that military burdens have considerably increased in nearly all countries since the said year, the Conference declares that it is highly desirable to see Governments take up again the serious study of that subject.

THE RECOMMENDATIONS OF THE CONFERENCE

In addition to the conventions, declarations, and resolution, the Conference emitted five desires or *vœux,* the first of which is in the nature of a resolution. Of each of these in turn—

> The Conference recommends to the signatory Powers the adoption of the project hereunto annexed, of a Convention for the establishment of a Court of Arbitral Justice and its putting in effect as soon as an accord shall be reached upon the choice of the judges and the constitution of the Court.

An analysis of this paragraph shows that the establishment of the Court is not the expression of a mere wish or desire on the part of the Conference, but that it is a recommendation to the Powers to undertake the establishment of the court. In the next place, the project of convention annexed to the recommendation is not to be submitted as a plan or as a model, but for adoption as the organic act of the Court. Again, the convention annexed and made a part of the recommendation goes forth not only with the approval of the Conference, but as a solemn act adopted by it. And, finally, accepting the convention as the organic act, the Conference recommends that the Court be definitely and permanently established by the Powers as soon as they shall have agreed upon a method of appointing the judges, who, when appointed, thus constitute the Court. It will be noted that the number of Powers necessary to establish the Court is not stated, nor is the number of judges determined. It follows, therefore, that the Powers wishing to establish the Court are free to adopt the project of convention, agree upon the method of choosing the judges, and establish the Court at The Hague for the trial of cases submitted by the contracting Powers.

The establishment of the Court of Arbitral Justice would not interfere with

the Court of Arbitration instituted by the Conference of 1899, and continued by the Conference of 1907, for this latter is a temporary tribunal, erected for a particular purpose, to decide as arbiters a controversy submitted. The Court of Arbitral Justice, on the contrary, is meant to be a permanent court, composed of judges acting under a sense of judicial responsibility, representing the various legal systems of the world, and capable of assuring the continuity of arbitral jurisprudence. (Art. 1.) The contracting Powers are free to appoint either a large or a small number of judges; but it is provided in Article 3 that the judges so appointed shall hold office for a period of twelve years and that they shall be chosen from among persons enjoying the highest moral consideration who meet the requirements for admission in their respective countries to the high magistracy, or who shall be jurists of recognized competency in matters of international law. (Art. 2.)

From these provisions it is evident that the proposed institution is to be not merely in name but in fact a court of justice; that it is to be permanent in the sense that it does not need to be constituted for any and every case submitted to it. It is obvious that such a court, acting under a sense of judicial responsibility, would decide, as a court, according to international law and equity, a question submitted to it, and that the idea of compromise hitherto so inseparable from arbitration, would be a stranger to this institution. The Court is said to be permanent in the sense that it holds, as courts do, certain specified terms for the trial of cases. For example, Article 14 says:

> The Court assembles in session once a year. The session begins on the third Wednesday of June and lasts until the calendar shall have been exhausted.
>
> The Court does not assemble in session if the meeting is deemed unnecessary by the delegation. If, however, a Power is a party to a case actually pending before the Court, the preliminary proceedings of which are completed or near completion, that Power has the right to demand that the session take place.
>
> The delegation may, in case of necessity, call an extraordinary session of the Court.

It was deemed inexpedient to have an empty Court at The Hague, and it was felt that without a judicial committee capable of transacting the ordinary business that might be submitted, permanency in the true sense of the word would be lacking, therefore it is provided by Article 6 of the project that—

> The Court designates, every year, three judges who constitute a special delegation and three others who are to take their places in case of disability. They may be reelected. The vote is cast by blanket ballot. Those who obtain the larger number of votes are considered to be elected. The delegation elects its own president, who, failing a majority, is drawn by lot.
>
> A member of the delegation is barred from the exercise of his functions

when the Power by which he was appointed, and under whose jurisdiction he is, is one of the parties to the case.

The members of the delegation bring to a conclusion the cases that may have been referred to therein, even though their term of office should have expired.

Taking the two articles together, it is apparent that the Court as such is intended to be permanently in session at The Hague; that the judicial committee will attend to the smaller cases submitted, and that the full Court will meet in ordinary or extraordinary session once a year or whenever the business before it would justify its assembling. The judges are intended to be permanent court officials and as such to receive stated salaries whether they are actively engaged at The Hague in the trial of cases or not. The compensation is small (6,000 florins), but the honor is great. If, however, a judge sits as a trial judge at The Hague, his expenses to and from The Hague are paid according to the rate allowed in the home country for the traveling expenses of a judge in service, and in addition the judge is to receive the further sum of 100 florins a day during his official service in the examination or trial of cases.

The first article speaks of a court free and easy of access. It is easy of access because it is permanent and has stated terms. It is free because no fees are paid for entrance, and it is likewise free in this sense: That the salaries of the judges are not paid by the litigating parties, but proportionately by the contracting Powers. The jurisdiction of the Court is very wide; for example, "the Court of Arbitral Justice is competent to decide all cases which are submitted to it by virtue of a general stipulation of arbitration or by a special agreement" (Art. 17); that is to say, if there be a general treaty of arbitration designating the Court of Arbitral Justice, the Court is competent, if the cause of action be presented, to assume jurisdiction and to decide the case. It may be that parties to a controversy may submit the finding of a commission of inquiry to the Court in order to have the legal responsibility established in an appropriate case, or it may be that parties to an arbitration may wish to have the case examined when on appeal or *de novo* by the Court of Arbitral Justice. In such a case, by virtue of the special agreement of the parties litigant, the Court is invested with jurisdiction.

It was not thought advisable to clothe the judicial committee with the jurisdiction of the full Court, lest there be two competing institutions. The judicial committee is, however, expected to be a serviceable body, and its jurisdiction is commensurate with its dignity. For example, Article 18 provides:

The delegation (Art. 6) is competent—

1. To hear arbitration cases coming under the foregoing article, if the parties agree upon demanding the application of summary procedure as determined in Title IV, Chapter IV, of the Convention of July 29, 1899.

2. To institute an inquiry by virtue of and in conformity to Title III

of the Convention of July 29, 1899, in so far as the delegation may have been charged with this duty by the litigants acting in common accord. With the assent of the parties and in derogation of Article 7, section 1, members of the delegation who took part in the inquiry may sit as judges if the dispute comes for arbitration before either the Court or the delegation itself.

The judicial committee, therefore, is competent to sit as the Court of summary proceeding in cases where parties litigant agree to make use of the summary proceeding of the revised convention. It is likewise competent to sit as a commission of inquiry; and as the commission of inquiry finds facts, there seems to be no reason why the members of the judicial committee may not sit as judges if the litigation is submitted to the full Court or to the delegation.

Article 19 invests the judicial committee with the power to frame the special agreement—that is to say, the *compromis* provided for in Article 52 of the Convention for the peaceful adjustment of international differences, already mentioned—unless there be an agreement or stipulation to the contrary.

The procedure of the Court has not been neglected, but finds an appropriate place in the project of convention.

The establishment of the permanent court was proposed by the American delegation, was accepted in principle and loyally supported by the delegations of Germany and Great Britain, and the project actually framed and recommended by the Conference is the joint work of the American, German, and British delegations. It should be said, however, that the project could not have been adopted without the loyal and unstinted support of France.

From this brief exposition it is evident that the foundations of a permanent court have been broadly and firmly laid; that the organization, jurisdiction, and procedure have been drafted and recommended in the form of a code which the Powers or any number of them may accept and, by agreeing upon the appointment of judges, call into being a court at once permanent and international. A little time, a little patience, and the great work is accomplished. . . .

The final desire of the Conference is in the nature of a recommendation and is as follows:

> Lastly, the Conference recommends to the Powers the holding of a Third Peace Conference which might take place within a period similar to that which has elapsed since the preceding Conference on a date to be set by joint agreement among the Powers, and it draws their attention to the necessity of preparing the labors of that Third Conference sufficiently in advance to have its deliberations follow their course with the requisite authority and speed.
>
> In order to achieve that object, the Conference thinks it would be very desirable that a preparatory committee be charged by the Governments about two years before the probable date of the meeting with the duty of collecting the various propositions to be brought before the Conference, to seek out the matters susceptible of an early international settlement, and to

prepare a program which the Governments should determine upon early enough to permit of its being thoroughly examined in each country. The committee should further be charged with the duty of proposing a mode of organization and procedure for the conference itself.

The desire of the friends of progress is to have the Hague Conference a permanent institution, which meets at certain regular periods, automatically if possible, and beyond the control of any one Power. The American delegation was instructed to secure, if possible, this result, and through the efforts of the American delegation this result was reached in large measure. It is difficult, if not impossible, for one legislative body to bind its successor. It is doubly difficult for a quasi-legislative or diplomatic assembly to bind a succeeding assembly. It was therefore thought advisable not to attempt to fix the date absolutely, but to recommend that a Third Conference meet within or at about the period which has elapsed between the calling of the First and the assembling of the Second Conference, leaving the exact date to be fixed by the Powers.

Experience has shown that much time is lost not merely in organizing a Conference, but in preparing and presenting the various projects. It is desirable that the projects be prepared in advance so that they may be presented, printed, and distributed at the opening of the session. This the Conference recommended. But to prepare the various propositions to be submitted to the Conference it is necessary to determine in advance, at least tentatively, the program. The Conference therefore recommended that some two years before the probable date of the Conference a preparatory committee be charged by the various Governments to collect propositions, to ascertain the matters susceptible of international regulation, and to prepare the program sufficiently in advance of the meeting that it may be seriously and maturely considered by each Government intending to take part.

The wisdom of these provisions is so apparent that any justification of them seems unnecessary. The last clause, however, can not be passed in silence, as its importance is funadmental; for, in simple terms, it means that the Conference is not to be organized or the method of procedure determined by any single Power. In other words, the Conference, it would seem, is to be given over to itself. The committee of the Powers is charged with the duty of proposing a mode of organization and procedure for the Conference, and it can not be doubted that the committee, consisting of leading and representative Powers, will propose a mode of organization and procedure which will permit the Conference to organize itself and conduct its proceedings without requiring the guidance and direction of any particular Power. Its officers may be elected by the Conference, rather than appointed, and if so elected or selected by the Conference it is safe to assume that they will be not only in harmony with its purposes, but in full sympathy with the spirit of the Conference. In any case the recommendation is of the greatest importance, because it shows a unanimous desire on the part of the Powers pres-

ent for the calling of a Third Conference, and it indicates in no uncertain terms that the Conference in becoming in the largest sense international is not to be under the control or predominance of any one nation.

Such is, in brief, the work of the Second International Peace Conference. It is believed that the various measures adopted by it and recommented to the favorable consideration of the Powers will meet with general approval. It is hoped that the reasons set forth, briefly, in the present report may justify the delegates in signing the various measures and that their action as a whole may meet with the approval of the Secretary of State.

We have the honor to be, sir, your obedient servants,

JOSEPH H. CHOATE, *Chairman.*
CHANDLER HALE, *Secretary.*

XVII

The Recommendations of Habana Concerning International Organization, Adopted by the American Institute of International Law at its Second Session in the City of Habana, January 23, 1917

WHEREAS the independent existence of civilized nations and their solidarity of interests under the conditions of modern life has resulted in a society of nations; and

WHEREAS the safety of nations and the welfare of their peoples depend upon the application to them of principles of law and equity in their mutual relations as members of civilized society; and

WHEREAS the law of nations can best be formulated and stated by the nations assembled for this purpose in international conferences; and

WHEREAS it is in the interest of the society of nations that international agreements be made effective by ratification and observance on all occasions, and that some agency of the society of nations be constituted to act for it during the intervals between such conferences; and

WHEREAS the principles of law and equity can best be ascertained and applied to the disputes between and among the nations by a court of justice accessible to all in the midst of the independent Powers forming the society of civilized nations;

THEREFORE the American Institute of International Law, at its second session, held in the City of Habana, in the Republic of Cuba, on the 23d day of January, 1917, adopts the following recommendations, to be known as its *Recommendations of Habana.*

I. The call of a Third Hague Conference to which every country belonging to the society of nations shall be invited and in whose proceedings every such country shall participate.

II. A stated meeting of the Hague Peace Conference which, thus meeting at regular, stated periods, will become a recommending if not a law-making body.

III. An agreement of the States forming the society of nations concerning the call and procedure of the Conference, by which that institution shall become not only internationalized, but in which no nation shall take as of right a preponderating part.

IV. The appointment of a committee, to meet at regular intervals between the Conferences, charged with the duty of procuring the ratification of the Conventions and Declarations and of calling attention to the Conventions and Declarations in order to insure their observance.

V. An understanding upon certain fundamental principles of international law, as set forth in the Declaration of the Rights and Duties of Nations adopted by the American Institute of International Law on January 6, 1916, which are themselves based upon decisions of English courts and of the Supreme Court of the United States.

VI. The creation of an international council of conciliation to consider, to discuss, and to report upon such questions of a non-justiciable character as may be submitted to such council by an agreement of the Powers for this purpose.

VII. The employment of good offices, mediation, and friendly composition for the settlement of disputes of a non-justiciable nature.

VIII. The principle of arbitration in the settlement of disputes of a non-justiciable nature; also of disputes of a justiciable nature which should be decided by a court of justice, but which have, through delay or mismanagement, assumed such political importance that the nations prefer to submit them to arbiters of their own choice rather than to judges of a permanent judicial tribunal.

IX. The negotiation of a convention creating a judicial union of the nations along the lines of the Universal Postal Union of 1906, to which all civilized nations and self-governing dominions are parties, pledging the good faith of the contracting parties to submit their justiciable disputes—that is to say, their differences involving law or equity—to a permanent court of this union, whose decisions will bind not only the litigating nations, but also all parties to its creation.

X. The creation of an elightened public opinion in behalf of peaceable settlement in general, and in particular in behalf of the foregoing nine propositions, in order that, if agreed to, they may be put into practice and become effective, in response to the appeal to that greatest of sanctions, "a decent respect to the opinions of mankind."

XVIII

Commentary on the Recommendations of Habana Concerning International Organization, adopted January 23, 1917.—By James Brown Scott, Director of the Division of International Law, Carnegie Endowment for International Peace

I. The call of a Third Hague Conference to which every country belonging to the society of nations shall be invited and in whose proceedings every such country shall participate.

If it be true that in a multitude of counselors there is safety and, as we may hope, wisdom, it necessarily follows that the larger the number of the nations met in conference the greater the safety and the greater the wisdom. Indeed, there are those, whose opinions are entitled to respect, who see in the meeting of the Hague Conferences a greater hope and a greater promise than in the work of their hands. The Hague Conference of 1899 was composed of the representatives of twenty-six States; its successor of 1907 represented officially no less than forty-four sovereign, free, and independent States, which, taken together, well nigh make up the society of civilized nations.

In speaking of the value of the Hague Peace Conferences of 1899 and 1907, Secretary Root said that:

> The most valuable result of the Conferences of 1899 was that it made the work of the Conference of 1907 possible. The achievements of the Conferences justify the belief that the world has entered upon an orderly process through which, step by step, in successive Conferences, each taking the work of its predecessor as its point of departure, there may be continual progress toward making the practice of civilized nations conform to their peaceful professions.

And, still further developing the same thought, he added:

> The question about each international conference is not merely what it has accomplished, but also what it has begun, and what it has moved forward. Not only the conventions signed and ratified, but the steps taken toward conclusions which may not reach practical and effective form for many years to come, are of value. Some of the resolutions adopted by the last conference do not seem to amount to very much by themselves, but each one marks on some line of progress the farthest point to which the world is yet willing to go. They are like cable ends buoyed in mid-ocean, to be picked up here-

after by some other steamer, spliced, and continued to shore. The greater the reform proposed, the longer must be the process required to bring many nations differing widely in their laws, customs, traditions, interests, prejudices, into agreement. Each necessary step in the process is as useful as the final act which crowns the work and is received with public celebration.

II. A stated meeting of the Hague Peace Conference which, thus meeting at regular, stated periods, will become a recommending if not a law-making body.

Without a radical reorganization of the society of nations, difficult, time-consuming, and perhaps impossible to bring about, the Conventions and Declarations adopted by the Conference are to be considered not as international statutes, but as recommendations, which must be submitted to the nations taking part in the Conference for their careful examination and approval. By the ratification of each of these, and by the deposit of the ratifications at The Hague in accordance with the terms of the Conventions and Declarations recommended by the Conference, they become at one and the same time national and international laws: national laws because they have been ratified by the law-making body of each of the countries, and international laws because, by the ratification and the deposit of the ratifications at The Hague, they have assumed the form and effect of treaties, that is to say statutes, of the contracting parties.

On the method of procedure of such an international conference, Secretary Root said in his instructions to the Delegates of the United States to the Second Hague Peace Conference:

> In the discussions upon every question it is important to remember that the object of the Conference is agreement, and not compulsion. If such Conferences are to be made occasions for trying to force nations into positions which they consider against their interests, the Powers can not be expected to send representatives to them. It is important also that the agreements reached shall be genuine and not reluctant. Otherwise they will inevitably fail to receive approval when submitted for the ratification of the Powers represented. Comparison of views and frank and considerate explanation and discussion may frequently resolve doubts, obviate difficulties, and lead to real agreement upon matters which at the outset have appeared insurmountable. It is not wise, however, to carry this process to the point of irritation. After reasonable discussion, if no agreement is reached, it is better to lay the subject aside, or refer it to some future Conference in the hope that intermediate consideration may dispose of the objections. Upon some questions where an agreement by only a part of the Powers represented would in itself be useful, such an agreement may be made, but it should always be with the most unreserved recognition that the other Powers withhold their concurrence with equal propriety and right.
>
> You should keep always in mind the promotion of this continuous process through which the progressive development of international justice and peace may be carried on; and you should regard the work of the Second Conference, not merely with reference to the definite results to be reached

in that Conference, but also with reference to the foundations which may be laid for further results in future Conferences. It may well be that among the most valuable services rendered to civilization by this Second Conference will be found the progress made in matters upon which the delegates reach no definite agreement.

The irreducible minimum may well be the maximum of achievement at any given time, and in all our meetings, and in all our discussions, we should bear in mind the wise counsel of an illustrious French statesman at the First and Second Hague Peace Conferences that: We are here to unite, not to be counted.

III. An agreement of the States forming the society of nations concerning the call and procedure of the Conference, by which that institution shall become not only internationalized, but in which no nation shall take as of right a preponderating part.

The delegation of the United States to the Second Hague Peace Conference was thus instructed by the then Secretary of State:

> You will favor the adoption of a resolution by the Conference providing for the holding of further Conferences within fixed periods and arranging the machinery by which such Conferences may be called and the terms of the program may be arranged, without awaiting any new and specific initiative on the part of the Powers or any one of them.

Mr. Root then went on to say:

> Encouragement for such a course is to be found in the successful working of a similar arrangement for international conferences of the American Republics. The Second American Conference, held in Mexico in 1901-2, adopted a resolution providing that a third conference should meet within five years, and committed the time and place and the program and necessary details to the Department of State and representatives of the American States in Washington. Under this authority the Third Conference was called and held in Rio de Janeiro in the summer of 1906, and accomplished results of substantial value. That Conference adopted the following resolution:
>
> > The governing board of the International Bureau of American Republics (composed of the same official representatives in Washington) is authorized to designate the place at which the Fourth International Conference shall meet, which meeting shall be within the next five years; to provide for the drafting of the program and regulations and to take into consideration all other necessary details; and to set another date in case the meeting of the said Conference can not take place within the prescribed limit of time.
>
> There is no apparent reason to doubt that a similar arrangement for successive general international conferences of all the civilized Powers would

prove as practicable and as useful as in the case of the twenty-one American States.

The delegation of the United States complied with both the letter and spirit of these instructions, brought the subject of a stated international conference to the attention of the delegates of the forty-four nations there assembled, and secured the following recommendation, a first step toward the realization of a larger purpose:

> 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.

IV. The appointment of a committee, to meet at regular intervals between the Conferences, charged with the duty of procuring the ratification of the Conventions and Declarations and of calling attention to the Conventions and Declarations in order to insure their observance.

In Mr. Root's instructions to the American delegation to the Second Hague Peace Conference, the governing board of the International Bureau of American Republics, now called the Pan American Union, was suggested as a possible method of organization for the nations meeting in conference at The Hague. The American delegation did not lay before the Conference the method of organization found satisfactory to the American Republics and did not propose that it be adopted, because, as the result of private discussion, it appeared unlikely that the method would at that time meet with favor, and indeed it seemed probable that its proposal would prejudice those representatives of governments against the periodic meeting of conferences who thought they saw in cooperation of this kind a step toward federation.

There is, however, a body already in existence at The Hague, similar in all respects to the governing board of the Pan American Union at Washington,

which can be used for like purposes if the governments only become conscious of the services which it could render if it were organized and invested with certain powers. The body at Washington forming the governing board is composed of the diplomatic representatives of the American Republics accredited to the United States; the body at The Hague is formed of the diplomatic representatives of the Powers accredited to the Netherlands. If they should be authorized by their respective governments to meet, either in the Foreign Office or the Peace Palace at The Hague at regular intervals between the conferences, to be determined by themselves or their countries, they would, by the mere fact of this association, form a governing board in which all nations would of right be represented which cared to maintain diplomatic agents at The Hague. By the mere fact of this association they would also, even without express authority, gradually and insensibly assume the duty of procuring the ratification of the Conventions and Declarations of the Conference and of calling the attention of the Powers represented at The Hague to the Conventions and Declarations, and in case of need to their provisions, in order that they might be observed.

The first step toward this consummation has already been taken. Twenty-six nations at the First created and forty-four nations confirmed at the Second Hague Peace Conference an organization for administering the affairs of the so-called Permanent Court of Arbitration by availing themselves of the diplomatic agents accredited to The Hague, as shown in the following extract from the Convention for the Pacific Settlement of International Disputes:

> A Permanent Administrative Council, composed of the diplomatic representatives of the signatory Powers accredited to The Hague and of the Netherlands Minister for Foreign Affairs, who will act as president, shall be instituted in this town as soon as possible after the ratification of the present Act by at least nine Powers.
>
> This Council will be charged with the establishment and organization of the International Bureau [of the Permanent Court of Arbitration], which will be under its direction and control.
>
> It will notify to the Powers the constitution of the Court, and will provide for its installation.
>
> It will settle its rules of procedure and all other necessary regulations.
>
> It will decide all questions of administration which may arise with regard to the operations of the Court.
>
> It will have entire control over the appointment, suspension, or dismissal of the officials and employés of the Bureau.
>
> It will fix the payments and salaries, and control the general expenditure.
>
> At meetings duly summoned the presence of five 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 signatory 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 expenses.

What has been done for one may assuredly be done for another purpose, and, without changing the body, the nations merely need to enlarge its scope by having it perform the same services for each of the general interests affecting "the solidarity which unites the members of the society of civilized nations." If a governing board may act at Washington without affecting the sovereignty, freedom, and independence of twenty-one States, a governing board can likewise act at The Hague in the interest of and without affecting the sovereignty, freedom, and independence of forty-four States. There is only one thing needed—the desire so to do.

In the belief that the Powers may prefer to proceed more cautiously, the American Institute of International Law ventures to suggest on this point that the Conference might, upon its adjournment, appoint a committee charged with the duty of procuring the ratification of the Conventions and Declarations, and of calling attention to the Conventions and Declarations in order to secure their observance; and in the appointment of the committee the Conference might specify both the nature and extent of the authority with which it would be clothed. This would not be an attempt on the part of a Conference to bind its successor; it would be a recommendation of the Conference to the Powers represented in it, the binding force and effect of which would result solely from the acceptance and ratification of the agreement, as is the case with The Hague Conventions or Declarations.

The appointment of such a committee for limited and specific purposes is highly desirable, if other and better methods are not devised and preferred, and it is not without a precedent in its behalf and favor. Under the 9th of the Articles of Confederation of the United States the Congress appointed "a committee of the States," composed of one delegate from each of the thirteen States, to sit during the recess of the Congress, then a diplomatic, not a parliamentary body, to look after the interests of the States as a whole and to exercise some, but not all, of the powers delegated to the Congress by the States, which in the 2d of the Articles had declared themselves to be sovereign, free, and independent. It is important to note that in the Articles of Confederation we are dealing with sovereign States and to bear in mind that sovereignty is not lessened by its mere exercise, because after as before the Articles the States were sovereign. What thirteen sovereign, free, and independent States have done, forty-four sovereign, free, and independent States may do, if they only can be made to feel and to see the consequences of this simple step in international development and supervision.

In further justification of this modest recommendation, the pacific settlement convention of the Hague Conferences may be cited which contains the germ of the recommendation. Article 27 of the Convention of 1899 and Article 48 of the revised Convention of 1907 deal with this matter. Thus Article 27 reads:

> The signatory 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.

It will be observed that a duty is here either created or recognized, and either view is sufficient for present purposes.

> Consequently, they declare that the fact of reminding the conflicting parties 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.

The objection to this article is that it leaves the Powers free to take or not to take action, although it is stated to be a duty to do so. It can not be too often said that everybody's business is nobody's concern, and to give effect to the provision some person or body should be appointed whose duty it is to comply with the recommendation of the article. This defect was obvious to the delegates of the Second Conference, who apparently sought to remedy it by the following addition to the text of Article 27, which as amended became Article 48 of the revised Convention:

> 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.

The amendment is limited to the parties in dispute. The signatory Powers appear to be overlooked, and yet the duty was created or recognized by the article as the duty of the signatory or contracting Powers to remind the disputants that the Permanent Court is open to them, and the amendment merely permits the Powers in dispute to avail themselves of the International Bureau to transmit a proposal of arbitration. Something more is needed and yet the amendment serves as a precedent. The article itself refers to the provisions of the convention, and expressly states that reminding the parties in dispute of the provisions of the convention is not to be regarded as an unfriendly act. Following the precedent created by the amendment and enlarging its scope, it would seem to be a proper and friendly act on the part of the signatory or contracting Powers to call the attention of the Powers generally, not merely those in dispute, to all the provisions of the convention and indeed to the terms of all the Conventions and Declarations of the Hague Conferences, and to invest somebody with the duty of acting in behalf of the signatory or contracting Powers in the performance of what is considered to be a duty. It is a detail, although a very important one, whether the diplomats accredited to The Hague, a special committee thereof, or a committee appointed by the Conference itself, or the International Bureau, should be used for this purpose. The acceptance of the principle carries with

it the creation of apt agencies, and the wisdom of the nations may be trusted to devise the means if they agree upon the need.

It may well be that the preparatory committee mentioned by the recommendation for a Third Conference, "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," will develop into a standing committee entrusted with international interests between the various Conferences. Especially would this be so if the committee were appointed by the Conference, instead of being selected by agreement of the Powers some time before the calling of the future Conference. It would not be an executive; it would not be a Government; it would, however, as a committee, represent international interests during the periods between the Conferences.

V. An understanding upon certain fundamental principles of international law, as set forth in the Declaration of the Rights and Duties of Nations adopted by the American Institute of International Law on January 6, 1916, which are themselves based upon decisions of English courts and of the Supreme Court of the United States.

1. Every nation has the right to exist and to protect and to conserve its existence; but this right neither implies the right nor justifies the act of the State to protect itself or to conserve its existence by the commission of unlawful acts against innocent and unoffending States. (Chinese Exclusion Case, 130 U. S., 581, 606; Regina vs. Dudley, 15 Cox's Criminal Cases, p. 624, 14 Queen's Bench Division, 273.)

2. Every nation has the right to independence in the sense that, it has a right to the pursuit of happiness and is free to develop itself without interference or control from other States, provided that in so doing it does not interfere with or violate the rights of other States.

3. Every nation is in law and before law the equal of every other nation belonging to the society of nations, and all nations have the right to claim and, according to the Declaration of Independence of the United States, "to assume, among the Powers of the earth, the separate and equal station to which the laws of nature and of nature's God entitle them." (*Le Louis,* 2 Dodson, 210, 243-4; *The Antelope,* 10 Wheaton, 66, 122.)

4. Every nation has the right to territory within defined boundaries and to exercise exclusive jurisdiction over its territory, and all persons, whether native or foreign, found therein. (*The Exchange,* 7 Cranch, 116, 136-7.)

5. Every nation entitled to a right by the law of nations is entitled to have that right respected and protected by all other nations, for right and duty are correlative, and the right of one is the duty of all to observe. (United States *vs.* Arjona, 120 U. S., 479, 487.)

6. International law is at one and the same time both national and international: national in the sense that it is the law of the land and applicable

as such to the decision of all questions involving its principles; international in the sense that it is the law of the society of nations, and applicable as such to all questions between and among the members of the society of nations involving its principles. (Barbuit's case, Cases tempore Talbot, p. 281; Triquet *vs.* Bath, 3 Burrow, 1478; Heathfield *vs.* Chilton, 4 Burrow, 2015; The *Paquete Habana,* 175 U. S., 677, 700.)

VI. The creation of a permanent international council of conciliation to consider, to discuss, and to report upon such questions of a non-justiciable character as may be submitted to such council by an agreement of the Powers for this purpose.

The prototype of this council is the International Commission of Inquiry proposed by the First Hague Conference and contained in its Convention for the Pacific Settlement of International Disputes. Its form may well be that adopted by Mr. Bryan in the various treaties for the advancement of peace which, as Secretary of State, he concluded on behalf of the United States with some thirty foreign nations. In these it is provided that all disputes which diplomacy has failed to settle, or which have not been adjusted by existing treaties of arbitration, shall be laid before a permanent commission of some five members, which shall have a year within which to report its conclusions and during which time the contracting parties agree not to resort to arms.

The Powers might agree to establish an international commission as it is proposed to establish an international court, to be composed of a limited number of members appointed for a period of years, to which perhaps a representative of each of the countries in controversy might be added, in order that the views of the respective governments should be made known and be carefully considered by those members of the commission strangers to the dispute. In this case there would be a permanent nucleus, and the Powers at odds would not be obliged to agree upon the members of the commission, but only to appoint, each for itself, a national member. In this way the dispute could be submitted to the commission before it had become acute and had embittered the relations of the countries in question.

If an international commission of the kind specified should be considered too great a step to be taken at once, the countries might conclude agreements modeled upon those of Mr. Bryan, and as the result of experience take such action in the future as should seem possible and expedient.

The conclusions of the commission are in the nature of a recommendation to the Powers in controversy, which they are free either to accept or to reject. They are not in themselves an adjustment as in the case of diplomacy, an award as in the case of arbitration, or a judgment as in the case of a court of justice. It is the hope of the partisans of this institution that its conclusions will nevertheless form the basis of settlement and that, under the pressure of enlightened public

opinion, the Powers may be minded to settle their differences more or less in accord with the recommendations of the commission.

VII. The employment of good offices, mediation, and friendly composition for the settlement of disputes of a non-justiciable nature.

Good offices and mediation were raised to the dignity of an international institution by the First Hague Peace Conference, and in its Peaceful Settlement Convention the signatory or contracting Powers agreed to have "recourse, as far as circumstances allow, to the good offices or mediation of one or more friendly Powers," and it is specifically stated in the Convention, in order to remove doubt or uncertainty, that the offer of good offices or of mediation is not to be considered as an unfriendly act—and the Powers might also have added that it is not an act of intervention, which nations resent.

The offer of good offices is a word of advice, it is not an award or a decision. Mediation goes a step further, as the nation proposing it offers to cooperate with the parties in effecting a settlement. The agreement to ask and to offer good offices and mediation is qualified by the expression "as far as circumstances will allow." It is therefore highly desirable that frequent resort be made to good offices and mediation, in order that the nations may learn from experience that circumstances allow the offer and the acceptance of good offices and mediation without danger to either and with satisfaction to both.

Friendly composition is more than good offices or mediation, and may be less than arbitration. It is not limited to advice, and it is not restricted to cooperation; it is the settlement of a difference not necessarily upon the basis of law, but rather according to the judgment of a high-minded and conscientious person possessing in advance the confidence of both parties to the dispute and deserving it by his adjustment of the dispute.

It may be a settlement in the nature of a compromise; it may be an adjustment according to the principles of fair dealing; it may be a bargain according to the principles of give and take. This remedy has been found useful in the past, and it can be of service in the future, where it is more to the advantage of nations to have a dispute adjusted than to have it determined in any particular way.

VIII. The principle of arbitration in the settlement of disputes of a non-justiciable nature; also of disputes of a justiciable nature which should be decided by a court of justice, but which have, through delay or mismanagement, assumed such political importance that the nations prefer to submit them to arbiters of their own choice rather than to judges of a permanent judicial tribunal.

The arbiter is not, as is the friendly composer, a free agent in the sense that he may render an award in accordance with his individual sense of right or wrong, for, as the First Hague Peace Conference said in its Pacific Settlement

Convention, "international arbitration has for its object the settlement of differences between States by judges of their own choice, and on the basis of respect for law." Even if law is not absolutely binding it can not be arbitrarily rejected; it must be respected, and the sentence, if it be not just in the sense that it is based upon law, it must be equitable in the sense that it is based upon the spirit of the law as distinct from the letter.

Hundreds of disputes have been settled since the Jay Treaty of 1794 between Great Britain and the United States, which brought again this method into repute and into the practice of nations. As a result of this large experience, extending over a century, nations find it difficult to refuse arbitration when it has been proposed. But if it is a sure, it is a slow-footed, remedy, as in the absence of a treaty of arbitration one must be concluded, and, in the practice of the United States, there must be a special agreement submitted to and advised and consented to by the Senate, stating the exact nature and scope of the arbitration. The arbiters forming the temporary tribunal must likewise be chosen by the parties, and unfortunately at a time when they are least inclined to do so. It is a great and a beneficent remedy, but the difficulty of setting it in motion and the doubt that the award may be controlled by law suggest the creation of a permanent tribunal which does not need to be composed for the settlement of the case and in which law shall, as in a court of justice, control the decision.

There are many cases turning on a point of law and which could be got out of the way, to the great benefit of the cause of international peace, if they were submitted, when and as they arose, to a judicial tribunal. Unfortunately, such a tribunal has not existed in times past, and many a dispute, by delay or mismanagement, has assumed a political importance which it did not possess at the beginning. Nations may have taken a position upon it, and in consequence be unwilling to change their attitude. Again, there are matters, largely if not wholly political, or in which the political element dominates, which nations would prefer to submit to a limited commission or tribunal composed of persons in whose ability and character they have confidence and whose training seems to fit them for the disposition of the controversy in hand.

The reasons for a resort to arbitration, even although an International Court of Justice be established and ready to receive and to decide the case, have never been better stated than by Mr. Léon Bourgeois in the following passage taken from an address advocating the retention of the so-called Permanent Court of Arbitration and of creating alongside of it a permanent court composed of professional judges, which was proposed at the Second Hague Conference of 1907 and adopted in principle:

> If there are not at present judges at The Hague, it is because the Conference of 1899, taking into consideration the whole field open to arbitration, intended to leave to the parties the duty of choosing their judges, which choice is essential in all cases of peculiar gravity. We should not like to

see the court created in 1899 lose its essentially arbitral character, and we intend to preserve this freedom in the choice of judges in all cases where no other rule is provided.

In controversies of a political nature especially, we think that this will always be the real rule of arbitration, and that no nation, large or small, will consent to go before a court of arbitration unless it takes an active part in the appointment of the members composing it.

But is the case the same in questions of a purely legal nature? Can the same uneasiness and distrust appear here? . . . And does not every one realize that a real court composed of real jurists may be considered as the most competent organ for deciding controversies of this character and for rendering decisions on pure questions of law?

In our opinion, therefore, either the old system of 1899 or the new system of a truly permanent court may be preferred, according to the nature of the case. At all events there is no intention whatever of making the new system compulsory. The choice between the tribunal of 1899 and the court of 1907 will be optional, and the experience will show the advantages or disadvantages of the two systems.

IX. The negotiation of a convention creating a judicial union of the nations along the lines of the Universal Postal Union of 1906, to which all civilized nations and self-governing dominions are parties, pledging the good faith of the contracting parties to submit their justiciable disputes—that is to say, their differences involving law or equity—to a permanent court of this union, whose decisions will bind not only the litigating nations, but also all parties to its creation.

In the Universal Postal Union, which has been mentioned as the prototype of a judicial union, all the civilized nations of the world and self-governing dominions have bound themselves to submit to arbitration their disputes concerning the interpretation of the Convention as well as their disputes arising under it, by a commission of three arbiters, of whom one is to be appointed by each of the disputants and the third in case of need by the arbiters themselves. What the nations have agreed to do *after* they can do *before* the outbreak of a dispute, for the appointment in this case is a matter of time, not of principle.

The American Institute of International Law calls especial attention to the fact that sovereignty is not necessarily involved in the formation of a judicial union, in the appointment of the judges, or in the operation of the judicial tribunal, because in the Universal Postal Union self-governing dominions are parties, which could not be the case if sovereignty were requisite, as they are not sovereign.

Should they create a judicial union, and at the time of its formation install a permanent tribunal composed of a limited number of judges, the Society of Nations would find itself possessed of a court of justice composed in advance of the disputes, ready to assume jurisdiction of them whenever they should arise, without the necessity of creating the court, appointing its members, agreeing

upon the question to be litigated, and in many, if not in most, instances upon the procedure to be followed.

The prototype of this international court of justice and its procedure is the Supreme Court of the United States and its procedure. which may be thus briefly outlined:

1. The Supreme Court determines for itself the question of jurisdiction, receiving the case if it finds that States are parties and if, as presented, it involves questions of law or of equity. (Rhode Island *vs.* Massachusetts 12 Peters, 657, decided by Mr. Justice Baldwin.)

2. If States are parties to the suit, and if it is justiciable, that is, if it involves law or equity, the plaintiff State is, upon its request, entitled to have a subpœna against the defendant State issued by the Supreme Court. (New Jersey *vs.* New York, 3 Peters, 461, decided by Mr. Chief Justice Marshall; New Jersey *vs.* New York, 5 Peters, 284, decided by Mr. Chief Justice Marshall.)

3. The plaintiff State has the right to proceed *ex parte* if the defendant State does not appear and litigate the case. (New Jersey *vs.* New York, 5 Peters, 284, decided by Mr. Chief Justice Marshall; Massachusetts *vs.* Rhode Island, 12 Peters, 755, decided by Mr. Justice Thompson.)

4. The plaintiff State has the right, in the absence of the defendant duly summoned and against which a subpœna has been issued, to proceed to judgment against the defendant State in a suit which the Supreme Court has held to be between States and to be of a justiciable nature. (New Jersey *vs.* New York, 5 Peters, 284, decided by Mr. Chief Justice Marshall.)

5. In the exercise of its jurisdiction the Supreme Court does not compel the presence of the defendant State (Massachusetts *vs.* Rhode Island, 12 Peters, 755, decided by Mr. Justice Thompson), nor does it execute by force its judgment against a defendant State (Kentucky *vs.* Dennison, 24 Howard, 66, decided by Mr. Chief Justice Taney.)

The reasonableness of the judgment and the advantage of judicial settlement have thus created a public opinion as the sanction of the Supreme Court in suits between States.

6. In the exercise of its jurisdiction the Supreme Court has moulded a system based upon equity procedure between individuals in such a way as to simplify it, giving to the defendant State opportunity to present its defense as well as to the plaintiff State to present its case without delaying or blocking the course of justice by technical objections. (Rhode Island *vs.* Massachusetts, 14 Peters, 210, decided by Mr. Chief Justice Taney.)

As in the case of the Supreme Court, which has been suggested as the prototype of an international tribunal, there would be no need of a treaty of arbitration or of a special agreement in addition to the Convention creating the court and authorizing it to receive and decide justiciable disputes submitted by the

contracting parties. The plaintiff State could set the court in motion upon its own initiative, without calling to its aid the members of the Union, just as each member of the American Union can file its bill in the Supreme Court without the aid, and indeed without the knowledge, of the other States of the American judicial union.

The employment of physical force either to hale a nation into court or to execute against it the judgment of the international tribunal has not been mentioned. The sheriff did not antedate the judge, nor did he come into being at the same time. He is a later creation, if not an afterthought. He is necessary in disputes between individuals; he is not necessary—at least, he is not a part of the machinery of the Supreme Court in the trial of disputes between States of the American judicial union and in the execution of its judgments against States. It may be that an international sheriff may prove to be necessary, but nations shy at physical force, especially if they understand that it is to be used against them. The presence of the sheriff armed with force, that is to say, of an international police, would make an agreement upon an international court more difficult, and if an international sheriff should prove to be unnecessary his requirement as a prerequisite to the court would delay the constitution of this much-needed institution.

If the sheriff is needed, or if some form of compulsion is found advisable in order to procure the presence of the defendant State before the international tribunal, and to execute the judgment thereof when rendered, it is the part of wisdom to allow the experience of nations to determine when and how the force shall be created and under what circumstances and conditions it is to be applied. We should not unduly complicate a problem already sufficiently complex by insisting that the international court shall be, in its beginning, more perfect than is the Supreme Court of the United States after a century and more of successful operation.

X. The creation of an enlightened public opinion in behalf of peaceable settlement in general, and in particular in behalf of the foregoing nine propositions, in order that, if agreed to, they may be put into practice and become effective, in response to the appeal to that greatest of sanctions, "a decent respect to the opinions of mankind."

If for physical force we would substitute justice, we must create a public opinion in favor of justice, as we must create a public opinion in behalf of any and every reform which we hope to see triumph. The more difficult the problem, the greater the need that we set about it, and the sooner we begin the better it will be for the cause which we champion. There are many who advocate short-cuts to international justice, and therefore to international peace, just as there are many who advocate short-cuts to knowledge; but the pithy reply of Euclid to his royal but backward pupil is as true today as it was when uttered centuries ago,

that there is no royal road to learning. To change the standard of conduct, and as a preliminary to this to change the standard of thought, is indeed a difficult task; but if mankind is to prefer the test of justice to the test of force, we must educate mankind to a belief in justice. If we succeed, justice will prevail between nations as between men; if we fail, justice may partially prevail between men, as it largely does today, but not between and among the nations. The problem before us is therefore one of education from a false to a true and an ennobling standard. If public opinion can be educated in one country, it can be educated in other countries, and we can confidently look forward to a public opinion in all countries—universal, international, and as insistent as it is universal and international. A mere statute, we know by a sad experience, will not make men virtuous, and a mere treaty—for a treaty is an international statute—will not make the nations virtuous. We have failed in the one, and we are doomed to failure in the other attempt, for nations, composed of these very men and women, are not to be *reformed by statute any more than the men and women composing them.* Without public opinion the statute—national or international—is a dead letter; with public opinion the statute—national or international—is a living force. With public opinion all things are possible; without public opinion we may hope to do nothing. Were Archimedes living today, and if he were speaking of things international, he would declare public opinion the lever that moves the world.

In speaking of public opinion, Mr. Root has recently and impressively said:

> There is but one power on earth that can preserve the law for the protection of the poor, the weak, and the humble; there is but one power on earth that can preserve the law for the maintenance of civilization and humanity, and that is the power, the mighty power, of the public opinion of mankind.
>
> Without it your leagues to enforce peace, your societies for a world's court, your peace conventions, your peace endowments are all powerless, because no force moves in this world until it ultimately has a public opinion behind it.
>
> The thing that men fear more than they do the sheriff or the policeman or the State's prison is the condemnation of the community in which they live.
>
> The thing that among nations is the most potent force is the universal condemnation of mankind. And even during this terrible struggle we have seen the nations appealing from day to day, appealing by speech and by pen and by press, for the favorable judgment of mankind, the public opinion of the world. That establishes standards of conduct.

May we not, on the eve of an International Conference, say with Washington on the eve of the International Conference of 1787: "Let us raise a standard to which the wise and the honest can repair. The event is in the hands of God."

XIX

Provision of Law Declaring the International Policy of the United States.—Enacted by the Sixty-fourth Congress[1]

AUGUST 29, 1916

It is hereby declared to be the policy of the United States to adjust and settle its international disputes through mediation or arbitration, to the end that war may be honorably avoided. It looks with apprehension and disfavor upon a general increase of armament throughout the world, but it realizes that no single nation can disarm, and that without a common agreement upon the subject every considerable power must maintain a relative standing in military strength.

In view of the premises, the President is authorized and requested to invite, at an appropriate time, not later than the close of the war in Europe, all the great Governments of the world to send representatives to a conference which shall be charged with the duty of formulating a plan for a court of arbitration or other tribunal, to which disputed questions between nations shall be referred for adjudication and peaceful settlement, and to consider the question of disarmament and submit their recommendation to their respective Governments for approval. The President is hereby authorized to appoint nine citizens of the United States, who, in his judgment, shall be qualified for the mission by eminence in the law and by devotion to the cause of peace, to be representatives of the United States in such a conference. The President shall fix the compensation of said representatives, and such secretaries and other employees as may be needed. Two hundred thousand dollars, or so much thereof as may be necessary, is hereby appropriated and set aside and placed at the disposal of the President to carry into effect the provisions of this paragraph.

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[1] Provision of the Act making appropriations for the naval service for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for other purposes. *Statutes at Large of the United States,* vol. 39 (64th Congress), p. 618.

INDEX