THE PEACE CONFERENCE AT THE HAGUE


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THE PEACE CONFERENCE AT THE HAGUE

AND ITS BEARINGS ON INTERNATIONAL LAW AND POLICY

BY

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Justitia elevat gentem

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To His Majesty

NICHOLAS THE SECOND

EMPEROR OF RUSSIA

THE AUGUST INITIATOR OF THE PEACE CONFERENCE

THIS VOLUME IS, BY PERMISSION

Most Respectfully Dedicated

PREFACE

The Peace Conference at the Hague in 1899 has passed into history. From the time of its inception it has naturally been the object of much discussion, and of every variety of criticism. Of enthusiastic welcome it received but little, and even that little rarely came from leaders of thought or action. Its lofty aim did not save it from sarcasm, cynicism, and even condemnation. The good faith of the originating government was openly challenged or derided, — at best the idea was patronizingly called an "Utopian dream" — "a misprint on the page of history," according to the gloomy pessimism of a distinguished historian.

By a singular but well-nigh universal misconception of its object, it was at first persistently called the "Disarmament Conference," and the gradual abolition of armies and navies, as well as "eternal peace," was by implication assumed to be its ultimate object.

Accordingly, theoretical discussions on the abstract justice or injustice of warfare immediately arose, while hardly any preparatory work of value regarding the

practicable and attainable objects of such a gathering was done, either by publicists or journalists.

When the Conference opened, speculation was rife as to whether or not it could last a fortnight without ending in a quarrel, and perhaps precipitating a general war.

The modest and unostentatious as well as business-like way in which the Conference organized and immediately went to work, made the first distinctly favorable impression, and for a while there seemed to be ground for hope that continental public opinion would at least suspend judgment.

This hope was destroyed largely through the unfortunate attitude of many important members of the Conference toward the press. That secrecy, during the progress of the work of a diplomatic gathering, was indispensable was readily admitted by the journalists themselves, some of whom were the most eminent in their profession, and all of whom were men of high standing and ability. With their scepticism, however, regarding the ultimate outcome, even a slight show of an uncompromising, haughty, and even hostile attitude was sufficient to convince them of the uselessness of further attention under adverse circumstances. The fact that "disarmament" could not even be discussed was, of course, soon evident; and taking this fact as proof of the "failure" of

the Conference, the press, with a very few notable exceptions, withdrew its representatives from The Hague, and contented itself thereafter with supplying its readers with the fragmentary and often inaccurate snatches of information supplied by irresponsible sources.

In consequence, and also because the official records of the Conference have only lately been published, it may be said that hardly upon any recent event of importance is even the reading public less completely informed than upon the work actually accomplished at the Peace Conference and its practical value.

Under these circumstances it is hardly surprising that the events which have taken place, notably in South Africa and in the Far East, since the adjournment of the Conference, should have resulted in deepening the prevalent misconceptions regarding its results and their importance. Fortunately the waves of honest disappointment and of ignorant abuse can no longer rise to a point where the work itself might be endangered. "The past at least is secure," and neither hopeful nor pessimistic prediction, but experience alone can now pass final judgment.

The present writer frankly avows his conviction that the Peace Conference accomplished a great and glorious result, not only in the humanizing of warfare and the codification of the laws of war, but,

above all, in the promulgation of the Magna Charta of International Law, the binding together of the civilized powers in a federation for Justice, and the establishment of a permanent International Court of Arbitration.

He believes that this view will be shared by an increasing number of thoughtful observers as time progresses; and that in consequence, the story of the Conference and a description of its work, even within the necessarily restricted limits open to a member, will not be without interest.

Under these circumstances he has no apology to offer for the preparation of this volume. The official records of the Conference have not yet been published in the English language, and, when so published, they will contain many details, technical or otherwise, of little general interest. In this book the aim has been to tell what took place, with sufficient fulness for the student of International Law, but without making the book too technical for the general reader, — a most difficult undertaking, and one in which no author can hope for more than a qualified success.

No pains have been spared to secure accuracy, but no attempt has been made in the commentaries on the treaties to do more than elucidate the text, or state the reasons for the adoption of the various

provisions. Exhaustive and thorough commentaries will no doubt soon appear from the pens of scholars both in Europe and America, and could not enter into the plan of this volume.

The author has freely used the admirable reports made to the Conference by the reporters of the various Committees: Chevalier Descamps, M. Rolin, Professor Renault, Jonkheer van Karnebeek, Count Soltyk, M. Asser, and General Den Beer Poortugael, and it is a pleasure to acknowledge his obligation to these gentlemen. By the courtesy of the Honorable John Hay, Secretary of State, the author was also permitted to make unrestricted use of the files of the State Department with reference to the Conference, and the reports of the American Commission, notably those of its distinguished military and naval experts, Captain Crozier, of the army, and Captain Mahan, of the navy, have been freely drawn upon, especially in the discussion of the work of the First and Second Committees.

As this book is written primarily for American and English readers, particular attention has been paid to the action of the American and British governments, and their representatives at the Conference. It is believed, however, that nothing of importance, bearing upon the attitude and actions of the other Powers, has been omitted.

The translation of the various treaties has been carefully revised by the author, from the British Blue Book, and will, it is hoped, be found to be accurate, while, on the other hand, a free rendering of speeches and debates is given.

In the appendix will be found the complete text of the Final Act, the Treaties and Declarations of the Conference, as well as the Reports of the American Commission. The story of the Peace Conference would not have been complete without an account of the Hugo Grotius celebration, on July 4, at Delft. Accordingly a complete record of the proceedings, containing the admirable oration of Ambassador White, and the other addresses given on that occasion, is also included.

The author acknowledges with sincere thanks the encouragement and valuable suggestions, with reference to the preparation of the present volume, received by him from Ambassador White, Lord Pauncefote, and the Honorable David Jayne Hill, Assistant Secretary of State. The same is especially true of his friends, Albert Shaw and Nicholas Murray Butler, who have also kindly assisted in reading proofs and revising the text.

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THE PEACE CONFERENCE AT THE HAGUE

CHAPTER I

THE CALLING OF THE PEACE CONFERENCE

WITHOUT attempting to forestall the judgment of history, it may perhaps be taken for granted that the year 1898 will be chiefly remembered on account of three notable events, — the Spanish-American War, the death of Prince Bismarck, and the circular letter of Count Mouravieff, by direction of His Majesty the Emperor of Russia, calling the International Peace Conference. While these three events had no causal connection whatever, it seems indisputable that the timeliness of the third was strikingly dependent upon the other two.

Three notable events in 1898.

The Spanish-American War, both in its inception and its results, revealed to the world what had long been known to a comparatively small number of thoughtful observers; namely, the existence of a great and mighty power in the New World, with unlimited reserve force, which needed only to become interested in questions of foreign policy to make it at once a factor of the very first importance. The wise warning of Washington against entangling alliances with foreign nations had been followed by the United States to a degree hardly foreseen or intended by its author; and standing apart in the world in more or less selfish isolation,

The Spanish-American War.

Chapter I

the great Republic of the West had almost become a negligible quantity in the calculations of European diplomats.

The changed position of the United States.

This is not the occasion to discuss the wisdom of this policy, or of its modification. It is sufficient to emphasize the fact, as well as the momentous and permanent change which occurred when the people of the United States, with singular unanimity and zeal, but still with grave and serious purpose, drew the sword to put an end to an intolerable situation in Cuba. It was a war of aggression — but the American people felt that it was aggression for a high and noble object; and the fact that the great Republic was capable of such idealism — the spectacle of hundreds of thousands of volunteers crowding to enlist in a cause offering absolutely no material inducements — served to deepen the impression made upon the rest of the world. The campaign, both on land and sea, was perhaps more remarkable for the hidden possibilities which it revealed than for actual demonstrations. The general expectation, however, of many continental critics, that the American army and navy would first encounter defeats which might perhaps be retrieved ultimately by the mere force of physical and numerical preponderance, was doomed to disappointment, and gave way, on the part of observers not blinded by jealousy or prejudice, to expressions of sincere respect for American prowess and efficiency.

The revelation of the fundamental solidarity, in

both feelings and interest, on the part of the two great branches of the Anglo-Saxon race was beyond doubt the most important incidental result of the war. The people of the British Empire stood almost alone in their unwavering belief in the sincerity and unselfishness of the avowed purposes of the United States, and consequently in their warm sympathy and hope for American success. Without a formal alliance, without anything even in the nature of a diplomatic understanding, the world was surprised to observe that the two great English-speaking peoples of the world appeared to think and feel in unison; that all minor differences and causes of misunderstanding seemed to be forgotten, and that the feeling of kinship — free from all hostility against any other power, and without the slightest impairment of national independence or separate interests, but still strong and true — dominated public and private opinion on both sides of the Atlantic. It is needless to add that this fact opened up to the continental statesman vistas of which he had never dreamed before, and that it necessitated a more or less complete revision of previous calculations, plans, and combinations.

The solidarity of the Anglo-Saxon race.

The death of Prince Bismarck was the outward sign of the end of a period of European history, justly called, after its dominant figure and his motto, the Bismarckian Epoch, or that of Blood and Iron. For more than a human generation the titanic mind of the Iron Chancellor had dominated the international policy of Europe, and so potent

The death of Prince Bismarck.

Chapter I

had his ideas become, in Germany, that they had compelled even Science to bend to their support the masterly but "barrack-trained" minds of men like Treitschke and his pupils. The attempt was made, not entirely without success, to give a scientific and even a systematized philosophical basis to the policy of the most consistent and reckless realist and opportunist since Napoleon. There is probably little danger that this school of political science and philosophy will long outlive its mighty creator, but its very existence bears witness to the stupendous force of a master mind which could hold sway, even in a realm hitherto sacred to absolute freedom of thought and of teaching.

Bismarck a friend of peace.

History cannot fairly question the great Chancellor's right to be known as a sincere friend of peace. The problems which demanded solution at the outset of his career could not have been settled, humanly speaking, otherwise than with blood and iron.

Germany at that time was little more than a geographical expression, and, at the threshold of the stupendous industrial and commercial development of the last fifty years, the German people were two centuries behind other Western nations politically and economically. The vastly greater part of the nation had no legal access to the sea, and the entire country bade fair to become an object of barter or division among powerful surrounding states, whose designs were but imperfectly concealed. The rivalry of Austria and Prussia had become too acute for

longer continuance, and both the unity and independence of the German nation could no longer be saved except by a triumphant display of force. Questions of national independence or unification such as these, and the similar ones which confronted Italy forty years ago, demanded the stern arbitrament of war, by which alone the right to independence or to national unity can be vindicated, — but when these achievements had once been confirmed, the one end of Prince Bismarck's policy was the maintenance of peace in Europe. In this he was successful, so far as the entire continent, with the exception of the Balkan peninsula, was concerned. His domination has given to Europe, with this one exception, thirty years of unbroken peace — the longest period of repose in modern history.

The basis of his policy.

But the basis of his policy was avowedly not so much a love of peace for its own sake, as, on the contrary, the fear of the consequences of war, and his method was the simplest imaginable, — a consistent and continually increasing preparation for war by universal military service, and the avowed determination to be ready to strike the first blow, when necessary, with greater swiftness and effectiveness than any possible opponent. After the peace of Frankfort, the conviction was well-nigh unanimous in the German Empire, that what had been won by the sword would ere long have to be defended by the sword; and the trend of public discussion in France has even yet hardly been calculated to remove that impression. It was, therefore,

Chapter I

comparatively easy, in the first flush of national exultation, to establish the system of the utmost possible preparation for war, as practically the only guarantee of peace so far as the German Empire was concerned.

Advantages of universal military service.

Nor is it fair, even from a cosmopolitan or philosophical point of view, wholly to condemn the system of universal military service, as it was first established in Prussia and is now in vogue in continental Europe. That it is a great school of manliness and discipline may readily be admitted, and the undoubted democratic element which its absolute impartiality introduces into a military monarchy is deeply significant and of far-reaching importance. During the continuance of Prince Bismarck in office the slightest criticism, even of the details of this system, seemed almost sacrilegious. Had he died in office, the force of tradition would probably have upheld his ideas almost, if not quite, up to the economic breaking point. The retirement of the great Chancellor eight years before his death must be considered in many respects one of the most fortunate occurrences for the German people. It afforded a period of transition of incalculable value. The reduction of the term of service from three years to two[1] is the outward sign of a change which would have been diffi-

[1] This proposal was adopted in 1896, and seems to have given general satisfaction, but the mere suggestion of such a change was denounced under Bismarck with a fury which, according to Georg von Bunsen, one of the noblest and most attractive of modern Germans, envenomed and wasted the best years of a life full of the brightest promise. See Marie von Bunsen, *Georg von Bunsen*, p. 182.

cult, if not impossible, under a continuance of his régime. Chapter I

With his death, on July 30, 1898, his own countrymen as well as the world at large felt that an important chapter of European history had closed. The system of "Blood and Iron" had accomplished its work. A generation had grown to manhood who had never seen a great European war, and whose knowledge of problems which permitted of none but a bloody solution was derived solely from study and tradition. The insecure, burdensome, and wasteful character of the existing so-called "guarantees of peace" could no longer escape discussion and unanswerable demonstration.[1] The first manifestations of a Far Eastern problem of world-wide significance threw a specially lurid light upon the useless and dangerous divisions with which the civilized powers

An outlived system.

[1] The most important example of this fact is the remarkable volume of Dr. Eugen Schlief, *Der Friede in Europa, eine völkerrechtliche Studie*, published in 1892. Combining profound learning with sound judgment and common sense, the author of this book, to which reference will repeatedly be made hereafter, not only demonstrates the practicability of substituting an International Federation for Justice, for the unstable equilibrium of universal armaments, but almost prophetically forecasts the calling and, to a great extent, the results of the Peace Conference. He even suggests (p. 490) the initiative of Russia, and his discussion of the political problems involved shows statesmanlike insight and diplomatic tact.

The remarkable speech of the Emperor Francis Joseph of Austria-Hungary to the Delegations, in November, 1891, quoted in Schlief's book, p. 134, may also be cited as an expression which would hardly have been made during Prince Bismarck's continuance in power, and which was in direct contradiction to the "barracks-philosophy" referred to above.

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were confronting a situation fraught with grave possibilities.

In seemingly hopeless darkness the world anxiously awaited a sign of the dawn of another and a better era, and in the fulness of time it came.

The Rescript of the Russian Emperor

At the regular weekly reception of the diplomatic representatives accredited to the Court of St. Petersburg, held at the Foreign Office in that city on Wednesday, August 24 (12th, old style), 1898, each visitor was surprised to receive from Count Mouravieff, the Russian Foreign Minister, a lithographed communication, which read as follows: —

Text of the Rescript.

"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 ideas of His Majesty the Emperor, my August Master, have been won over to this view. In the conviction that this lofty aim is in conformity with the most essential interests and the legitimate views of all Powers, the Imperial Government thinks that the present moment would be very favorable for seeking, by means of international discussion, the most effectual means of insuring to all peoples the benefits of a real and durable peace, and, above all, of putting an

end to the progressive development of the present armaments.

"In the course of the last twenty years the longings for a general appeasement 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 concluded between themselves powerful alliances; it is the better to guarantee peace that they have developed, in proportions hitherto unprecedented, their military forces, and still continue to increase them without shrinking from any sacrifice.

"All these efforts nevertheless have not yet been able to bring about the beneficent results of the desired pacification. The financial charges following an upward march strike at the public prosperity at its very source.

"The intellectual and physical strength of the nations, labor and capital, are for the major part diverted from their natural application, and unproductively consumed. Hundreds of millions are devoted to 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 checked in their development. Moreover, in proportion as the armaments of each Power increase so do they less

and less fulfill the object which the Governments have set before themselves.

"The economic crises, due in great part to the system of armaments *à l'outrance*, and the continual danger which lies in this massing 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 things were prolonged, it would inevitably lead to the very cataclysm which it is desired to avert, and the horrors of which make every thinking man shudder in advance.

"To put an end to these incessant armaments and to seek the means of warding off the calamities which are threatening the whole world, — such is the supreme duty which is to-day imposed on all States.

"Filled with this idea, His Majesty has been pleased to order me to propose to all the Governments whose representatives are accredited to the Imperial Court, the meeting of a conference which would have to occupy itself with this grave problem.

"This conference should be, by the help of God, a happy presage for the century which is about to open. It would converge in one powerful focus the efforts of all States which are sincerely seeking to make the great idea of universal peace triumph over the elements of trouble and discord.

"It would, at the same time, confirm their agreement by the solemn establishment of the principles of justice and right, upon which repose the security of States and the welfare of peoples."

Among the representatives who received this communication on that day was Sir Charles Scott, Her Britannic Majesty's Ambassador in St. Petersburg, who in his despatch to Lord Salisbury, dated the following day, gives the following substance of the remarks of Count Mouravieff made at the time: —

Report of the British Ambassador.

"Count Mouravieff begged me to remark that this eloquent appeal, which he had drawn up at the dictation of the Emperor, did not invite a general disarmament, as such a proposal would not have been likely to be generally accepted as a practical one at present, nor did His Imperial Majesty look for an immediate realization of the aims he had so much at heart, but desired to initiate an effort, the effects of which could only be gradual.

"His Excellency thought that the fact that the initiative of this peaceful effort was being taken by the Sovereign of the largest military Power, with resources for increasing its military strength unrestricted by Constitutional and Parliamentary limitations, would appeal to the hearts and intelligence of a very large section of the civilized world, and show the discontented and disturbing classes of society that powerful military Governments were in sympathy with their desire to see the wealth of their countries utilized for productive purposes, rather than exhausted in a ruinous and, to a great extent, useless competition for increasing the powers of destruction.

"I observed, in reply, that it would be difficult to remain insensible to the noble sentiments which had inspired this remarkable document, which I would

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forward at once to your lordship, and I felt sure that it would create a profound impression in England."

Despatch from Mr. Balfour.

On August 30, Mr. Balfour, then temporarily in charge of the Foreign Office, replied to Sir Charles Scott as follows: —

"As the Prime Minister is abroad and the Cabinet scattered, it is impossible for me at present to give any reply, but I feel confident that I am only expressing the sentiments of my colleagues when I say that Her Majesty's Government most warmly sympathize with and approve the pacific and economic objects which His Imperial Majesty has in view."

Acceptance of the United States.

The United States of America accepted the invitation contained in Count Mouravieff's circular at once, and the Ambassador at St. Petersburg was instructed to do so orally in the most cordial terms.

The European press having to a great extent misunderstood or misconstrued the meaning of the circular, the following official communication appeared in the *Journal de St. Petersburg*, on Sunday, September 4: —

Russian explanation of the Rescript and its object.

"All the utterances of the foreign press regarding the Circular of the 24 ult. agree in testifying to the sympathy with which the action of the Russian Government has been received by the whole world. A high tribute of acknowledgment is paid to the noble and magnanimous conception which originated this great act. The unanimity of welcome proves in the most striking manner to what a degree the reflec-

tions, which lay at the root of the Russian proposal, correspond with the innermost feelings of all nations and their dearest wishes. Chapter I

"On all sides people had come to the conclusion that continuous armaments were a crushing burden to all nations, and that they constituted a bar to public prosperity. The most ardent wish of the nations is to be able to give themselves up to peaceful labor, looking calmly to the future, and they perceive clearly that the present system of armed peace is in its tendency peaceful only in name.

"It is to the excesses of this system that Russia desires to put an end. The question to be settled is without doubt a very complicated one, and some organs of public opinion have already touched on the difficulties which stand in the way of a practical realization. Nobody can conceal from himself the difficulties, but they must be courageously confronted.

"The intention of the Circular is precisely to provide for a full and searching investigation of this question by an international exchange of views. Certain other questions difficult of solution but of not less moment have already been settled in this century in a manner which has done justice to the great interests of humanity and civilization. The results which in this connection have been obtained at international conferences, particularly at the Congresses of Vienna and Paris, prove what the united endeavors of Governments can achieve when they proceed in harmony with public opinion and the needs of civilization.

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"The Russian proposal calls all States to greater effort than ever before, but it will redound to the honor of humanity at the dawn of the twentieth century to have set resolutely about this work that the nations may enjoy the benefits of peace, relieved of the overwhelming burdens which impede their economic and moral development."

All of the States invited to the Conference accepted the invitation, the last formal acceptance to be received being that of Great Britain on October 24. Lord Salisbury wrote as follows to the British Ambassador at St. Petersburg:—

Despatch from Lord Salisbury.

"Her Majesty's Government have given their careful consideration to the memorandum which was placed in your hands on August 24 last by the Russian Minister for Foreign Affairs, containing a proposal of His Majesty the Emperor of Russia for the meeting of a conference to discuss the most effective methods of securing the continuance of general peace and of putting some limit on the constant increase of armaments.

"Your Excellency was instructed at the time by Mr. Balfour, in my absence from England, to explain the reasons which would cause some delay before a formal reply could be returned to this important communication, and, in the meanwhile, to assure the Russian Government of the cordial sympathy of Her Majesty's Government with the objects and intentions of His Imperial Majesty. That this sympathy is not confined to the Government, but is equally

shared by popular opinion in this country, has been strikingly manifested since the Emperor's proposal has been made generally known by the very numerous resolutions passed by public meetings and societies in the United Kingdom. There are, indeed, few nations, if any, which, both on grounds of feeling and interest, are more concerned in the maintenance of general peace than is Great Britain.

"The statements which constitute the grounds of the Emperor's proposal are but too well justified. It is unfortunately true that while the desire for the maintenance of peace is generally professed, and while, in fact, serious and successful efforts have on more than one recent occasion been made with that object by the great Powers, there has been a constant tendency on the part of almost every nation to increase its armed force, and to add to an already vast expenditure on the appliances of war. The perfection of the instruments thus brought into use, their extreme costliness, and the horrible carnage and destruction which would ensue from their employment on a large scale, have acted no doubt as a serious deterrent from war. But the burdens imposed by this process on the populations affected must, if prolonged, produce a feeling of unrest and discontent menacing both to internal and external tranquillity.

"Her Majesty's Government will gladly coöperate in the proposed effort to provide a remedy for this evil; and if, in any degree, it succeeds, they feel that the Sovereign to whose suggestion it is due will have richly earned the gratitude of the world at large.

"Your Excellency is, therefore, authorized to assure Count Mouravieff that the Emperor's proposal is willingly accepted by Her Majesty's Government, and that the Queen will have pleasure in delegating a Representative to take part in the Conference whenever an invitation is received. Her Majesty's Government hope that the invitation may be accompanied by some indication of the special points to which the attention of the Conference is to be directed, as a guide for the selection of the British Representative, and of the assistants by whom he should be accompanied.

"You will read this despatch to the Minister for Foreign Affairs, and leave him a copy of it."

Despatch from the United States *Chargé d'Affaires.*

On November 9, Mr. Herbert H. D. Peirce, Chargé d'Affaires of the United States to Russia, reported his observations on the spot upon the proposed Conference to the Secretary of State in a most interesting and valuable despatch, which is here quoted almost in its entirety: —

"The question presents two broad phases: —

"1. The humanitarian aspect, looking toward a future universal peace, which, while it has long been the dream of philanthropists, has never before, I believe, been recognized as an attainable end, even in the distant future, in the materialism which governs State policies and international relations.

"2. The purely economic question of the absorption of men and resources for purely military purposes, to the detriment of national wealth and prosperity.

"While both aspects of the question are clearly set forth as actuating the Imperial Government in Count Mouravieff's circular, I am convinced that the gravity of its economic side is not lost sight of or obscured by any undue enthusiasm over its humanitarian aspect.

"It is, perhaps, at first blush a little disappointing that this great proposition of the Emperor's does not meet with warmer enthusiasm among the Russians themselves. But it should be remembered that the idea that a vast army is anything but a glory and a blessing is not only new, but is contrary to the traditions instilled into the Russian mind and carefully fostered ever since the time of Peter the Great. To expect them now to at once respond with enthusiasm to a proposition which involves the belief that this great military establishment, hitherto held up as the bulwark and safety of the nation, is in fact but a drain upon the resources of the country and which threatens to paralyze its development, would be to require an elasticity of temperament which the national character does not possess. Nor does the humanitarian aspect especially appeal to the ordinary Russian mind. The semi-oriental influences and traditions of the people have bred in them a slight regard for the value of human life and an apathetic fatalism which does not admit of the same point of view as exists in Western peoples. But furthermore, as this is essentially a military centre, in which the greater part of society has some near individual interest in the army, any proposition looking to a

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reduction of the army suggests the possibility of affecting personal interests which could not be complacently regarded.

"At the same time I do not wish to be understood as implying that there are not large numbers of people, both among the highly educated and among the merchant classes, who enter with enthusiasm into the views promulgated by the Emperor. These there are, and they regard the action with exultant pride in the sovereign, but they do not constitute the majority.

"That the Russian press is silent on the subject is due to the fact that the newspapers have been forbidden to discuss the matter. Naturally officials of the Government are unwilling to give free expression to any opinions they may hold on the subject. But whatever may be the state of public opinion on the question, it is safe to say that it will not in any way sway the policy of the Emperor.

"The general consensus of opinion among the members of the Diplomatic Corps now present appears to be that the proposition is visionary and Utopian, if not partaking of Quixotism. Little of value is expected to result from the Conference, and indeed every diplomatic officer with whom I have talked seems to regard the proposition with that technical scepticism which great measures of reform usually encounter. This is perhaps an argument in support of an opinion which has been advanced in certain journals that, diplomatic training and traditions being wholly opposed to the objects in view,

diplomatic officers would be unsuitable representa- Chapter I
tives for such a Conference.

"You are doubtless already well informed as to the attitude of the European press on the subject, and as the Russian journals contribute nothing to its literature I hesitate to attempt any summary, but yet a few observations concerning what has come under my notice may not be deemed amiss. Here also, in the absence of any other *modus vivendi* than *droit de force*, scepticism as to the possibility of arriving at any results characterizes the greater part of the utterances, although nearly all unite in paying high tribute to the philanthropic motives of the Emperor in calling the Conference. A few, chiefly of the less serious journals, referring to the recent increase in Russia's army and naval strength, as well as to her attitude in China, cast insinuations upon the good faith of his alleged benevolent intent.

"Many of the French papers bring up the old bone of contention between France and Germany over Alsace-Lorraine as an insurmountable impediment to any halt, on the part of France, in her military progress, while others suggest that a compromise on this question which would forever end it might be reached by Germany's surrendering Lorraine. Nearly all apply some point or other of international politics to the question, pointing to it as an obstacle to be overcome before anything approaching disarmament can be considered, even when grave results are admitted as an inevitable end to a continuance of

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the present progress in applied military science and development.

"Certain journals, considering more particularly the economic side of the question, point to Italy as a State ruined by the military development of the age. Statistical facts are brought forward to show the enormous sum expended annually by the various States for military purposes and the vast numbers of men kept out of useful employment, while, on the other side, is given some idea of what could be accomplished, in the way of material wealth, by the employment of the same men and money productively, giving rise to the reflection that possibly the increased wealth and resources so gained would be as powerful an agent in holding back aggression as are the present standing armies of Europe. Our own recent war has been an object lesson to all the world in the power of material wealth in time of national need.

"Many German newspapers have, while eulogizing the Emperor's humanitarian benevolence, argued that the expenditure of money and employment of men for military purposes is not impoverishing the State, since the money is expended and redistributed through the country, while the men find employment which they could not otherwise obtain. It is needless to say that these writers are not disciples of John Stuart Mill.

"The English newspapers have generally treated the subject more abstractly than the continental press, admitting the truth of the broad principles

involved, but while less ready to find specific objections and obstacles are still not free from scepticism as to the possibilities.

"But few suggestions for the accomplishment of the desired result have been made, though there have been some, as for instance the proposal that the minor powers should disarm, the peace of Europe to be guaranteed by the Great Powers, a measure which, while doubtless beneficial to the smaller States, would leave the guaranteeing Powers where they are.

"Count Lansdorff informs me that the Imperial Government has as yet formulated no further programme regarding the conference than that given in the Embassy's No. 141 of September 3rd, nor has it any definite policy in the matter, the purpose of the Conference being tentative and to open discussion as to the best means to bring about the desired result, if it be possible of attainment at all. I do not think that it is the expectation of any one in the Imperial Government that the end in view can even approximately be reached at an early day. The difficulties standing in the way are fully realized, but what is hoped for is that, by opening the discussion, ways to meet these difficulties may suggest themselves.

"In a conversation which I have recently had on the subject with a very eminent authority on international law of world-wide reputation, the following views were expressed. *Droit de force*, being, in effect, the *modus vivendi* under which nations now maintain their respective claims, if the very essence of that

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modus vivendi is to be swept away, as must be the case if any restriction is laid upon the employment by a nation of any part of its resources at its own discretion in military development, a new *modus vivendi* must be found adequate to the new conditions. Every nation, as every individual, is unalterably justified in defending its own rights against all encroachments by such means as, within accepted usage, lie within its grasp, and to repel force by force. In civilized communities the law undertakes to protect the individual in his rights in lieu of his maintenance of them *vi et armis*. But there is among nations no equivalent to the laws of civilized communities, for, however highly the principles of so-called international law, as enunciated by the various eminent authorities on the subject, may be regarded, they have not the sanctioning force of law, except in so far as certain of them are incorporated into treaties. In our own relations with Russia we have recently had an illustration of the absence of binding force of generally accepted principles of international law. I refer to the case of the *James Hamilton Lewis* and the reply of the Russian Government referred to in the Embassy's No. 177 of the 11th instant, in which the Russian Government, finding that the generally accepted principle of a jurisdiction extending three miles out to sea is inadequate to the defence of its case, claims that the limit of marine jurisdiction should be considered, in view of modern conditions, as extending to at least five miles from shore.

"The proposal of the Emperor would seem to Chapter I make the time auspicious for the consideration of the question of compiling a code of international principles having, by acceptance by treaty among the Powers, the sanctioning force of law. While it is not to be pretended that such a code would be the universal panacea for all international difficulties and disputes, any more than the civil law cures all private quarrels, it would at least be a great stride in advance in international relations, and might form the basis of a *modus vivendi* among the Powers which would take the place of *droit de force*.

"It may be argued that, given such a code, there would still be lacking either police or judicial tribunal to make it effective. But the same argument might be applied to treaties, and yet experience shows that the agreement of nations by treaty, while it does not prevent warfare, diminishes it and improves international relations.

"If it is admitted that the existence of such a code be a gain in international relations, it might perhaps be pertinent to consider a further extension of the same idea in the establishment of a permanent international congress, having legislative powers, subject to the ratification of the respective Governments, whose functions should be to so amend, from time to time, the international statutes as to meet new or unforeseen conditions." [1]

The next official communication, with reference to the Conference, is the circular letter of Count

[1] MSS. State Department.

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Mouravieff, dated St. Petersburg, January 11, 1899 (December 30, 1898, old style), as follows: —

Text of the second circular of Count Mouravieff, Dec. 30, 1898, Jan. 11, 1899.

"When, in the month of August last, my August Master instructed me to propose to the Governments which have Representatives in St. Petersburg the meeting of a Conference with the object of seeking the most efficacious means for assuring to all peoples the blessings of real and lasting peace, and, above all, in order to put a stop to the progressive development of the present armaments, there appeared to be no obstacle in the way of the realization, at no distant date, of this humanitarian scheme.

"The cordial reception accorded by nearly all the Powers to the step taken by the Imperial Government could not fail to strengthen this expectation. While highly appreciating the sympathetic terms in which the adhesions of most of the Powers were expressed, the Imperial Cabinet has been also able to collect, with lively satisfaction, evidence of the warmest approval which has reached it, and continues to be received, from all classes of society in various parts of the globe.

"Notwithstanding the strong current of opinion which exists in favor of the ideas of general pacification, the political horizon has recently undergone a decided change. Several Powers have undertaken fresh armaments, striving to increase further their military forces, and in the presence of this uncertain situation, it might be asked whether the Powers considered the present moment opportune for the inter-

national discussion of the ideas set forth in the Circular of August 12 (24, O. S.).

"In the hope, however, that the elements of trouble agitating political centres will soon give place to a calmer disposition of a nature to favor the success of the proposed Conference, the Imperial Government is of opinion that it would be possible to proceed forthwith to a preliminary exchange of ideas between the Powers, with the object: —

"(*a*) Of seeking without delay means for putting a limit to the progressive increase of military and naval armaments, a question the solution of which becomes evidently more and more urgent in view of the fresh extension given to these armaments; and

"(*b*) Of preparing the way for a discussion of the questions relating to the possibility of preventing armed conflicts by the pacific means at the disposal of international diplomacy.

"In the event of the Powers considering the present moment favorable for the meeting of a Conference on these bases, it would certainly be useful for the Cabinets to come to an understanding on the subject of the programme of their labors.

"The subjects to be submitted for international discussion at the Conference could, in general terms, be summarized as follows: —

"1. 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

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Text of the second circular of Count Mouravieff, Dec. 30, 1898, Jan. 11, 1899.

might even be effected in future in the forces and Budgets above mentioned.

"2. To prohibit the use in the armies and fleets of any new kind of fire-arms whatever, and of new explosives, or any powders more powerful than those now in use, either for rifles or cannon.

"3. To restrict the use in military warfare of the formidable explosives already existing, and to prohibit the throwing of projectiles or explosives of any kind from balloons or by any similar means.

"4. To prohibit the use, in naval warfare, of submarine torpedo-boats or plungers, or other similar engines of destruction; to give an undertaking not to construct, in the future, vessels with rams.

"5. To apply to naval warfare the stipulations of the Geneva Convention of 1864, on the basis of the additional Articles of 1868.

"6. To neutralize ships and boats employed in saving those overboard during or after an engagement.

"7. To revise the Declaration concerning the laws and customs of war elaborated in 1874 by the Conference of Brussels, which has remained unratified to the present day.

"8. To accept in principle the employment of good offices, of mediation and facultative arbitration in cases lending themselves thereto, with the object of preventing armed conflicts between nations; to come to an understanding with respect to the mode of applying these good offices, and to establish a uniform practice in using them.

"It is well understood that all questions concern-

ing the political relations of States, and the order of things established by Treaties, as in general all questions which do not directly fall within the programme adopted by the Cabinets, must be absolutely excluded from the deliberations of the Conference. Chapter I

"In requesting you, Sir, to be good enough to apply to your Government for instructions on the subject of my present communication, I beg you at the same time to inform it that, in the interest of the great cause which my August Master has so much at heart, His Imperial Majesty considers it advisable that the Conference should not sit in the capital of one of the Great Powers, where so many political interests are centred which might, perhaps, impede the progress of a work in which all the countries of the universe are equally interested.

"I have, etc.,

(Signed) "Comte Mouravieff."

In communicating this circular note to Lord Salisbury, Sir Charles Scott, the British Ambassador at St. Petersburg, in a despatch dated January 12, 1899, and printed in the British Blue Book, miscellaneous, No. 1, 1899, states: — Despatch from the British Ambassador in St. Petersburg.

"It will be observed that, in this note, after acknowledging the sympathetic reception which the Emperor's original suggestion has met with on the part of most of the foreign Governments and nations, the Russian Government refers to the change which has since been remarked in the aspect of the political horizon, and to increased armaments by certain

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Despatch from the British Ambassador in St. Petersburg.

Powers as having possibly suggested a doubt whether the present moment was an opportune one for holding such a Conference as His Majesty had contemplated.

"As I was reading this paragraph of the note, Count Mouravieff remarked that Great Britain had been one of the Powers which had been recently arming. I replied that I had seen this stated in irresponsible organs of the public press, but that I was not aware that any unusual or alarming military preparations or armaments had been made in England, and that I thought that all such reports should be received with a considerable amount of distrust.

"The note goes on to state the Emperor's opinion, that, if the Powers agree, an exchange of views might at once take place between the Governments on the subject of a programme for the deliberations of a Conference, the aims of which should be twofold: —

"1. To check the progressive increase of military and naval armaments, and study any possible means of effecting their eventual reduction.

"2. To devise means for averting armed conflicts between States by the employment of pacific methods of international diplomacy.

"With this object, the note suggests several themes as possibly suitable for discussion, and Count Mouravieff begged me to observe that the various points which the note enumerates are not to be regarded as put forward by the Russian Government, as prop-

ositions to which they are definitely committed, as they might possibly find themselves unable to support some of them in the Conference, but as mere indications of the class of subjects on which an exchange of views is invited. Chapter I

"While requesting me to seek the instructions of Her Majesty's Government on this communication, the note adds that, in the Emperor's opinion, the proposed Conference should not be held in the capital of any of the Great Powers. The place of meeting.

"On this point, Count Mouravieff said, in reply to my inquiry, that the Emperor had no particular capital of a smaller Power in view, but that a suggestion might be made later on, if the Powers shared His Majesty's view of the unsuitableness of a capital where large political interests might be unavoidably influenced by the presence of the Conference. In any case, he said, it was not desired that the Conference should be held in St. Petersburg."

The reply of Lord Salisbury to this despatch is dated London, February 14, 1899 (Blue Book, p. 4), as follows: —

"Foreign Office, February 14, 1899.

"Sir: — I have duly laid before the Queen your Excellency's despatch of the 12th ultimo, forwarding copy of a further note from the Russian Minister for Foreign Affairs with regard to the Conference proposed by His Majesty the Emperor of Russia to consider the means of insuring the general peace and of putting a limit to the progressive increase of armaments. Despatch from Lord Salisbury in reply to the second circular.

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Despatch from Lord Salisbury in reply to the second circular.

"Her Majesty's Government have learnt with satisfaction that the Russian Government persevere in their efforts towards this desirable object. It is undoubtedly true, as stated in Count Mouravieff's note, that since the first proposal made on this subject, in August, 1898, there has been some increase in the armament of several Powers, but this increase, in which, unless Her Majesty's Government are erroneously informed, the Russian Government have themselves in some degree participated, has, in their opinion, been more of a precautionary than of an aggressive nature, and need not be considered as indicating any diminution of the general interest and sympathy with which the Emperor's first proposal was received.

"Her Majesty's Government will, therefore, gladly accept the invitation which Count Mouravieff contemplates for a Conference to discuss the best methods of attaining the two objects specified in his Excellency's note, namely: the diminution of armaments by land and sea, and the prevention of armed conflicts by pacific, diplomatic procedure. With regard to the eight points enumerated by Count Mouravieff as proper subjects for discussion by the Conference, Her Majesty's Government would prefer for the present to abstain from expressing any definite opinion. They note that Count Mouravieff himself stated to your Excellency that the Russian Government must for the present observe a similar attitude. It is indeed clear that, in regard to some of these points, much must depend upon

the views and intentions which may be found to be entertained by the majority of the Powers, and a conclusion in respect to them can scarcely be arrived at without careful expert examination. As regards the eighth point, it is not necessary for Her Majesty's Government to make any fresh declaration of their earnest desire to promote, by all possible means, the principle of recourse to mediation and arbitration for the prevention of war.

"Her Majesty's Government accept willingly the proviso made by Count Mouravieff, that questions concerning the political relations between States, the order of things established by Treaties, and generally all questions not directly included in the programme of the Conference, should be excluded from its deliberations.

"They also agree with Count Mouravieff that it may be desirable that the meeting should be held at some other place than the capital of one of the Great Powers, although it would have been a satisfaction to them that the Conference, which owes its initiative to the Emperor, should have assembled at St. Petersburg, had His Imperial Majesty thought fit to propose it.

"You will read this despatch to Count Mouravieff and leave his Excellency a copy of it.

"I am, etc.,

(Signed) "SALISBURY."

The Hague selected as the place of meeting.

On February 9 (January 28, old style), Count Mouravieff informed the invited Governments that

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the Imperial Government had communicated with the Government of Her Majesty, the Queen of the Netherlands, regarding the choice of The Hague as the eventual seat of the proposed Conference, and that the Netherlands Government having expressed its assent, the representatives were requested to inform their Governments of this selection, which would, no doubt, be received with general sympathy. (Blue Book, p. 6.) On the 15th of the same month, Sir Henry Howard, the British Minister to The Hague, informed the British Government that M. de Beaufort, the Foreign Minister of the Netherlands, had informed him that the Conference would meet at The Hague, and that the Netherlands Minister at St. Petersburg would discuss the necessary preliminary details with Count Mouravieff. M. de Beaufort added that he expected that, in accordance with precedent, the Russian Foreign Office would, in the first instance, designate the Powers to be invited to send representatives to the Conference, and that then the Netherlands Government would issue the invitations; and he added that both the Queen and the Government of the Netherlands were greatly pleased at the selection of The Hague for the Conference.

Text of the formal invitation of the Netherlands Government.

The formal invitation of the Netherlands Government was extended by the Minister of the Netherlands to each of the invited Powers, and was dated April 7, 1899. It read as follows: —

"The Imperial Russian Government addressed on the 12th (24th) August, 1898, to the Diplomatic

Representatives accredited to the Court of St. Peters- Chapter I
burg a Circular expressing a desire for the meeting of an International Conference which should be commissioned to investigate the best means of securing to the world a durable peace, and of limiting the progressive development of military armaments.

"This proposal, which was due to the noble and generous initiative of the august Emperor of Russia, and met everywhere with a most cordial reception, obtained the general assent of the Powers, and His Excellency the Russian Minister for Foreign Affairs addressed on the 30th of December, 1898 (11th January, 1899), to the same Diplomatic Representatives a second Circular, giving a more concrete form to the general ideas announced by the magnanimous Emperor, and indicating certain questions which might be specially submitted for discussion by the proposed Conference.

"For political reasons the Imperial Russian Government considered that it would not be desirable that the meeting of the Conference should take place in the capital of one of the Great Powers, and after securing the assent of the Governments interested, it addressed the Cabinet of The Hague with a view of obtaining its consent to the choice of that capital as the seat of the Conference in question. The Minister for Foreign Affairs at once took the orders of Her Majesty the Queen in regard to this request, and I am happy to be able to inform you that Her Majesty, my August Sovereign, has been pleased to authorize him to reply that it will

Chapter I

be particularly agreeable to her to see the proposed Conference at The Hague.

"Consequently, my Government, in accord with the Imperial Russian Government, charges me to invite the Government of to be good enough to be represented at the above-mentioned Conference, in order to discuss the questions indicated in the second Russian Circular of the 30th December, 1898 (11th January, 1899), as well as all other questions connected with the ideas set forth in the Circular of the 12th (24th) August, 1898, excluding, however, from the deliberations everything which refers to the political relations of States, or the order of things established by Treaties.

"My Government trusts that the Government will associate itself with the great humanitarian work to be entered upon under the auspices of His Majesty, the Emperor of all the Russias, and that it will be disposed to accept this invitation, and to take the necessary steps for the presence of its Representatives at The Hague on the 18th May, next, for the opening of the Conference, at which each Power, whatever may be the number of its Delegates, will have only one vote."

What States were invited.

These invitations were issued to all Governments having regular diplomatic representation at St. Petersburg, as well as to Luxemburg, Montenegro, and Siam. No official explanation of the principle upon which invitations were issued or withheld was given, and any discussion of the causes which led to the

exclusion of the South African republics, as well as the Holy See would have to be based upon surmises. The government of the United States regretted the absence of delegates from the sister republics of Central and South America very sincerely, and with good reason, for the Conference was in consequence deprived of the valuable assistance among others of M. Calvo, of the Argentine Republic, certainly one of the most eminent authorities on International Law, — a science to which he and other South American scholars have made such notable contributions. The American commissioners at The Hague did not fail to remember that, with the exception of the Mexican delegates, they were the sole representatives of the Western Hemisphere, and in the entire course of the Conference, and especially in the discussions in the *Comité d'Examen*, careful efforts were made to safeguard the peculiar interests of Central and South America.

The absence of Central and South American Republics.

With reference to the other Powers who were not invited, it seems unquestionable that the course of the Russian Government was not only wise and just, but that it was, in fact, the only possible method of avoiding questions which would most certainly have led to an absolute and unqualified failure of the Conference itself. The merit of having successfully averted this danger, with notable tact and in perfect good will, is certainly one of the greatest achievements of modern Russian diplomacy.

CHAPTER II

THE OPENING OF THE CONFERENCE

On Thursday, the 18th of May, 1899, the beautiful Netherlands Capital of The Hague presented a stirring and picturesque spectacle. From all of the public buildings, the principal hotels, the various embassies and legations, and from many private houses, especially in the neighborhood of the public squares of the Lange Voorhout, Vyverberg, and Plein, the flags of nearly all civilized countries were thrown to the wind. The delegates of twenty-five Powers had arrived in order to attend the opening of what has since been officially known as the International Peace Conference. It was a perfect spring day, and it had been chosen for this interesting ceremony because it was the birthday of the Emperor of Russia.

The birthday of the Emperor of Russia.

At ten o'clock in the morning the Russian delegation, together with the members of the Russian Legation to the Netherlands, proceeded in full uniform to the small Orthodox chapel near Scheveningen, where a solemn Te Deum was chanted in honor of the Czar. The representatives of the United States of America had requested permission to participate in the service, but the request was withdrawn when they were informed that the chapel was scarcely large enough

to hold all of the Russians who were present in an official capacity. Chapter II

The opening ceremony of the Conference itself was set for two o'clock in the afternoon in the Oranje Zaal of the famous House in the Wood (*Huis ten Bosch*), or Summer Palace of the Dutch royal family, situated about one mile from the city in the beautiful park known as the Bosch. This palace, and more especially the meeting room of the Conference, has been made the subject of numerous descriptions.[1] Uniting the qualities of beauty and simplicity to a striking degree in its exterior, the palace in its interior presents a series of magnificently decorated rooms, the finest of which is the Oranje Zaal, or ballroom, which was finished in 1647, in honor of Prince Frederick Henry of Orange by Jordaens and other pupils of Rubens, by the order of his widow. The "House in the Wood" and the meeting room.

For the purposes of the Conference the room had been arranged in the form of a parliamentary hall — four rows of concentric semi-circular tables, covered with green baize, affording just one hundred seats, from all of which the chair could be readily seen and addressed. The presiding officer's chair itself had been placed in the bay window, flanked on either side by seats for the Russian delegation, or, as the case might be, for the members of a committee making a report; and directly in front and between the chair and the body of the hall there was ample room for Arrangement of the room.

[1] The best general description of the House in the Wood is perhaps to be found in an article by Mrs. W. E. H. Lecky, in the *Nineteenth Century* for May, 1890.

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the secretaries and attachés. The seats were allotted to the respective States in alphabetical order, in the French language, and the United States of America having been classified as "*Amérique*," under "A" shared with Germany (*Allemagne*) the seats of honor along the centre of the room and directly in front of the chair.[1]

Exclusion of all outsiders.

There was no room either for spectators or for journalists, except only a narrow gallery in the cupola, to which a very few invited guests were admitted on the opening and closing days of the Conference. At all other times, outsiders of every kind were strictly excluded, and visitors were not permitted even to inspect the palace during the sessions of the Conference or of any of its committees. No guaranty was thus lacking for complete privacy and freedom of deliberations.

The members of the Conference.

The following is a complete list of the members of the Conference with the committee assignments of each, arranged alphabetically according to the names of countries in the French language.

GERMANY (*Allemagne*)

Count George Herbert Münster Ladenburg, since created Prince Münster Derneburg; Ambassador for Hanover at St. Petersburg, 1856–1864; Member of the Prussian House of Lords, 1867, and of the North German and German Reichstag, 1867–1873;

[1] This arrangement gave rise to an amusing incident on the opening day. The veteran Count Münster (now Prince Münster Derneburg) jokingly charged the American delegation with having origi-

Ambassador of Germany to the Court of St. James, 1873–1885; Ambassador of Germany to France since 1885. Count Münster was the senior member of the Conference, and Honorary President of the First Committee. Chapter II

Baron Carl von Stengel; Imperial Landgerichtsrath in Mulhausen, 1871–1879; at Strassburg, 1879–1881; Professor at University of Breslau, 1881–1890; at University of Würzburg, 1890–1895; at University of Munich since 1895. Vice-President of the Second Committee, and a member of the First Committee and of the Committee on the Final Act.

Professor Philip Zorn, Privy Councillor; Professor of Law at Munich, 1875, and at Berne, 1875–1878; Professor at University of Königsberg since 1878. Vice-President of the Third Committee, and member of the Second Committee, as well as of the *Comité d'Examen.*

Colonel, now Major-General, Gross von Schwarzhoff, commander of the Fifth Regiment of Infantry, No. 93; Military Expert, Member of the First and Second Committees.

Captain Siegel, Naval Attaché at the Embassy of the German Empire at Paris; Naval Expert. Vice-President of the First Committee, and a member of the Second and Third Committees.

nated the alphabetical arrangement as part of the new "imperialistic" policy of the United States. On being assured that the American representatives were as innocent of such complicity as a new born babe, the Count smilingly shook his head, and remarked, "American innocence is generally your excuse, and has always been a drawing card in diplomacy."

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The members of the Conference.

United States of America (*États Unis d'Amérique*)

Andrew Dickson White, LL.D., L.H.D.; Secretary of Legation at St. Petersburg, 1855–1856; State Senator of New York, 1863–1867; President of Cornell University, 1867–1885; Special Commissioner of the United States to the Republic of Santo Domingo, 1871; Envoy Extraordinary and Minister Plenipotentiary to Germany, 1879–1881; to Russia 1892–1894; Ambassador to Germany since 1897. President of the American Commission, Honorary President of the First Committee, and member of the Second and Third Committees.

Seth Low, LL.D.; Mayor of Brooklyn, 1881–1885; President of Columbia University, New York, since 1890. Member of the Third Committee, and of the Committee on the Final Act.

Stanford Newel; Envoy Extraordinary and Minister Plenipotentiary of the United States to the Netherlands, since 1897. Member of the Second Committee.

Captain Alfred T. Mahan, LL.D., D.C.L., United States Navy, appointed to the Navy, 1856; Lieutenant, 1861; Lieutenant-Commander, 1865; President of the Naval War College at Newport, R. I., 1886–1893; Member of the Naval Advisory Strategy Board, 1898. Member of the First and Second Committees.

Captain William Crozier, United States Army; Captain in the Ordnance Department since 1890; inventor of a disappearing gun carriage, wire wrapped

rifle, and an improved ten-inch gun; Major and Inspector General of United States Volunteers, 1898. Member of the Second and Third Committees.

Frederick William Holls, D.C.L., Counselor at Law; Member of the Constitutional Convention of the State of New York, 1894. Secretary and Counsel of the American Commission, and a member of the Third Committee, as well as of the *Comité d'Examen.*

AUSTRIA-HUNGARY (*Autriche-Hongrie*)

Count Rudolph von Welsersheimb; Envoy Extraordinary and Minister Plenipotentiary at Belgium in 1888; Privy Councillor and Permanent Under-Secretary of State for Foreign Affairs, since 1895; Ambassador Extraordinary to The Hague for the purposes of this Conference. Honorary President of the Second Committee and a member of the Third Committee.

Alexander Okoliscanyi von Okoliscna; Privy Councillor and Chamberlain of His Majesty the Austrian Emperor; Envoy Extraordinary and Minister Plenipotentiary to Stuttgart, 1889, and to the Netherlands in 1894. Member of the Third Committee.

Gaetan Mérey de Kapos-Mére; Councillor of State and Chief of Cabinet in the Ministry of Foreign Affairs. Vice-President of the Third Committee of the Conference and a member of the Second Committee, and of the Committee on the Final Act.

Professor Heinrich Lammasch, Professor of Law at the University of Vienna. Member of the Second

and Third Committees, as well as of the *Comité d'Examen*.

Victor von Khuepach zu Ried, Zimmerlehen und Haslburg; Lieutenant-Colonel on the General Staff; Military Expert. Member of the First and Second Committees.

Count Stanislas Soltyk, Captain; Naval Expert. Member of the First and Second Committees.

Belgium (*Belgique*)

Auguste Beernaert, Minister of State, President of the Chamber of Deputies of the Kingdom of Belgium. President of the First Committee, and a member of the First and Second Committees.

Count de Grelle Rogier; Envoy Extraordinary and Minister Plenipotentiary of Belgium to the Netherlands. Member of the First and Third Committees.

Chevalier Descamps, Senator of the Kingdom of Belgium. Member of the Second and Third Committees, and of the Committee on the Final Act, and a member and reporter for the *Comité d'Examen*.

China (*Chine*)

Yang Yu, Envoy Extraordinary and Minister Plenipotentiary to the Courts of St. James and Vienna, former Minister to Washington, Lima, and Madrid; Mandarin of the second class, wearing the peacock feather.

Lou-Tseng-Tsiang, Secretary of Legation at St. Petersburg since 1892.

Hoo-Wei-Teh, Secretary of Legation at St. Peters-

burg, formerly at London, Washington, and Madrid; Chargé d'Affaires at St. Petersburg and Vienna; Mandarin of the third class.

The three Chinese delegates were members of the Second and Third Committees.

Ho-Yen-Cheng, Councillor of Legation, assistant delegate.

Denmark (*Danemark*)

Frederick E. De Bille, Minister at Washington, 1867–1872; at Stockholm, 1872–1890; Envoy Extraordinary and Minister Plenipotentiary to London since 1890. Vice-President of the Third Committee.

Colonel J. G. F. von Schnack, former Minister of War. Member of the First and Second Committees.

Spain (*Espagne*)

The Duke of Tetuan, formerly Minister of Foreign Affairs. Honorary President of the Second Committee.

W. Ramirez de Villa-Urrutia, Envoy Extraordinary and Minister Plenipotentiary to Brussels; Plenipotentiary for the negotiation of peace with the United States in Paris, 1898. Member of the Second and Third Committees.

Arturo de Baguer, Envoy Extraordinary and Minister Plenipotentiary to The Hague. Member of the Second Committee.

Colonel Count de Serrallo, Military Attaché of the Spanish Legation at Brussels; Military Expert. Member of the First Committee.

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The members of the Conference.

France (*France*)

Leon Bourgeois, formerly Minister of Public Instruction and Prime Minister of France. President of the Third Committee and of the *Comité d'Examen.*

Georges Bihourd, Envoy Extraordinary and Minister Plenipotentiary to The Hague. Member of the First Committee.

Baron d'Estournelles de Constant, formerly Chargé d'Affaires at London; member of the Chamber of Deputies. Vice-President of the Third Committee, and Secretary of the *Comité d'Examen.*

Rear-Admiral Pephau, French Navy; Naval Expert. Member of the First and Second Committees.

Brigadier-General Mounier, French Army; Military Expert. Member of the First and Second Committees.

Louis Renault, Professor of Law at Paris. Member of the Second and Third Committees, and a member and reporter of the Committee on the Final Act.

Great Britain and Ireland (*Grande Bretagne et Irlande*)

Sir Julian Pauncefote, since raised to the Peerage as Baron Pauncefote of Preston, Ambassador to the United States. Honorary President of the Third Committee of the Conference and of the *Comité d'Examen.*

Sir Henry Howard, Envoy Extraordinary and Minister Plenipotentiary to The Hague. Member of the Third Committee.

Vice-Admiral Sir John A. Fisher, R.N.; Naval Ex- Chapter II
pert. Vice-President of the First Committee and member of the Second Committee.

Major-General Sir John Ardagh, R.A., Director of Military Intelligence at the War Office; Military Expert. Vice-President of the First Committee of the Conference and member of the Second Committee.

Lieutenant-Colonel Charles á Court, R.A., Military Attaché at Brussels and at The Hague. Member of the Second Committee.

GREECE (*Gréce*)

Nicholas P. Delyannis, formerly Prime Minister and Minister of Foreign Affairs; Envoy Extraordinary and Minister Plenipotentiary to Paris. Member of the Third Committee.

ITALY (*Italie*)

Count Constantino Nigra, formerly Ambassador to France and London; Ambassador to Vienna. Honorary President of the Third Committee and of the *Comité d'Examen*, and member of the Committee on the Final Act.

Count A. Zannini; Envoy Extraordinary and Minister Plenipotentiary to The Hague. Member of the Third Committee.

Commander Guido Pompilj; Member of the Italian Parliament. Vice-President of the Third Committee; member of the Second Committee.

Major-General Chevalier Louis Zuccari; Military

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The members of the Conference.

Expert. Vice-President of the Second Committee and member of the First Committee.

Captain Chevalier Auguste Bianco; Naval Expert. Naval Attaché at London. Member of the First and Second Committees.

JAPAN (*Japon*)

Baron Hayashi, formerly Envoy Extraordinary and Minister Plenipotentiary to St. Petersburg and at present to the Court of St. James.

M. J. Motono, Envoy Extraordinary and Minister Plenipotentiary to Brussels. Member of Second and Third Committees.

Colonel Uyehara, Military Expert. Member of the First Committee.

Captain Sakamoto, Naval Expert. Member of the First Committee.

Nagas Arriga, Professor of International Law at the Army and Navy College at Tokio; Technical Delegate.

LUXEMBURG (*Luxembourg*)

M. Eyschen, Minister of State and President of the Grand Ducal Government. Member of the Second and Third Committees.

Count d'Villers, Chargé d'Affaires at Berlin. Member of the Second and Third Committees.

MEXICO (*Mexique*)

M. de Mier, Envoy Extraordinary and Minister Plenipotentiary at Paris.

M. Zenil, Minister resident at Brussels, and member of the Second and Third Committees. Chapter II

MONTENEGRO

(See Russia)

NETHERLANDS (*Pays Bas*)

Jonkheer A. P. C. van Karnebeek, formerly Minister of Foreign Affairs; member of the Second Chamber of the States General, Vice-President of the Peace Conference, and Honorary President of the First Committee, and member of the Third Committee.

General J. C. C. Den Beer Poortugael, formerly Minister of War; member of the Council of State. Member of the First Committee.

T. M. C. Asser, member of the Council of State; President of the Institute of International Law and Honorary President of the Second Committee of the Conference; member of the Third Committee and of the *Comité d'Examen*, as well as of the Committee on the Final Act.

E. N. Rahusen, member of the First Chamber of the States General, and member of Second Committee.

Commander A. P. Tadema, Chief of the General Staff of the Netherlands Marine; Naval Expert and member of the First Committee.

PERSIA (*Perse*)

General Mirza Riza Khan (Arfa ud Dovleh), Envoy Extraordinary and Minister Plenipotentiary at St.

Petersburg. Member of the First, Second, and Third Committees.

Mirza Samad Khan Montazis-Saltaneh, Councillor of the Legation at St. Petersburg.

Portugal (*Portugal*)

Count de Macedo, Envoy Extraordinary and Minister Plenipotentiary to Madrid. Vice-President of the Third Committee.

Agostinho d' Ornellas Vasconcellos, Envoy Extraordinary and Minister Plenipotentiary at St. Petersburg. Member of the Third Committee.

Count de Selir, Envoy Extraordinary and Minister Plenipotentiary to The Hague. Member of the Second Committee.

Captain Ayres d' Ornellas; Military Expert. Member of the First Committee.

Captain Auguste de Castilho, of the Portuguese Navy; Naval Expert.

Roumania (*Roumanie*)

Alexander Beldiman, Envoy Extraordinary and Minister Plenipotentiary at Berlin. Member of the First and Third Committees.

Jean N. Papiniu, Envoy Extraordinary and Minister Plenipotentiary to The Hague. Member of the Second and Third Committees.

Colonel Constantine Coanda, Director of Artillery in the Ministry of War; Military Expert. Member of the First Committee.

Russia (*Russie*)

Baron de Staal, Privy Councillor, Ambassador of Russia at the Court of St. James; President of the Peace Conference. Member of the Third Committee and of the *Comité d'Examen.*

Fedor de Martens, Privy Councillor; Permanent Member of the Council of the Imperial Ministry of Foreign Affairs. President of the Second Committee, member of the Third Committee and of the *Comité d'Examen*, as well as of the Committee on the Final Act.

Chamberlain de Basily, Councillor of State; Director of First Department of Imperial Ministry of Foreign Affairs. Member of the First Committee and of the *Comité d'Examen.*

Arthur Raffalovich, Councillor of State; Agent of the Imperial Ministry of Finance at Paris. Technical Delegate, Assistant Secretary-General, and member of the Committee on the Final Act.

Colonel Gilinsky of the General Staff; Military Expert. Member of the First and Second Committees.

Count Barantzew, Colonel of Mounted Artillery in the Guard; Military Expert. Member of the First and Second Committees.

Captain Scheine, Naval Agent of Russia at Paris; Naval Expert. Member of the First and Second Committees.

Lieutenant Ovtchinnikow, Professor of Jurisprudence; Technical Delegate. Member of the First and Second Committees.

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The members of the Conference.

SERVIA (*Serbie*)

Chedomil Mijatovitch, Envoy Extraordinary and Minister Plenipotentiary to the Court of St. James. Member of the Second and Third Committees.

Colonel Maschine, Envoy Extraordinary and Minister Plenipotentiary to Cettigne. Member of the First Committee.

Voislave Veljkovitch, Professor of Law at Belgrade. Member of Second and Third Committees.

SIAM (*Siam*)

Phya Suriya, Envoy Extraordinary and Minister Plenipotentiary to France. Member of the Third Committee.

Phya Visuddha, Envoy Extraordinary and Minister Plenipotentiary to the Court of St. James.

Chevalier Corragioni d' Orelli, Councillor of Legation. Member of the Second and Third Committees.

Edouard Rolin, Consul-General of Siam in Belgium. Member of the First and Third Committees; reporter of the sub-committee of the Second Committee.

SWEDEN AND NORWAY (*Suède et Norvège*)

Baron de Bildt, formerly Minister to Washington and Vienna, Envoy Extraordinary and Minister Plenipotentiary to Italy. Member of the Third Committee.

Col. P. H. E. Brändström, Commander First Regi-

ment of Grandees of the Court; Military Expert. Member of the First and Second Committees. Chapter II

Captain C. A. M. de Hjulhammer, Naval Expert.

W. Konow, President of the Odelsthing of Norway, and member of the Third Committee.

Major-General J. J. Thaulow of the Norwegian Army, Military Expert. Vice-President of the Second Committee.

SWITZERLAND (*Suisse*)

Arnold Roth, Envoy Extraordinary and Minister Plenipotentiary at Berlin. Vice-President of the Second Committee and member of the Third Committee.

Colonel Arnold Kuenzli, National Councillor. Member of the First and Third Committees.

Edouard Odier, National Councillor; Counselor at Law. Member of the Second and Third Committees and of the *Comité d'Examen.*

TURKEY (*Turquie*)

Turkhan Pacha, formerly Minister of Foreign Affairs and member of Council of State. Honorary President of the Second Committee and member of the Third Committee.

Noury Bey, Secretary-General in the Ministry of Foreign Affairs. Member of the Second and Third Committees.

General Abdullah Pacha, Military Expert. Vice-President of the First Committee; member of the Second Committee.

Rear-Admiral Mehemed Pacha, Naval Expert. Member of the First and Second Committee.

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BULGARIA (*Bulgarie*)

Dimitri I. Stancioff, Diplomatic Agent at St. Petersburg. Member of the Second and Third Committees.

Major Christo Hessaptchieff, Military Attaché at Belgrade. Member of the First Committee.

So far as the author could ascertain, not one of these one hundred members was missing at the opening scene. Promptly at two o'clock the doors of the meeting room were closed, and an impressive silence came over the assemblage, in which every member doubtless realized that a great and solemn historical moment had arrived.

His Excellency W. H. de Beaufort, Minister of Foreign Affairs of the Netherlands, rose and called the meeting to order with the following remarks: —

Address of M. de Beaufort, Minister of Foreign Affairs.

"In the name of Her Majesty, my August Sovereign, I have the honor to bid you welcome, and to express in this place my sentiments of profound respect and lively gratitude toward His Majesty, the Emperor of all the Russias, who, in designating The Hague as the meeting-place of the Peace Conference, has conferred a great honor upon our country. His Majesty, the Emperor of all the Russias, in taking the noble initiative which has been acclaimed throughout the entire civilized world, wishing to realize the desire expressed by one of his most illustrious predecessors — the Emperor Alexander the First — that of seeing all the sovereigns and all the nations of

Europe united for the purpose of living as brethren, aiding each other according to their reciprocal needs, — inspired by these noble traditions of his august grandfather, His Majesty has proposed to all the Governments, of which the representatives are found here, the meeting of a Conference which should have the object of seeking the means of putting a limit to incessant armaments, and to prevent the calamities which menace the entire world. The day of the meeting of this Conference will, beyond doubt, be one of the days which will mark the history of the century which is about to close. It coincides with the festival which all the subjects of His Majesty celebrate as a national holiday, and in associating myself, from the bottom of my heart, with all the wishes for the well-being of this magnanimous Sovereign, I shall permit myself to become the interpreter of the wishes of the civilized world, in expressing the hope that His Majesty, seeing the results of his generous designs by the efforts of this Conference, may hereafter be able to consider this day as one of the happiest in his reign. Her Majesty, my August Sovereign, animated by the same sentiments which have inspired the Emperor of all the Russias, has chosen to put at the disposal of this Conference the most beautiful historical monument which she possesses. The room where you find yourselves to-day, decorated by the greatest artists of the seventeenth century, was erected by the widow of Prince Frederick Henry to the memory of her noble husband. Among the greatest of the alle-

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gorical figures which you will admire here, there is one appertaining to the peace of Westphalia, which merits your attention most especially. It is the one where you see Peace entering this room for the purpose of closing the Temple of Janus. I hope, gentlemen, that this beautiful allegory will be a good omen for your labors, and that, after they have been terminated, you will be able to say that Peace, which here is shown to enter this room, has gone out for the purpose of scattering its blessings over all humanity. My task is finished. I have the honor to submit to you two propositions: first, to offer to His Majesty, the Emperor of all the Russias, our respectful congratulations by telegraph in these words: 'The Peace Conference places at the feet of Your Majesty its respectful congratulations on the occasion of Your Majesty's birthday, and expresses its sincere desire of coöperating in the accomplishment of the great and noble work in which Your Majesty has taken the generous initiative, and for which the Conference requests the acceptance of its humble and profound gratitude.'

Telegram to the Emperor of Russia.

Election of the President.

"My second proposition will be met with equal favor. I wish to be permitted to express the desire that the Presidency of this assembly be conferred upon His Excellency M. de Staal, Ambassador of Russia."

These motions having been carried unanimously, His Excellency M. de Staal took the presidential chair, with the following speech: —

Address of President de Staal.

"GENTLEMEN: My first duty is to express to His Excellency, the Minister of Foreign Affairs of the Netherlands, my gratitude for the noble words which he has just addressed to my August Master. His Majesty will be profoundly touched by the high sentiments by which M. de Beaufort is inspired, as well as with the spontaneity with which they have been approved by the members of this high assembly. If the Emperor of Russia has taken the initiative for the meeting of this Conference, we owe it to Her Majesty, the Queen of the Netherlands, that we have been called together in her capital. It is a happy presage for the success of our labors that we have been called together under the auspices of a young Sovereign whose charm is known far and near, and whose heart, open to everything grand and generous, has borne witness to so much sympathy for the cause which has brought us here.

"In the quiet surroundings of The Hague — in the midst of a nation which constitutes a most significant factor of universal civilization, we have under our eyes a striking example of what may be done for the welfare of peoples by valor, patriotism, and sustained energy. It is upon the historic ground of the Netherlands that the greatest problems of the political life of States have been discussed; it is here, as one may say, that the cradle of the science of International Law has stood; for centuries the important negotiations between European Powers have taken place here, and it is here that the remarkable treaty was signed which imposed a truce during the bloody con-

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Address of President de Staal.

test between States. We find ourselves surrounded by great historic traditions.

"It remains for me to thank the Minister of Foreign Affairs of the Netherlands for the too flattering expressions which he has used about me. I am certain that I express the impulse of this high assembly, in assuring His Excellency, M. de Beaufort, that we should have been happy to see him preside over our meetings. His right to the Presidency was indicated not only by precedents followed on like occasions, but especially by his qualities as the eminent statesman who now directs the foreign policy of the Netherlands. His Presidency would, besides, be one more act of homage which we should love to pay to the August Sovereign who has offered us her gracious hospitality. As for myself, I cannot consider the election which has been conferred upon me otherwise than as a result of my being a plenipotentiary of the Emperor, my Master, — the august initiator of the idea of this Conference. Upon this ground I accept, with profound thanks for the high honor which the Minister of Foreign Affairs has conferred upon me in proposing my name, and which all the members of the Conference have so graciously ratified. I shall employ all my efforts to justify this confidence, but I am perfectly aware that the advanced age which I have attained is, alas, a sad privilege and a feeble auxiliary. I hope at least, gentlemen, that it may be a reason for your indulgence.

"I now propose to send to Her Majesty, the Queen, whose grateful guests we are here, a message which I shall now read: —

"'Assembled for the first time in the beautiful House in the Woods, the members of the Conference hasten to place their best wishes at the feet of Your Majesty, begging the acceptance of the homage of their gratitude for the hospitality which you, madame, have so graciously deigned to offer them.' Chapter II

"I propose to confer the Honorary Presidency of the International Peace Conference upon His Excellency, the Minister of Foreign Affairs of the Netherlands, and to name as Vice-President of this assembly the Jonkheer van Karnebeek, First Delegate of the Netherlands." Election of the Honorary President and Vice-President.

Upon the adoption of these propositions, the following officers were elected. Secretary-General, Jonkheer J. C. N. van Eys of Holland; Assistant Secretary-General, M. Raffolovich of Russia; Secretaries: M. Albert Legrand of France, M. Edouard de Grelle Rogier of Belgium, Chevalier W. de Rappard of Holland, Jonkheer A. G. Schimmelpenninck of Holland, M. Max Jarousse de Sillac of France, and Jonkheer J. J. Rochussen of Holland. Assistant Secretaries: G. J. C. A. Pop and Lieutenant C. E. Dittlinger. Secretaries.

After passing a resolution declaring all meetings of the Conference and of its Committees to be absolutely secret, the Conference adjourned at half-past two until Saturday, May 20, at eleven o'clock in the morning. Secrecy.

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The Second Session

At the second session of the Conference, the President, M. de Staal, read the following telegrams: —

Telegrams from the Queen of the Netherlands and the Emperor of Russia.

"Hausbaden: May 19, 1899. In thanking Your Excellency, as well as the members of the Peace Conference, for the sentiments expressed in your telegram, I take this occasion, with great pleasure, to repeat my welcome to my country. I wish most sincerely that, with the aid of God, the work of the Conference may realize the generous idea of your August Sovereign. (Signed) "Wilhelmina."

"St. Petersburg: May 19, 1899. The Emperor requests me to act towards the Conference as the interpreter of his sincere thanks and of his most cordial wishes. My August Master directs me to assure Your Excellency how much His Majesty appreciates the telegram which you have sent to him.

(Signed) "Count Mouravieff."

The President stated that at the moment of beginning the labors of the Conference, he considered it useful to summarize its objects and general tendencies, and he expressed himself as follows: —

Address of President de Staal.

"To seek the most efficacious means to assure to all peoples the blessings of a real and durable peace, this, according to the circular of the 12th — 24th — of August, is the principal object of our deliberations. The name of Peace Conference, which the instincts of the people, anticipating a decision on this point by the Governments, has given to our

assemblage, indicates accurately the essential object of our labors. The Peace Conference must not fail in the mission which devolves upon it; it must offer a result of its deliberations which shall be tangible, and which all humanity awaits with confidence. The eagerness which the Powers have shown in accepting the proposition contained in the Russian circular is the most eloquent testimony of the unanimity which peaceful ideas have attained. It is, therefore, for me an agreeable duty to ask the delegates of all the States represented here to transmit to their respective Governments the repeated expressions of thanks of the Russian Government. The very membership of this assemblage is a certain guarantee of the spirit in which we approach the labor which has been confided to us. The Governments are represented here by statesmen who have taken part in shaping the destiny of their own countries; by eminent diplomats who have been concerned in great negotiations, and who all know that the first need of peoples is the maintenance of peace. Besides these, there will be found here *savants* who in the domain of international law enjoy a justly merited renown. The general and superior officers of the armies and navies who will help us in our labors will bring to us the assistance of their high competence. Diplomacy, as we all know, has for its object the prevention and the appeasement of conflicts between States; the softening of rivalries, the conciliation of interests, the clearing up of misunderstandings, and the substitution of harmony for discord. I may be permitted

to say that in accordance with the general law, diplomacy is no longer only an art in which personal skill enjoys exclusive prominence. It is tending to become a science, which should have its own fixed rules for the solution of international conflicts. This is to-day the ideal object which ought to be before our eyes, and indisputably a great progress would be accomplished if diplomacy should succeed in establishing here even some of the results of which I have spoken. We shall also undertake in a special manner to generalize and codify the practice of arbitration, of mediation, and of good offices. These ideas constitute, so to speak, the very essence of our task. The most useful object proposed for our efforts is to prevent conflicts by pacific means. It is not necessary to enter the domain of Utopia. In the work which we are about to undertake, we should take account of the possible, and not endeavor to follow abstractions. Without sacrificing anything of our ulterior hopes,[1] we should here remain in the domain of reality, sounding it to the deepest depth for the purpose of laying solid foundations and building on concrete bases. Now what does the actual state of affairs show us? We perceive between nations an amount of material and moral interests which is constantly increasing. The ties which unite all parts of the

[1] This phrase was seized upon by the press as an indication of ambiguity, not to say duplicity, and the most unfounded and absurd attacks upon Russian diplomacy were founded on an evident misconception. Nothing could be clearer than that M. de Staal was referring solely to "ulterior hopes" of permanent peace, and not to advantages of a political nature.

human family are ever becoming closer. A nation could not remain isolated if it wished. It finds itself surrounded, as it were, by a living organism fruitful in blessings for all, and it is, and should be, a part of this same organism. Without doubt, rivalries exist; but does it not seem that they generally appertain to the domain of economics, to that of commercial expansion which originates in the necessity of utilizing abroad the surplus of activity which cannot find sufficient employment in the mother country? Such rivalry may do good, provided that, above it all, there shall remain the idea of justice and the lofty sentiment of human brotherhood. If, therefore, the nations are united by ties so multifarious, is there no room for seeking the consequences arising from this fact? When a dispute arises between two or more nations, others, without being concerned directly, are profoundly affected. The consequences of an international conflict occurring in any portion of the globe are felt on all sides. It is for this reason that outsiders cannot remain indifferent to the conflict — they are bound to endeavor to appease it by conciliatory action. These truths are not new. At all times there have been found thinkers to suggest them and statesmen to apply them, but they appertain, more than ever before, to our own time, and the fact that they are proclaimed by an assembly such as this, marks a great date in the history of humanity.

"The nations have a great need for peace, and we owe it to humanity — we owe it to the Governments which have here given us their powers and who are

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Address of President de Staal.

responsible for the good of their peoples — we owe it to ourselves to accomplish a useful work in finding the method of employing some of the means for the purpose of insuring peace. Among those means arbitration and mediation must be named. Diplomacy has admitted them in its practice for a long while, but it has not fixed the method of their employment, nor has it defined the cases in which they are allowable. It is to this high labor that we must concentrate our efforts — sustained by the conviction that we are laboring for the good of all humanity, according to the way which preceding generations have foreseen, and when we have firmly resolved to avoid chimeras, when we have all recognized that our real task, grand as it is, has its limits, we should also occupy ourselves with another phase of the situation. From the moment when every chance of an armed conflict between nations cannot be absolutely prevented, it becomes a great work for humanity to mitigate the horrors of war. The governments of civilized States have all entered into international agreements, which mark important stages of development. It is for us to establish new principles; and for this category of questions the presence of so many persons of peculiar competence at this meeting cannot be otherwise than most valuable. But there are, besides these, matters of very great importance, and of great difficulties, which also appertain to the idea of the maintenance of peace, and of which a consideration has seemed to the Imperial Government of Russia a proper part of the labors of this Conference. This is

the place to ask whether the welfare of peoples does not demand a limitation of progressive armaments. It is for the governments to whom this applies to weigh in their wisdom the interests of which they have charge. Chapter II

"These are the essential ideas, gentlemen, which should in general guide our labors. We shall proceed, I am sure, to consider them in a lofty and conciliatory spirit, for the purpose of following the way which leads to a consolidation of peace. We shall thus accomplish a useful work, for which future generations will thank the sovereigns and heads of state represented in this assembly.

"One of our preliminary duties in order to insure the progress of our work is to divide our labors, and I therefore beg to submit for your approval the following proposal. Three Committees shall be appointed. The First Committee shall have charge of the Articles 1, 2, 3, and 4 of the Circular of December 30, 1898. The Second Committee of Articles 5, 6, and 7. The Third Committee shall have charge of Article 8 of the said Circular, and each Committee shall have power to subdivide itself into subcommittees. Appointment of Committees.

"It is understood that outside of the aforementioned points the Conference does not consider itself competent to consider any other question. In case of doubt the Conference shall decide whether any proposition originating in the Committee is germane or not to the points outlined. Every State may be represented upon every Committee. The First Dele-

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gates shall designate the members of the respective delegations who shall be members of each of the Committees. Members may be appointed upon two or more Committees. In the same manner as in the full Conference each State shall have but one vote in each Committee. The Delegates, representing the Governments, may take part in all the meetings of the Committees. Technical and scientific Delegates may take part in the full meetings of the Conference. The Committees shall appoint their own officers and regulate the order of their labors."

These propositions of the President were unanimously adopted.

Communications to the press.

At the same meeting the President and the Bureau were authorized to communicate to the members of the press a summary of the proceedings of each Committee, it being understood that in other respects the rule of secrecy should be maintained.

At its subsequent sessions the Conference adopted the reports presented by its various Committees, and an account of its work will be found in the following chapters under the appropriate heads.

Summary of the sessions of the Conference.

In the interest of historical and chronological accuracy it should however be stated that the Conference held ten sessions in all, of which the first two, on May 18 and 20, have been described above. At the third session, May 23, the various Committees were announced. At the fourth session, June 20, the report of the Second Committee on the Extension of the Geneva Rules to naval warfare was adopted,

and the Committee on the Final Act was appointed. Chapter II
At the fifth session, July 5, the report of the Second Committee on the Laws and Customs of War was adopted, and the subject of the immunity of private property on the high seas, introduced by the American representatives, was referred to a future conference. At the sixth session, July 21, the report of the First Committee on Disarmament and on the employment of certain instruments of warfare was agreed to, and at the seventh session, July 25, the report of the Third Committee on the peaceful adjustment of international differences was adopted, subject to the declaration of the United States of America regarding the Monroe Doctrine. The eighth and ninth sessions, July 27 and 28, were devoted to a discussion of the Final Act, and the placing upon record of various formal declarations; and an account of the tenth or final session, July 29, will be found in a subsequent chapter.

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THE WORK OF THE FIRST COMMITTEE

Limitation of Armaments

Misconception of the object of the Conference.

The future historian of the Peace Conference will regard the fact that this gathering was, almost from the first, named the "Disarmament Conference," as a most significant circumstance, throwing a peculiar light upon the condition of public opinion, especially with reference to the institution of universal military service. The word "disarmament" does not occur in any of the official documents of the Conference, but the idea was immediately seized upon almost unconsciously by the public at large, as the ultimate goal toward which the entire movement must inevitably tend. The immediate result of this misconception was perhaps unfortunate, in that it led directly to the widespread impression of the "failure" of the Conference, when it became apparent that disarmament was a subject which could not even be seriously considered. It is a matter of history that immediately after the adjournment of the Conference this alleged failure to agree, even upon a limitation of present armaments, was made the text of innumerable unfavorable observations upon the Conference as a whole, and its positive results in other directions, far reaching and momentous as they are, were almost entirely

forgotten, or mentioned only with patronizing condescension. Fortunately the results attained by the Peace Conference did not depend, for their ultimate realization, upon public opinion in any country, except the United States of America, where a two-thirds majority of the Senate was required for the ratification of the treaty. That ratification was happily secured without difficulty. It is hardly doubtful that before long the petulant disappointment of public opinion over the failure of an idea which must be regarded as premature, if not Utopian, will give way to a careful examination of the work actually done, and the fundamental truth will once more be clearly seen that until an acceptable substitute for war is provided, the ancient proverb has lost but little of its force: "*Si vis pacem, para bellum.*"

Value of the discussion on the Limitation of Armaments.

The limitation of armaments to their present strength, both in numbers and in equipment, by international agreement, was an idea which was seriously proposed and discussed at the Peace Conference, but the realization of which was unanimously decided to be premature at the present time. That such a limitation will ever be the result of an international agreement may well be doubted, owing to the inherent difficulties of the scheme. It cannot, however, be denied that the practical discussion of the question, by the representatives of powers supposed to have conflicting or hostile interests, was in itself of value, and that the light thrown upon the subject during these discussions will be of service hereafter.

The subject was referred to the First Committee of the Conference, and the discussion was opened on June 23 by M. Beernaert of Belgium, the president of the committee, who spoke as follows: —

Speech of M. Beernaert.

"GENTLEMEN: We have now reached the serious problem which the Russian Government has first raised, in terms which have already engaged the attention of all the world. Faithful to the traditions of his predecessors, and notably of Alexander I., who, in 1816, attempted to found Eternal Peace, through Disarmament, Emperor Nicholas urges a reduction of military expenses, or at least a limitation of their increase. He has done this in terms, the gravity and importance of which can hardly be exaggerated. For once it is a great Sovereign who thinks that the enormous charges which, since 1871, have resulted in the state of armed peace, now to be seen in Europe, are of a nature to undermine and paralyze public prosperity, and that their ever increasing progress upward will produce a heavy load, which the peoples will carry with greater and greater difficulty. It is for this evil that he wishes Europe to find a remedy.

"The circular of Count Mouravieff defines the problem with greater precision in presenting it in its double aspect: What are the means of setting a limit to the progressive increase of armaments? Can the nations agree by common accord not to increase them, or even to reduce them? But it is for me rather to indicate the problem than to propose a solution, and I believe that this latter should

be formulated most clearly and precisely. The subject is difficult, and it would be impossible to exaggerate its importance, for the question of armed peace is not only bound closely to that of public wealth and of the highest form of progress, but also to the question of social peace. This is one more reason why we should give to our discussions clear and formal bases. Hence, for example, we should ask whether the agreement should provide for the number of the effective forces or for the amount of the budget of military expenses, or for both of these points. How should the numbers be fixed and verified? Should the armies of to-day be taken as the basis for the designation? Are naval forces to be treated the same as armies? What shall be done about the defence of colonies? Chapter III

"I hope that our eminent President, His Excellency M. de Staal, who will now address us, will enlighten us on all these different points."

M. de Staal thereupon spoke as follows: —

"MR. PRESIDENT: I wish to add a few words to the eloquent remarks which you have just made. I should like to state precisely the thought by which the Russian Government has been inspired, and to indicate at the same time the different stages through which the question which now occupies us, has passed. Since the month of August, 1898, the Russian Government has invited the Powers to seek by the aid of international discussion the most efficacious means of setting a limit to the progressive Speech of M. de Staal.

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Speech of M. de Staal.

development of armaments. A cordial and sympathetic welcome was given to the request of the Imperial Government by all the Powers who are here represented. At the same time, notwithstanding the enthusiasm with which this proposition was received, the Russian Government considered it necessary to gather more definite information from the various Cabinets for the purpose of deciding whether the time was really favorable for the convocation of a Conference, of which the first object would properly be this restriction of armaments. The responses which were given to us, the acceptance of the programme sketched in the Circular of December 30, 1898, and in which the first point looked to the non-augmentation, for a fixed term, of the existing armies, led us to decide in favor of taking the initiative in the Peace Conference. It is thus, gentlemen, that we find ourselves united at The Hague, animated by a spirit of conciliation, in which our good will confronts a common work to be accomplished.

"Let us examine the essential point which has been referred to this committee, — it is the question of the limitation of budgets and of actual armaments. It seems to me indispensably necessary to insist that this important question should be made the subject of a most profound study, constituting, as it does, the first purpose for which we are here united, that of alleviating, as far as possible, the dreadful burden which weighs upon the peoples, and which hinders their material and even moral development. The forces of human activity are absorbed in an increas-

ing proportion by the expenses of the military and naval budgets. As General Den Beer Poortugael has said so eloquently, it is the most important functions of civilized governments which are paralyzed by this state of affairs, and which are thus relegated to the second place. Armed peace to-day causes more considerable expense than the most burdensome war of former times. If one of our great committees has been charged with the duty of alleviating or mitigating the horrors of war, it is to you, gentlemen, that the equally grand task has been assigned to alleviate the burdens of peace, especially those which result from incessant competition in the way of armaments. I may be permitted to hope that on this point, at least, the desires of anxious populations who are following our labors with a constant interest shall not be balked. The disappointment would be cruel. It is for this reason that I ask you to give all of your attention to the proposition which the technical delegates of Russia will present to you. You will see that these propositions constitute in very truth a minimum. Is it necessary for me to declare that we are not speaking of Utopias or chimerical measures? We are not considering disarmament. What we are hoping for, is to attain a limitation — a halt in the ascending course of armaments and expenses. We propose this with the conviction that if such an agreement is established, progress in other directions will be made — slowly perhaps, but surely. Immobility is an impossibility in history, and if we shall only be able for some years to provide for a certain stability, every-

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thing points to the belief that a tendency toward a diminution of military charges will be able to grow and to develop. Such a movement would correspond entirely to the ideas which have inspired the Russian circulars. But we have not yet attained to this point. For the moment we aspire to the attainment of stability for a fixed limitation of the number of effectives and of military budgets."

General Den Beer Poortugael of Holland followed in a most eloquent and brilliant address, which was in the nature of a general exhortation and an elaboration of the ideas expressed by M. de Staal; whereupon Colonel Gilinsky of Russia presented the text of the two proposals submitted on behalf of the Russian Government, as follows: —

Russian proposals.

"I. As to armies: —

"1. An international agreement for the term of five years, stipulating for the non-augmentation of the present number of troops kept in time of peace.

"2. The determination, in case of such an agreement, if it is possible, of the number of troops to be kept in time of peace by all of the Powers, not including Colonial troops.

"3. The maintenance, for the term of five years, of the amount of the military budget in force at the present time.

"II. As regards navies: —

"1. The acceptance in principle of fixing for a term of three years the amount of the naval budget,

and an agreement not to increase the total amount for this triennial period, and the obligation to publish during this period, in advance: —

"(*a*) The total tonnage of men-of-war which it is proposed to construct, without giving in detail the types of ships.

"(*b*) The number of officers and crews in the navy.

"(*c*) The expenses of coast fortifications, including fortresses, docks, arsenals, etc."

Speech of Colonel Gilinsky of Russia.

Colonel Gilinsky said that the programme of the Russian Government had in view two objects, — the first was humanitarian, diminishing the possibility of war, and as far as possible its evils and calamities; the second was founded upon economic considerations, namely: to diminish so far as possible the enormous weight of pecuniary charges which all the nations are obliged to supply for the support of their armies in time of peace.

With regard to the first object, the committees to which have been referred the questions of arbitration, good offices, the laws and usages of war, and the adaptation of the principles of the Geneva Convention to naval warfare, were now busily engaged; but Colonel Gilinsky, while hoping that their labors would be crowned with great success, asked whether the peoples represented at the Conference would be entirely satisfied if nothing whatever was done at the Conference to lift this heavy load which they were bearing in time of peace, and which was so enormous that open war had been considered almost

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Speech of Colonel Gilinsky of Russia.

preferable to the indefinite continuance of such unbearable conditions.

Colonel Gilinsky proceeded to examine the argument that the expenditure of money for the support of the army was a benefit to the country because the money was kept in the country; and he pointed out the difficulty of setting a limit to continued increase of armaments on the part of any country which considered itself in danger, except by virtue of an international agreement. He claimed that the Russian proposals were not in themselves novel, since they simply extended over the entire world principles which had been accepted in many of the countries here represented. In Germany the strength of the army was fixed every seven years: in Russia the military budget was fixed for a term of five years. The term might be shorter if the Conference so decided.

"We suggest nothing new," he remarked, "except the decision and the courage to ascertain the facts, and to say that the time has come to call a halt. Russia proposes this to you: she invites you to set a limit to the further increase of military forces at a moment when she herself is far from having attained the maximum in this development, for we Russians do not call upon more than twenty-six to twenty-nine and one-half per cent of our young men to enter the ranks, whereas other States require twice as great a percentage or even more. There is thus no selfish interest in the Russian proposal. It is a purely humanitarian idea, and a proposition with an eco-

nomic feature which you can entertain and discuss in absolute confidence."

Colonel Gilinsky called attention to the fact that the Russian proposition was the only one upon the subject which had been submitted to the Conference, but assured all the members that any alternative proposition, modification, or suggestion for amendment coming from any other country would be most welcome. He hoped the question would be carefully and freely discussed. As for disarmament, he repeated that it was neither practicable nor desirable to discuss that question until an agreement had been reached regarding a limitation of present armaments. He closed as follows: —

"The idea of the Emperor of Russia is grand and generous. Misunderstood at first, it now commands the approval of all peoples, for the people have at last understood that this idea has in view nothing but peace and the prosperity of all. The seed has fallen into fruitful soil — the human mind is aroused — it is working to make it germinate, and soon I am sure this seed will bear beautiful fruit. If not this first Conference, it will be a future Conference which will accept the idea, for it responds to the wants of the nations. We are here, gentlemen, to cultivate this idea, to solve this problem. Do not let us yield the honor to others. Let us make a supreme effort, and with good-will and confidence, I hope we shall arrive at the very agreement so ardently desired by all nations."

At the next meeting of the First Committee on

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June 27, Colonel Gilinsky gave a few additional explanations of the Russian proposal, the most important being, that, while Russia had no colonies in the strict sense of the term, she owned territories at a very great distance from Europe, and he consequently proposed to treat troops serving in the Central Asia and the Amur districts like the colonial troops of other Powers; that is to say, to place no limitation upon their numbers.

General Gross von Schwarzhoff of Germany thereupon spoke as follows: —

Speech of General von Schwarzhoff.

"GENTLEMEN: Our honored colleague, Colonel Gilinsky, has requested us not to vote, but to discuss the propositions which have been formulated in his report on the first point of the Circular of Count Mouravieff. I feel constrained to comply with this request, and to express my opinion, and I shall do so with perfect frankness, and without any reservation. In the meanwhile, however, I should like to say a few words in reply to General Den Beer Poortugael, who made himself the warm defender of these propositions even before they had been submitted to us. He did so in very elevated and picturesque language, for which I envy him, and of which we all recognize the high eloquence. But I am unable to agree with all the ideas which he has expressed. There is a Latin proverb which says, '*Quis tacet consentire videatur*,' and I should not like to have my silence taken as consent. I can hardly believe that among my honored colleagues there is a single one ready to state that his Sovereign, his Government, is engaged

in working for the inevitable ruin, the slow but sure annihilation of his country. I have no mandate to speak for my honored colleagues, but so far as Germany is concerned, I am able to completely reassure her friends and to relieve all well-meant anxiety. The German people is not crushed under the weight of charges and taxes,—it is not hanging on the brink of an abyss; it is not approaching exhaustion and ruin. Quite the contrary; public and private wealth is increasing, the general welfare and standard of life is being raised from one year to another. So far as compulsory military service is concerned, which is so closely connected with those questions, the German does not regard this as a heavy burden, but as a sacred and patriotic duty to which he owes his country's existence, its prosperity, and its future. Chapter III

"I return to the propositions of Colonel Gilinsky, and to the arguments which have been advanced, and which to my mind are not quite consistent with each other. On the one hand, it is feared that excessive armaments may bring about war; on the other, that the exhaustion of national wealth will make war impossible. As for me, I have too much confidence in the wisdom of sovereigns and nations to share such fears. On the one hand, it is pretended that nothing is asked but things which have existed for a long time in some countries, and which therefore present no technical difficulties; on the other hand, it is said that this is truly a very difficult question, the solution of which would require a supreme effort. I am entirely of the latter opinion. We shall encounter

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Speech of General von Schwarzhoff.

insurmountable obstacles — those which may be called technical in a somewhat wider sense of the term. I believe that the question of effectives cannot be regarded by itself alone, disconnected from a number of other questions to which it is quite subordinated. Such questions, for instance, as the state of public instruction, the length of time of active military service, the number of established regiments, the effectives of each army unit, the number and duration of the drills or military obligations of the reserves, the location of the different army corps, the railway system, the number and situation of fortified places. In a modern army all of these belong together and form the national defence which each people has organized according to its character, its history, and its traditions, taking into account its economical resources, its geographical situation, and the duties incumbent upon it. I believe that it would be very difficult to substitute for such an eminently national task an international convention. It would be impossible to determine the extent and the force of one single portion of this complicated mechanism. It is impossible to speak of effectives without taking into account the other elements which I have enumerated in a most incomplete manner. Furthermore, mention has been made only of troops stationed in the larger cities, and with this Colonel Gilinsky agrees; but there is territory which may not be a part of the particular country, but which may be so near that troops stationed there would certainly participate in a continental war. And the countries over sea — how

could they ever admit a limitation of their armies if colonial troops, which alone menace them, are not to be affected by this convention? Chapter III

"Gentlemen: I have simply indicated from a general point of view some of the reasons which, according to my view, prevent the realization of the desire which is surely shared by us all, to arrive at an agreement on the question before us. Permit me to add a few words regarding the special situation of the country which I have the honor to represent in this body. In Germany the number of effectives is fixed by an agreement between the Government and the Reichstag, and in order not to repeat every year the same debates, the number was fixed for seven and later for five years. This is one of the arguments advanced by Colonel Gilinsky when he declared that he asks of us nothing new. At first sight, gentlemen, it would seem that such an arrangement might facilitate our adhesion to a similar proposition; but apart from the fact that there is a great difference between a municipal law and an international convention, it is precisely our 'quinquennate' which prevents us from making the proposed agreement. There are two reasons against it: first, the international period of five years would not synchronize with our national period, and this would be a grave obstacle; furthermore, the military law which is to-day in force does not fix a specified number of effectives, but on the contrary it provides for a continuous increase up to 1902 or 1903, in which year the reorganization begun this year will have been termi-

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nated. Up to then it would be impossible for us to maintain, even for two consecutive years, the same number of effectives." [1]

Answer of Colonel Gilinsky.

Colonel Gilinsky replied briefly to the arguments of General von Schwarzhoff. He considered it possible to meet the objections based upon the present laws of Germany. Regarding the prosperity of States, Colonel Gilinsky said that he did not claim that all countries were being impoverished — there are those which progress notwithstanding military charges, but still the latter were certainly not a help to public prosperity. Successive armaments were not of a nature to increase the wealth of governments, even though they might be profitable to some persons. He conceded that the question of railways exercises a great influence upon the defence of a country — an army would have to be much more numerous if the boundaries could not be quickly defended from the interior, with the assistance of an effective railway system. With regard to the countries beyond sea, he admitted that exceptions would have to be made on the subject of colonial troops, but he thought that while no hard-and-fast rule could be laid down, the way might be found to satisfy, if not all, at least a great number.

General von Schwarzhoff, in reply, feared that he

[1] The entire subject of disarmament, or a limitation of armaments in its various aspects, is treated in a masterly manner, in Chapter XIV. (p. 450) of Schlief, *Der Friede in Europa*, where the reader will find some of General von Schwarzhoff's view's amplified, and others controverted.

had not been completely understood. He would not deny that other means, perhaps more humane, might be found to spend money, than in supplying military armaments. He merely wished to answer language which, according to his ideas, was surely exaggerated. The number of effectives alone gave no proper basis for comparison of the strength of armies, because there was a great number of other considerations which had to be regarded. Without touching the number of its effectives, any power could vastly increase its belligerent strength. The equilibrium which is now supposed to exist would then be destroyed, and in order to reëstablish it, governments must be left free to choose the means best suited to their requirements.

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Reply of General von Schwarzhoff.

Jonkheer van Karnebeek of Holland supported the views advanced by his colleague, General Den Beer Poortugael, without ignoring the great force of the objections raised by General von Schwarzhoff, and he called particular attention to the fact that the forces of anarchy and unrest in each country would be the only ones to profit directly by the failure of the Conference to agree upon some limitation of the increase of armaments.

Speech of Jonkheer van Karnebeek.

M. Stancioff of Bulgaria declared that his Government would cordially support any proposition for a limitation of armaments. He declared that armed peace was ruinous, especially for small countries whose wants were enormous and who had everything to gain by using their resources for the development of industry, agriculture, and general progress. He

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repudiated the idea that the proposition before the Conference impaired the liberty of nations. For this reason Bulgaria had warmly welcomed the circular of Count Mouravieff, and was prepared to support every movement tending toward the practical realization of the ideas of the Emperor of Russia.

Appointment of Sub-Committees.

After a further brief discussion, the chairman, M. Beernaert, suggested the appointment of a committee to which the Russian proposals should be referred.

M. Bourgeois of France suggested that the smaller states, which were necessarily inclined toward the maintenance of peace, should be represented equally with the Great Powers, and the motion of the chairman was adopted by the following vote: —

Ayes: United States of America, Belgium, Spain, France, Great Britain, Italy, Japan, Netherlands, Persia, Portugal, Roumania, Russia, Servia, Sweden and Norway, China, Turkey, and Bulgaria, (17).

Noes: Germany, Austria-Hungary, (2).

Abstentions: Denmark, Greece, Switzerland, (3).

The sub-committee for the examination of the military proposals was constituted as follows: —

Military.

Major-General Gross von Schwarzhoff of Germany, General Mounier of France, Colonel Gilinsky of Russia, General Sir John Ardagh of Great Britain, Lieutenant-Colonel von Khuepach of Austria, General Zuccari of Italy, Captain Brändström of Sweden, Colonel Coanda of Roumania, and M. Raffalovich of Russia, Secretary.

Naval.

The naval portion of the Russian proposals was referred to another sub-committee, consisting of M.

de Bille of Denmark, Count Soltyk of Austria, Captain Scheine of Russia, and M. Corragioni d' Orelli of Siam. Chapter III

At the next meeting of the First Committee under the Presidency of M. Beernaert on June 30, M. Mijatovitch of Servia took the floor, and in a speech of great force declared the adhesion of his country to the ideas expressed by Count Mouravieff, and formulated in the Russian proposals.

Report of Military Sub-Committee.

The military sub-committee appointed at the last session, to which was referred the examination of the first proposal, reported through M. Beernaert as follows: "The members of the committee, to whom was referred the proposition of Colonel Gilinsky, regarding the first point in the Circular of Count Mouravieff, after two meetings, report, that with the exception of Colonel Gilinsky they are unanimously of the opinion, first, that it would be very difficult to fix, even for a period of five years, the number of effectives, without regulating at the same time other elements of national defence; second, that it would be no less difficult to regulate by international agreement the elements of this defence, organized in every country upon a different principle. In consequence, the committee regrets not being able to approve the proposition made in the name of the Russian Government. A majority of its members believe that a more profound study of the question by the Governments themselves would be desirable."

General Zuccari of Italy declared that the number of effectives for peace of the Italian army

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was fixed by organic laws, which his Government had no intention of changing, and that it must therefore reserve to itself complete liberty of action with regard to any international agreement on the subject.

Baron de Bildt of Sweden and Norway spoke as follows: —

Speech of Baron de Bildt of Sweden and Norway.

"I venture to say that in no country have the Russian proposals been received with a more spontaneous and more sincere sympathy than in Sweden and Norway. Profoundly convinced of the necessity of peace, we have for nearly a century pursued a policy which looks to nothing but the maintenance of good relations with other Powers, and our military establishments have always had only one object, — the protection of our independence and the maintenance of neutrality. A message of peace, having in view a limitation of the armaments which now weigh heavily upon the world, could not be otherwise than welcome to us, and it could not come from any better source than from our powerful neighbor. If, notwithstanding all this, we cannot approve the propositions formulated by Colonel Gilinsky, it is not because we have not the same desire as he, regarding that which is to be done, but because we find ourselves confronted with an important question of form. The Russian propositions make no difference between armies organized according to the principles of modern military science and those which are still governed by former conditions, possibly superannuated, or those which are at present in a state of transformation.

Moreover, they make no distinction between armies constituting a complete military weapon, equally adapted to attack or defence, and those which, either by the short duration of service or by their distinctive qualities, manifestly are intended to have only a defensive character. This is precisely the case with the Swedish and Norwegian armies, organized on the basis of obligatory service of at least some months, and being now in a stage of transformation. When I state that the greater number of cadres of the Swedish army exists under a system dating back two centuries, I believe I have said enough to convince you that this is not an organization which we could agree to maintain even for five years. We have, therefore, not given our vote in favor of the Russian proposition, such as it has been formulated, and I state this fact with the sincerest regret — I may say more, with great sorrow — for, gentlemen, we are about to terminate our labors, recognizing that we have been confronted by one of the most important problems of the century, and confessing that we have done very little toward solving it. It is not for us to indulge in illusions; when the results of our labors shall have become known, there will arise, notwithstanding all that we have done for arbitration, the Red Cross, etc., one grand cry, 'This is not enough,' and most of us in our conscience will have to admit the justice of this cry. It is true, our conscience will also tell us, as a consolation, that we have done our duty, for we have evidently followed our instructions; but I venture to say that our duty is not finished,

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Speech of Baron de Bildt of Sweden and Norway.

and that there yet remains something else to accomplish. Let me explain what I mean. The act of the Russian Emperor has already been covered with all the flowers of rhetoric, by men much more eloquent than I. Let me content myself with saying, that while the idea is grand and beautiful, and while it responds to a desire felt by millions upon millions of men, it may further be said that it cannot die. If the Emperor will only add the virtue of perseverance to the nobility of heart and the generosity of spirit which he has shown throughout the Peace Conference, the triumph of his labors is assured. He has received from Providence not only the gift of power, but also that of youth. If the generation to which we belong is not destined to accomplish this work, he may count upon that which will soon come to take our places. To him belongs the future, but in the meanwhile we, who wish to be, each one in his own small sphere of activity, his humble and faithful co-laborers, we have the duty to seek, and to explain to our Governments with entire frankness and entire veracity, each imperfection, each omission which may be shown in the preparation or the execution of this work, and to tenaciously strive after the means of doing better and doing more, whether this means be found in new conferences, in direct negotiations, or simply in the policy of a good example. This is the duty which it remains for us to fulfil."

The speech of Baron de Bildt was warmly applauded and created a profound impression.

M. Bourgeois thereupon took the floor, and spoke as follows: — Chapter III

"I have been happy to listen to the eloquent remarks which Baron de Bildt has just delivered. They express not only my personal sentiments and those of my colleagues of the French delegation, but I am sure that they also express the feelings of the entire Conference. I wish to join in the appeal which the delegate of Sweden and Norway has just made. I believe that to express completely the thought by which it was animated, the committee must do something more. I have read carefully the text of the conclusions adopted by the sub-committee. This report shows with great precision and force the difficulties now in the way of the adoption of an international treaty for the limitation of effectives. It was for the purpose of examining these practical difficulties that the subject was referred to this sub-committee, and no one can think of criticising the manner in which it has accomplished its task. But this first committee of the Conference should consider the problem presented by the first paragraph of the circular of Count Mouravieff from a point of view more general and more elevated. We certainly do not wish to remain indifferent to a question of principle presented to the civilized world by the generous initiative of His Majesty the Emperor of Russia. It seems to me necessary that an additional resolution should be adopted by us, to express more clearly the sentiment which animated the last speaker, and which makes us all hope and wish that Speech of M. Bourgeois of France.

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Speech of M. Bourgeois of France.

the work here begun may not be abandoned. The question of principle may be stated very simply. Is it desirable to limit the military charges which now weigh upon the world? I listened with great care in the last session to the remarkable speech of General von Schwarzhoff. He presented with the greatest possible force the technical objections which, according to his view, prevented the committee from adopting the propositions of Colonel Gilinsky. It did not, however, seem to me that he at the same time sufficiently recognized the general ideas in pursuance of which we are here united. He showed us that Germany is easily supporting the expense of its military organization, and he reminded us that notwithstanding this, his country was enjoying a very great measure of commercial prosperity. I belong to a country which also supports readily all personal and financial obligations imposed by national defence upon its citizens, and we have the hope to show to the world next year that we have not gone back in our productive activity, and have not been hindered in the increase of our financial prosperity. But General von Schwarzhoff will surely recognize with me that if in his country, as well as in mine, the great resources, which are now devoted to military organization, would, at least in part, be put to the service of peaceful and productive activity, the grand total of the prosperity of each country would not cease to increase at an even more rapid rate. It is this idea which we ought not only to express here among ourselves, but which, if possible, we

should declare before the public opinion of the world. It is for this reason that if I were obliged to vote on the question put in the first paragraph of the proposition of Colonel Gilinsky, I would not hesitate to vote in the affirmative. Besides, we have hardly the right here to consider only whether our particular country supports the expense of armed peace. Our duty is higher. It is the general situation of all nations which we have been summoned to consider. In other words, we are not only to vote on questions appertaining to our special situation. If there is a general idea which might serve to attain universal good, it is our duty to emancipate ourselves. Our object is not to form a majority and a minority. We should refrain from dwelling upon that which separates us, but emphasize those things upon which we are united. If we deliberate in this spirit, I hope we shall find a formula which, without ignoring the difficulties which we all understand, shall at least express the thought that a limitation of armaments would be a benefit for humanity, and this will give to the Governments that moral support which is necessary for them, if they are to still further pursue this noble object. Gentlemen, the object of civilization seems to us to be to abolish more and more the struggle for life between men, and to put in its stead an accord between them for the struggle against the unrelenting forces of matter. This is the same thought which, upon the initiative of the Emperor of Russia, it is proposed that we should promote by international agreement. If sad necessity obliges us

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to renounce for the moment an immediate and positive engagement to carry out this idea, we should at least attempt to show public opinion that we have sincerely examined the problem presented to us. We shall not have labored in vain if in a formula of general terms we at least indicate the goal to be approached, as we all hope and wish, by all civilized nations."

M. Bourgeois then moved the adoption of the following resolution: —

Resolution on the limitation of armaments.

"The Committee considers that a limitation of the military charges which now weigh upon the world is greatly to be desired in the interests of the material and moral welfare of humanity." This resolution was adopted unanimously.

M. Delyannis of Greece next read a statement explaining the non-committal attitude of his Government toward the Russian proposals.

The Report.

The second sub-committee, to which the naval propositions were referred, made a report similar to that of the first sub-committee, so far as the limitations of naval budgets was concerned, and the full Committee resolved that the resolution presented by M. Bourgeois applied equally to both Russian proposals. After requesting Jonkheer van Karnebeek to draw up the report of the Committee to the Conference, the Committee adjourned, and the further discussion upon the question of the limitation of armaments took place in the full Conference.

At the last meeting of the First Committee, on July 17, when the report to be presented to the

Conference was under consideration, the following statement, drawn up by the Commission of the United States of America, was read: — Chapter III

"The delegation of the United States of America have concurred in the conclusions upon the first clause of the Russian letter of December 30, 1898, presented to the Conference by the First Committee, 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, cannot now be accepted, and that a more profound study on 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 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 they concern Europe alone, the United States has no claim to enter. The resolution offered by M. Bourgeois and adopted by the First Committee has also received 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

Statement on behalf of the United States of America.

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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 the number of the population, as well as in comparison with those of other nations, that their size can entail no additional burden or expense upon the latter, nor can even form a subject for profitable mutual discussion."

Further study of the question.

The Conference subsequently unanimously adopted the resolution proposed by the First Committee on the motion of M. Bourgeois, and the entire subject was thus relegated to the further study of the various Governments. It should not be forgotten that an agreement to limit armaments is in effect a promise to be more or less unready in what may be a supreme crisis of national life or national honor. So long as the fear of such crises may reasonably enter into the daily thoughts and the serious plans of even the most peaceable and highly civilized of nations, there can be little hope even for a further study of the question.

Its probable effect.

The effective federation of the civilized world for purposes of international justice, and the conviction, possible perhaps only after years of experience, that in the twentieth century international differences can be settled by peaceable means more frequently than ever before, will alone suffice to reassure the nations of the world sufficiently to permit the relaxing of efforts which even the warmest friends of peace cannot, in the meanwhile, wholly condemn.

The second, third, and fourth clauses of the circular of Count Mouravieff of December 30, 1898, treating of the humanizing of war, were also referred to the First Committee of the Conference, which in turn referred the second and third paragraphs to its military sub-committee, and the fourth paragraph to its naval sub-committee.

The military sub-committee in consequence had charge of the subjects of powders and explosives, field guns, balloons, and muskets, as well as bullets, although, as Captain Crozier remarks in his report to the American Commission, it would have appeared more logical to consider them under the seventh numbered article of the circular, referring to the declaration concerning the laws and customs of war, made by the Brussels Conference in 1874.

Report of the Military Sub-Committee.

The report of the military sub-committee was submitted by General Den Beer Poortugael of the Netherlands, and it was most ably and lucidly summarized for the Commission of the United States of America by Captain Crozier, the American representative on the Committee. The Russian representative was Colonel Gilinsky, and the propositions for discussion were for the most part presented by him in the name of his Government, so that upon him generally devolved the duty of explaining and supporting the propositions in the first instance.

Powders.

Upon the subject of powders, by which term the propelling charge of projectiles as distinguished from

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the bursting charge, was meant, the proposition was an agreement not to make use of any more powerful powders than those employed at present, both for field guns and muskets. Upon this subject Captain Crozier declared that the prohibition of the adoption of more powerful powders than those actually in use might easily work against one of the objects of the Russian proposition, namely: economy. A powder being powerful in proportion to the production of gas furnished by the charge and the atmosphere of combustion, it might be easy to produce powder which, while furnishing a greater volume of gas at a lower temperature of combustion, might be more powerful than any powder now actually in use, and yet, at the same time, on account of the lower temperature, it might injure the musket much less, and thus increase the latter's durability.

The point made by the American representative was so well taken that the proposition was unanimously rejected.

Mining shells for field artillery.

As to explosives or the bursting charge of projectiles, two propositions were made. The first was an agreement not to make use of mining shells for field artillery. After a brief discussion the proposal was rejected by a vote of eleven to ten, the minority being made up of the States of Belgium, Denmark, Netherlands, Persia, Portugal, Servia, Russia, Siam, Switzerland, and Bulgaria.

High explosives.

The second proposition was not to make use of any new explosives of the class known as high explosives. This proposition was, after a short discussion, rejected by a vote of

twelve to nine — the majority being made up of Germany, United States of America, Austria-Hungary, Denmark, Spain, France, Great Britain, Italy, Japan, Roumania, Sweden and Norway, and Turkey. Chapter III

On the subject of field guns, the proposition was for the Powers to agree that no field material should be adopted of a model superior to the best material now in use in any country — those countries having material inferior to the best now in use retaining the privilege of adopting such best material. This proposition was rejected by a unanimous vote, with the exception of two abstentions, namely: Russia and Bulgaria. Field guns.

On the subject of balloons, the sub-committee first voted a perpetual prohibition of their use, or that of similar new machines, for throwing projectiles or explosives. In the full Committee, on motion of Captain Crozier, the prohibition was unanimously limited to cover a period of five years only. The action taken was for humanitarian reasons alone, and was founded upon the opinion that balloons, as they now exist, form so uncertain a means of injury, that they cannot be used with accuracy. The persons or objects injured by throwing explosives may be entirely disconnected from the conflict, and such that their injury or destruction would be of no practical advantage to the party making use of the machines. The limitation of the prohibition to five years' duration preserves liberty of action under such changed circumstances as may be produced by the progress of invention. Throwing projectiles or explosives from balloons.

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Muskets and Small arms.

Regarding muskets, the Russian proposition was that no Powers should change their existing type of small arms. This proposition differed essentially from the one regarding field guns, which permitted all Powers to adopt the most perfect material now in existence; the reason for the difference was explained by the Russian representative, to be, that, whereas there was a great difference in the excellence of field artillery material now in use in the different countries, that they all adopted substantially the same musket, and being on an equal footing, the present would be a good time to cease making changes. The object of the proposition was stated to be purely economical. It was explained that the prohibition to adopt a new type of musket was not intended to prevent the improvement of existing types; but this immediately called forth a discussion as to what constituted a type, and what improvements might be made without falling under the prohibition of not changing it. Efforts were made to cover this point by specifying details, such as initial velocity, weight of the projectiles, etc., also by a proposition to limit the time for which the prohibition should hold, but no agreement could be secured.

The attitude of the United States toward such questions.

Captain Crozier, on behalf of the United States of America, stated early in the discussion the attitude of America, namely: that it did not consider limitations in regard to the use of military inventions to be conducive to the peace of the world, and for that reason propositions for such a limitation would not generally be supported by the American representatives.

Automatic muskets.

A separate vote was taken on the question whether the Powers should agree not to make use of automatic muskets. In the words of Captain Crozier, "As this may be taken as a fair example of the class of improvements which, although they may have reached such a stage as to be fairly before the world, have not yet been adopted by any nation, an analysis of the vote taken upon it may be interesting as showing the attitude of the different Powers in regard to such questions." The States voting in favor of the prohibition were, Belgium, Denmark, Spain, Netherlands, Persia, Russia, Siam, Switzerland, and Bulgaria, (9). Those voting against it were, Germany, United States of America, Austria-Hungary, Great Britain, Italy, Sweden and Norway, (6). Those abstaining were, France, Japan, Portugal, Roumania, Servia, and Turkey, (6). From this statement it may be seen that none of the Great Powers, except Russia, was willing to accept restrictions in regard to military improvements, when the question of increase of efficiency was involved, and that only one great Power, France, abstained from expressing an opinion upon the subject.

In the full Committee, after the failure of another effort to secure the adoption of the proposition, it was agreed that the subject should be relegated to the future consideration of the different Governments.

New methods of destruction.

The question was also raised as to whether there should be any agreement in regard to the use of new means of destruction, which might possibly have a tendency to come into vogue — such as those depend-

ing upon electricity and chemistry. The Russian representative declared that his Government was in favor of prohibiting the use of all such instrumentalities, because of the fact that the means of destruction at present employed were quite sufficient; but after a short discussion this question was also put aside for future consideration on the part of the different Powers.

Expanding Bullets

The subject of unnecessarily cruel bullets gave rise to more active debate, and developed more radical differences of opinion than any other considered by the First Committee. The proposition which was finally adopted is as follows: —

"The use of bullets which expand or flatten easily in the human body, such as jacketed bullets of which the jacket does not entirely cover the core, or has incisions in it, should be forbidden."

When this proposition was first presented to the full Committee by the military sub-committee, on June 22, Sir John Ardagh of Great Britain read the following declaration: —

Declaration of Great Britain as to Dum Dum bullets.

"I ask permission to offer to the High Assembly some observations and explanations on the subject which has already been voted upon — the question of bullets. In the session of May 31, an article was accepted by a large majority, against the use of bullets with a hard jacket, of which the jacket does not cover the entire core, but has incisions in it. It seems to me that the use of words describing

technical details of construction will have the effect of rendering the prohibition somewhat too general, and result in its being disregarded, and that it will not seem to admit an exception for which I wish to provide, namely: the construction, in the present or in the future, of a projectile with a sufficient force to stop an individual who has been hit and to put him out of the struggle immediately, and which thus fulfils the indispensable requirements of war, without at all occasioning useless suffering. The completely jacketed bullet of our Lee-Metford rifle is deficient in this regard. It has been proven that in one of our small wars in India a man perforated five times by these bullets was still capable of walking to the English hospital at a considerable distance for the purpose of having his wounds dressed. After the battle of Omdurman, quite recently, it was shown that the greater number of the Dervishes who were wounded, but who had still saved themselves by flight, had been hit by small English bullets, at the same time when the Remington and Martini bullets of the Egyptian army were sufficient to put the soldier *hors de combat*. It was necessary to find a more efficacious means of warfare, and, with this object in view, the projectile known under the name of the Dum Dum bullet was manufactured in India, at the arsenal of that name near Calcutta. In the Dum Dum bullet, the jacket ends by leaving a small piece of the core uncovered. The effect of this modification is to produce a certain extension or convexity of the

The Dum Dum bullet.

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The Dum Dum bullet.

point, and to give a force more pronounced than that of the bullet which is completely jacketed, at the same time, however, less effective than that of the Enfield, Snider, or Martini bullets, all of which have greater calibre. The wounds made by this Dum Dum bullet suffice ordinarily to give a stopping shock and to place a soldier *hors de combat*, but their effect is by no means calculated to cause useless suffering.

"I wish to explain how the Dum Dum bullet gained a bad reputation in Europe. It is on account of certain experiments which were made with bullets having a shortened jacket, which did not resemble, in construction or in effect, the Dum Dum bullets. I speak of the experiments made at Tübingen, by Professor Bruns, of which a report was published in the *Beiträge zur Klinischen Chirurgie*, at Tübingen, in 1898. The bullet which was used in these experiments had a leaden point about one diameter longer than the hard jacket, and, by consequence, the flattening and extension when discharged was considerable, and the wounds were excessively severe — in fact, frightful. These experiments proved that a bullet of which the flattened, leaden point is entirely unprovided with a hard jacket works, in a certain sense, like an explosive bullet, and produces a terrible effect; but that cannot be accepted as evidence against the Dum Dum bullet, which has an entirely different construction and effect. At the same time, it is a fact that the erroneous conception formed in Europe about the character of the latter

Erroneous conception about the Dum Dum bullet.

is entirely due to an idea which is entirely false, namely, that the two projectiles are almost identical in construction. Several interpellations were made in the English Parliament on the subject of the Dum Dum bullet, and lately, on the 5th of June, the Secretary of State for India, in response to a question about the Dum Dum bullet, declared that the Government of Her Majesty could see no reason to inquire of the Government of India regarding the Dum Dum bullet, and he added that he would present the House of Commons the reports of the experiments with that projectile.

"It is hardly necessary to affirm that public opinion in England would never sanction the employment of a projectile calculated to cause useless sufferings, and that every projectile of this character is condemned in advance; but we claim the right and we recognize the duty to furnish our soldiers with a projectile upon the effect of which they may rely — a bullet which will suffice to stop a charge of the enemy and to put him *hors de combat* immediately. Heretofore this result was accomplished by spherical bullets of the old muskets, which had a diameter of twenty millimetres, by the bullets of the Enfield, with fourteen millimetres, and those of the Martini, with twelve millimetres. No objection upon humanitarian grounds were ever made against the bullets of these muskets. Our present musket — the Lee-Metford — has a calibre of only eight millimetres. The transverse section of this bullet, which is entirely covered by a jacket,

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is only about one-half of that of the Martini bullet, and one-sixth of the spherical bullet. It is, therefore, not surprising that they produce so much lighter a shock. In fact, it has been clearly proven that our bullet, which is completely jacketed and which is now actually in use in the English army, does not give sufficient protection to our soldiers against the charge of a determined enemy; and we desire to reserve our entire liberty on the subject of modifications, to be introduced in the construction of either the jacket or the core, for the purpose of producing a shock necessary to place a soldier *hors de combat* without occasioning an aggravation of useless suffering. This is our point of view, and for this reason we cannot accept the wording of the prohibition voted by the majority of the committee on the first reading, and which imposes a technical limit of details of construction. At the same time, I wish to repeat that we are completely in accord with the humanitarian principles announced in the Convention of St. Petersburg, and that we undertake to observe them, not only according to the letter, but according to the spirit, in seeking the model we shall adopt.

"I can assure this High Assembly that it is very disagreeable to me to find myself compelled by the reasons which I have just given to vote against a formula inspired by principles with which I am in hearty accord, but I still have the hope that it will be possible to adopt by unanimous vote a wording which shall leave aside technical details and those of

construction, but which shall confirm the principles upon which we are all agreed — the principles set forth in the Convention of St. Petersburg, namely: the prohibition of the use of bullets with the effect of aggravating uselessly the sufferings of soldiers *hors de combat* or of rendering their death inevitable." Chapter III

Captain Crozier supported the position of Sir John Ardagh, and deprecated the attempt to cover the principle of prohibition of bullets producing unnecessarily cruel wounds by specification of details of construction of the bullets, and he proposed the following formula as an amendment: — Captain Crozier's Amendment.

"The use of bullets inflicting wounds of useless cruelty, such as explosive bullets, and in general every kind of bullets which exceeds the limit necessary for placing a man *hors de combat*, should be forbidden."

The committee however adhered to the original proposition, without even voting upon the amendment proposed by Captain Crozier, the vote standing twenty to two — the latter being Great Britain and the United States of America, and one abstention (Portugal). China, Mexico, and Luxemburg were not represented on the committee.

With a view to securing unanimity, if possible, on this subject, an informal meeting took place on July 8, at the Hotel des Indes between Jonkheer van Karnebeek, the reporter of the committee which dealt with arms and explosives, and Lord Pauncefote, Sir Henry Howard, Sir John Ardagh, and Discussion between Jonkheer van Karnebeek and the British Delegates.

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Discussion between Jonkheer van Karnebeek and the British Delegates.

Colonel á Court, the immediate object being to discuss the form of the report and the manner in which it was to be dealt with by the Conference.[1]

Jonkheer van Karnebeek thought that the prohibition of expanding bullets might be put in the form of additional Articles to the St. Petersburg Convention.

He pointed out that as that Convention was only binding upon the signatory and acceding States, it was not applicable to the savage warfare in which Great Britain and other States were frequently engaged, and it would not debar the use of projectiles of a most effective stopping character in those wars. He also stated that he understood that the experts were of opinion that what was gained in stopping power was lost in penetrating power, and that the Dutch troops, in savage warfare, attached importance to the penetrating power, as it enabled the fully mantled bullets to reach their foes beyond the shelter of jungles and stockades, which, with the earlier form of bullet, proved to be a protection which was not penetrated; and he said that the Dutch troops were quite satisfied with their new fully mantled bullet. He also urged that if the British Delegates acceded to the prohibition voted by the majority, they would only place themselves in exactly the same position as the acceding Powers, if they should be at war with any of them, and he laid great stress upon the provisions contained in the last two paragraphs but

[1] A full account of this meeting, by Sir John Ardagh, will be found in the British Blue Book (Miscellaneous, No. 1, 1899), p. 169.

one of the Convention of St. Petersburg to which the prohibition would be attached. He hoped, therefore, that the British Government might see fit to conform to the views of the majority.

Adherence of Great Britain to the principle involved.

Lord Pauncefote replied that his instructions did not admit of his acceding to the text adopted by the majority, which was a condemnation of projectiles which British experts declared did not produce unnecessary suffering, and added that the British Delegates had declared their entire adherence to the humanitarian principles of the St. Petersburg Convention.

Sir John Ardagh said that it had been represented by responsible officers that the present British fully mantled bullet was not sufficient to stop a charge of cavalry or a rush of fanatics, that even the savage enemies of England looked on it with contempt, and that the British military authorities were firmly convinced that it was their duty to give the soldier an arm on which he could rely. They were not altogether satisfied with the modified bullets which had been tried, and intended to make further experiments, with a view to producing a bullet which shall comply with the military as well as the humanitarian requirements.

There were several texts to which they were prepared to accede. There was the Austrian text of Colonel Khuepach, the American text of Captain Crozier, the text comprised in the last paragraph of Sir John Ardagh's declaration, and the language of the Convention of St. Petersburg; but to the actual

text, as voted, he thought it was most improbable that their Government could — even with the arguments and limitations of Jonkheer van Karnebeek — be persuaded to agree.

Sir Henry Howard suggested that the Report might state that it had been found impossible to arrive at unanimity on the text which had been voted by the majority, but that all were agreed upon the acceptance of the humanitarian principle enunciated in the other texts which had been considered.

Jonkheer van Karnebeek said that in his position as Reporter, he was bound to give prominence to the vote of the majority.

Disagreement as to the form of Statement.

Lord Pauncefote thanked Jonkheer van Karnebeek for the pains which he had taken in endeavoring to reconcile divergent views, and promised to lay his suggestions before Her Majesty's Government. He could not, however, under his present instructions, hold out any hope of withdrawal from the position which they maintained, and he feared that persistence in adhering to the text voted by the majority, when the matter came before the Plenary Conference, would result in Her Majesty's Government refusing to accede — not on the ground of principle, for in that they were all in accord — but on account of these technical details of construction which might prove, both now and in the future, extremely embarrassing to those who were endeavoring to solve this difficult problem.

Captain Crozier, with the approval of the American Commission, and in its name, proposed to the

full Conference, at its session on July 21, the above-mentioned formula as an amendment to the proposition submitted by the First Committee, for the reason that the record had been left in a most unsatisfactory state by the action of the Committee — Great Britain and the United States appearing most unjustly to oppose a proposition of humanitarian intent, without indicating that the American Government not only stood ready to support, but had even proposed by its representative, a formula which was believed to meet the requirements of humanity much better than the one adopted by the Committee. In supporting his amendment Captain Crozier made the following address: —

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Further discussion on Captain Crozier's Amendment.

"The general principle touching the subject was well stated at St. Petersburg in 1868, viz.: that justifiable limits would be passed by 'the use of arms which would aggravate uselessly the sufferings of men already placed *hors de combat*, or would render their death inevitable.' The Convention of St. Petersburg then proceded to declare the proscription of the only violation of the principle then in view, *i.e.* the use of explosive projectiles of weight below 400 grammes.

Speech of Captain Crozier.

"It is now desired to extend the prohibition to other than explosive bullets, having in view efforts to increase the shock produced by the bullets of small calibres now in use, or of the still smaller calibres which may come. In formulating the prohibition, what is the object to be kept in view? Evidently to forbid everything, which, in the direction of cruelty, goes beyond necessity. And what

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Speech of Captain Crozier.

is necessity? The declaration of St. Petersburg says: 'It is sufficient to place *hors de combat* the greatest number of men possible.' My honorable colleague, the delegate from Russia, has stated here, that, 'the object of war is to put men *hors de combat.*' For military men there can be but one answer to the question, that the man hit by a bullet shall be placed *hors de combat;* and with this object, and the prohibition of everything beyond it in view, I propose the amendment, which states directly what is admissible and all that is admissible.

"It has also been stated that 'ordinary bullets suffice to place *hors de combat*'; there are differences of opinion as to this, as covering all cases. I can speak of them freely because the United States are satisfied with their bullet, and see no reason for changing it; but whatever may be the case with the bullets actually in use, no one can say what it will be if the decrease of calibre, which the Conference has not limited, shall continue. And here we see the weak point of the article, which confines the prohibition to a single class, viz.: bullets which expand or flatten, and gives as illustration certain details for construction: —

Criticism of the article as proposed.

"'The use of bullets which expand or flatten easily in the human body, such as jacketed bullets, of which the jacket does not entirely cover the core, or contains incisions, should be forbidden.'

"The advantages of the small calibre are well known, — flatter trajectory, greater danger space, less recoil, and, particularly, less weight of ammunition;

and if any nation shall consider them sufficiently great to wish to pass to a smaller calibre, which is to be regarded as quite possible, her military experts will at once occupy themselves with a method of avoiding the principal disadvantage — the absence of shock produced by the bullet. In devising means to increase the shock they will naturally examine the prohibitions which have been imposed, and they will find that with the exception of the two classes, viz.: explosive bullets and bullets which expand or flatten, the field is entirely clear; they will see that they can avoid the forbidden detail of construction by making a bullet with a large part of the covering so thin as to be ineffective, and that they can avoid altogether the proscribed classes by making a bullet such that the point would turn easily to one side upon entering the body, so as to cause it to turn end over end, revolving about its shorter axis; — it is well known how easily a rifle projectile can be made to act in this way. Or by making one of such original form as, without changing it, would inflict a torn wound. It is useless to give further examples. A technical officer could spend an indefinite time in suggesting designs of bullets, desperately cruel in their effects, which, forbidden by the amendment which I now propose, would be permitted under the article as it comes from the Committee. In fact they would be even more than permitted, for one might be driven, in the effort to avoid the specified class, to the adoption of another less humane. If the shocking power of the bullet is to be increased

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Speech of Captain Crozier.

at all, and we may be sure that if found necessary it will be done in one way or another, what more humane method can be imagined than to have it simply increase its size in a regular manner? But this is forbidden, and consequently there is great danger of some more cruel method coming into use, when there will not be a Conference ready to forbid it. There is always danger in attempting to cover a principle by the specification of details, for the latter can generally be avoided and the principle be thus violated.

The amendment more restrictive.

"It has been stated in the Committee that the language of my proposition is too vague, and that little would be left of the article voted if it were to be amended in accordance therewith; but in reality it is much the more restrictive of the two, for the Committee's proposition, instead of covering the principle, touches it at one point only, and, in the effort to catch a single detail of construction, has left the door open to everything else which ingenuity may be able to suggest. It has been squarely stated that the Dum Dum bullet is the one at which the prohibition is aimed. I have no commission for the defence of the Dum Dum bullet, about which I know nothing except what I have heard upon this floor, but we are asked to sit in judgment upon it, and for this purpose it would seem that some evidence is desirable; none, however, has been presented. Colonel Gilinsky, who, to his honor and that of his Government, has done here so much hard work in the cause of humanity,

believes that in two wars this bullet has shown itself to be such as to inflict wounds of great cruelty; but no facts have been presented which might lead us to share his opinions. The only alleged evidence of which we have heard at all is that of the Tübingen experiments and the asserted similarity of the bullet used therein with the Dum Dum, and this the British delegate has himself been obliged to bring in, in order that he might deny it. Let me call attention, however, to the fact that under my proposed amendment the Dum Dum bullet receives no license, and, if guilty, does not escape, but falls under the prohibition, provided a case can be made out against it.

"We are all animated with the common desire to prevent rather than to rail against the employment of weapons of useless cruelty, and for the efficiency of such prevention I ask whether it would not be better to secure the support of domestic public opinion in a country by the presentation to its Government of a case, supported by evidence, against any military practice, than to risk arousing a national sentiment in support of the practice by a condemnation of it without proof that the condemnation is deserved?

"The Conference is now approaching an end, and this subject is the only one of actual practice upon which there is division. The division is decided; it is even acute, and it operates to destroy all value of the action taken. I therefore ask even those gentlemen who may not have been convinced of the improvement in humane restrictiveness, which the article

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would acquire from the proposed amendment, to vote for it, in order that something may be secured, instead of the nothing which would result from the *status quo*."

Ineffective replies.

The replies to Captain Crozier's remarks in the full Conference, on the part of Colonel Gilinsky and General Den Beer Poortugael, were singularly ineffective, being confined to protestations that no mention was made or intended to be made of the Dum Dum bullet, and the curious contention that the amendment ought not to be voted on before the principal proposition. Captain Crozier, in reply, read from the report of General Den Beer Poortugael the statement that his Government had charged him with urging the formal prohibition of the use of Dum Dum bullets and similar projectiles. He went on to say that, contrary to the intention of its authors, the Committee's proposition was rather a prohibition of the use of the smaller calibre rifle than that of a uselessly cruel bullet, and he asked of Colonel Gilinsky whether he as a military man wished to be understood as declaring positively that it was impossible to manufacture a bullet which would expand, without being irregular, and in such a manner as to produce a wound of useless cruelty.

Objections of Captain Crozier.

Captain Crozier stated that to the article as it stood he had three objections: first, it prohibited the use of all expanding bullets, without reference to the fact that it might be desirable in the future to adopt a musket of still smaller calibre in conjunction with a bullet which would expand regularly to a some-

what larger size. Second, that by this interdiction it might force people to the employment of a missile of a more cruel character not forbidden by the article; and thirdly, that it condemned the Dum Dum bullet without evidence against it. Chapter III

In regard to the manner of taking the vote, Captain Crozier recalled that in the Committee priority had been refused to his amendment for the reason, as he supposed, that the customary practice in the Conference seemed to be to put the most radical proposition first, with the idea that its adoption would wipe out the subsidiary propositions, and thus save the time necessary for voting upon the latter. He admitted that this method had its merits, so far as quick despatch of business was concerned, but stated that there were cases in which another element was more important than haste in the despatch of business, and this was that all members should have an opportunity of recording in the most efficient manner, namely, by their votes, their opinion in regard to the propositions under consideration. This opportunity was absolutely prevented by the refusal to give priority to his amendment, it being apparently not understood that whatever the result of the vote upon the amendment, a second vote would be taken upon the proposition, amended or not amended, as the case might be, and that the two votes thus taken together would record positively the opinion of every member upon the subject. The manner of taking the vote.

It is a significant and characteristic fact that a proposition of parliamentary law, which is as familiar

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Absence of parliamentary law or practice.

as the alphabet to every member of the various school-boy societies in America, and the justice of which is self-evident, namely: that an amendment or a substitute must be voted on before the original proposition is put to a vote, was not only unfamiliar to most of the European members of the Peace Conference, but was seriously disputed, and the contrary rule adopted by an overwhelming majority.

The American amendment never voted on.

The result was that the American amendment was never put to a vote, and although in this particular instance there is every reason to believe that the amendment would have been rejected, even if the fundamental principles of parliamentary law and justice had been observed, the incident is highly instructive, in that it proves the absolute necessity, in future assemblies of this character, of at least a minimum in the way of ordinary rules of procedure.

Lessons of the incident.

During the discussion it was stated by Captain Crozier that the United States had no intention of using any bullet of the prohibited class, being entirely satisfied with the one now employed, which is in the same class as those in common use. A similar declaration was made on behalf of Germany by General von Schwarzhoff.

Motion to refer back to the Committee.

Ambassador White, after supporting Captain Crozier's contentions, proposed in the interests of harmony that the entire subject should be referred back to the First Committee, to see if a formula could not be found upon which all parties would agree. This proposition was rejected by twenty votes against five — the latter being the United

States of America, Denmark, Great Britain, Greece, and Portugal. Luxemburg did not vote. Chapter III

On the question whether the American amendment should be voted on before the original proposition, seventeen states voted, "No" and eight, namely: the United States of America, Belgium, China, Denmark, Great Britain, Greece, Portugal, and Servia, voted in the affirmative — Luxemburg again not voting.

Lord Pauncefote, at the same meeting, gave notice that he would submit a declaration on the same subject on behalf of Her Majesty's Government, which he would request to have spread upon the minutes *in extenso*. In view of the action taken, however, he subsequently withdrew this request. The declaration itself, however, which in printed in the British Blue Book (Miscellaneous No. 1, 1899, p. 118) is given below.[1] British Declaration.

[1] "When Her Majesty's Government, following the example set by other Powers, introduced the small-bore rifle, they adopted at the same time a bullet entirely covered by a hard envelope.

"Previous to the introduction of the small-bore rifle, there was no covering or envelope of any sort to the leaden bullets used with all rifles by every nation. The hard envelope was not introduced for humanitarian purposes, but because it was found to be necessary with the rapid twist of rifling of the small-bore rifle, in order to prevent the grooves becoming choked with lead.

"Experience with this bullet in the Chitral Campaign of 1895 proved that it had not sufficient stopping power, that the bullet drilled through a bone and did not fracture it, that at close quarters the injury was insufficient to cause immediate shock, and that when soft tissues only were struck, the amount of damage was comparatively trivial.

"It was proved that the enemy expressed contempt for the weapon, as compared with that previously in use; and numerous cases were

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There can be little doubt that history will vindicate the position taken by the United States of America and Great Britain on this subject. No

brought to light in which men struck by these bullets were not prevented from remaining in action.

"Under these circumstances, Her Majesty's Government ordered experiments to be undertaken with the object of obtaining a bullet which should possess equal stopping power effect with that of the rifle of larger calibre. The Committee which investigated the question recommended two bullets, one of which was proved to make more severe wounds than the other: Her Majesty's Government, however, rejected the one making the more severe wounds, and decided to adopt the less destructive bullet, now known as Mark IV. pattern, as giving the minimum of stopping effect necessary.

"This bullet has a small cylindrical cavity in the head, over which the hard metal envelope is turned down.

"There is nothing new in this cavity in the head of the bullet. It existed in the Snider bullet, with which Her Majesty's troops were armed for many years — a bullet which was perfectly well known to all the Powers of Europe, which was actually in use in Her Majesty's army at the date of the St. Petersburg Convention of 1868, and to which, nevertheless, no objection was ever raised on humanitarian grounds.

"The Indian Government for the same reasons adopted the so-called Dum Dum bullet, in which a very small portion of the head of the leaden bullet is not covered by the hard metal envelope.

"Her Majesty's Government are unable to admit that a bullet which has been deliberately adopted by them as possessing the minimum of destructive effect necessary, can be considered as inflicting unnecessary suffering; and in view of the fact that until recently all rifles of all Powers fired bullets consisting entirely of lead without a covering, and that the bullet with a cavity in the head was the bullet in use in Her Majesty's army at the date of the St. Petersburg Convention, and for many years subsequently, they are equally unable to admit that there is anything in either the exposure of a small portion of lead or the existence of a cavity, to justify the condemnation of either of these methods of construction.

"The experiments conducted in this country lead to the conclusion that the wounds inflicted by these bullets are not more severe than — if so severe as — the wounds inflicted by the larger bullets fired from

attempt was made to meet their arguments on the merits, and the best that can be hoped for is, that the decision of the Conference may not eventually defeat its own object. Chapter III

Methods of Naval Warfare

The propositions included in the fourth paragraph of the circular of Count Mouravieff were as follows:

"1. The prohibition of the use, in naval battles, of submarine and diving torpedo boats, or all other agencies of destruction of the same nature. 2. An agreement not to construct in the future warships armed with rams."

These subjects were referred to a special naval sub-committee, presided over by Jonkheer A. P. C. van Karnebeek of the Netherlands, the Vice-President of the Conference.

Limitation of calibre.

Captain Scheine, on behalf of the Russian Government, submitted a proposal respecting naval guns and armor, to the effect that the Powers should for the period of five years agree to limit the calibre of their guns to seventeen inches, the initial velocity to thirteen thousand feet a second, and the length of

previous rifles; therefore, Her Majesty's Government, while entirely sympathizing with the desire to avoid the use of missiles which inflict wounds of unnecessary severity, are unable to admit that this is involved by either of the above methods of construction. It is, however, their intention to pursue their investigations, and to spare no pains in order to combine with the necessary amount of stopping power the minimum aggravation of suffering on the part of the wounded, but they consider it absolutely essential that such stopping power should exist in the bullet employed by Her Majesty's troops."

guns to forty-five calibres; further, that armor should be limited to fourteen inches of the latest Krupp pattern.

This proposition was received by all the naval representatives *ad referendum*, with the result that it was almost unanimously negatived. The United States and British Governments both rejected it by cable very promptly.

Rams.

Upon the proposal not to construct warships armed with rams, a majority of the Governments represented declared their readiness to enter such an agreement provided it were unanimous. Unanimity was, however, frustrated by the declarations of the delegates from Germany, Austria-Hungary, Denmark, Sweden and Norway, to the effect that their Governments did not approve of the idea.

New types and calibres of naval guns.

Upon the subject of rifles and naval guns, and the possibility of an agreement respecting the employment of new types and calibres, a brief discussion showed that the utmost result attainable upon the subject was the expression of a wish, which was adopted, that the question should be relegated to the further study of the Governments.

Projectiles for the diffusion of asphyxiating gases.

The proposition that the Contracting Powers agree to abstain from the use of projectiles, the object of which is the diffusion of asphyxiating or deleterious gases, was adopted, with only one dissenting vote — that of the United States of America, and one vote conditioned upon unanimity — that of Great Britain.

The distinguished representative of the United States of America on the naval sub-committee,

Captain Mahan, gave the following reasons for voting against this provision, and they were inserted in the report of the proceedings of the Committee: — Chapter III

Captain Mahan's objections.

"1. That no shell emitting such gases is as yet in practical use or has undergone adequate experiment; consequently, a vote taken now would be taken in ignorance of the facts as to whether the results would be of a decisive character, or whether injury in excess of that necessary to attain the end of warfare, of immediately disabling the enemy, would be inflicted.

"2. That the reproach of cruelty and perfidy addressed against these supposed shells was equally uttered formerly against firearms and torpedoes, although each are now employed without scruple. Until we know the effects of such asphyxiating shells, there was no saying whether they would be more or less merciful than missiles now permitted.

"3. That it was illogical and not demonstrably humane, to be tender about asphyxiating men with gas, when all were prepared to admit that it was allowable to blow the bottom out of an ironclad at midnight, throwing four or five hundred men into the sea to be choked by water, with scarcely the remotest chance of escape. If, and when, a shell emitting asphyxiating gases has been successfully produced, then, and not before, will men be able to vote intelligently on the subject."

Whatever views may be held upon the merits of the various propositions considered by the First Committee, there can be no question as to the great

value of the deliberations themselves. Professional authorities may be relied upon to continue the work of investigation and discussion begun at The Hague, to the great advantage, no doubt, of that "further study on the part of the various Governments," which the Peace Conference was obliged to content itself in recommending.

CHAPTER IV

THE WORK OF THE SECOND COMMITTEE

I. The Convention for the Adaptation to Maritime Warfare of the Principles of the Geneva Convention of August 22, 1864

The Second Committee of the Conference, to which was referred the subject of the extension of the principles of the Geneva Convention of August 22, 1864, to maritime warfare, referred the subject to its First Sub-Committee, presided over by M. Asser of the Netherlands, and this in turn appointed a Committee consisting of Professor Renault of France, Chairman and Reporter, Vice-Admiral Sir John Fisher of Great Britain, Captain Scheine of Russia, Captain Siegel of Germany, Lieutenant-Colonel á Court of Great Britain, and Lieutenant Ovtchinnikow of Russia, which elaborated the articles embodied in the treaty on the subject.

In his report to the Conference, Professor Renault uses the following language: —

Report of Professor Renault.

"The general ideas which guided us are as follows: We considered it necessary to confine ourselves to the study of essential principles, and not to enter into details of organization and of regulations, which each State must fix according to its interests

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Report of Professor Renault.

and its customs. We determined the legal status from the international point of view of hospital ships; — but how are such ships to be provided for? What shall be the duty of ships belonging to the State as distinguished from those belonging to relief societies? Should even such ships as are furnished by individuals for hospital service during a war be considered? These are questions which should be determined by each Government. They are not susceptible of a uniform solution because the situations are too diverse. In all countries the force of private charity may prove to be more or less active; besides, however much we may be animated by sentiments of humanity, we must not forget the necessities of war. It is necessary to avoid results, inspired, no doubt, by most generous sentiments, but exposed to the risk of frequent disregard by belligerents, because the latter's freedom of action may be unduly impaired. Humanity does not gain much by the adoption of a rule which remains a dead letter, and the idea of respect for engagements would only be enfeebled thereby. It is, therefore, indispensably necessary to impose no obligations except such as can be fulfilled under all circumstances, and otherwise to allow the combatants all the latitude which they require. It is to be hoped that this will never be used for the purpose of hindering uselessly the work of alleviating suffering."

The representative of the United States on the sub-committee of the Second Committee of the Conference was Captain Alfred T. Mahan, whose careful

and lucid report regarding the work of the sub-committee and his own attitude is deserving of special attention. It will be found in full in the Appendix. Chapter IV

The articles of the treaty are as follows: —

Official hospital ships.

ARTICLE 1. Military hospital ships, that is to say, ships constructed or assigned by States especially and solely for the purpose of assisting the wounded, sick, or shipwrecked, and the names of which shall have been communicated to the belligerent Powers at the commencement or during the course of hostilities, and in any case before they are employed, shall be respected, and cannot be captured while hostilities last. These ships, moreover, are not on the same footing as men-of-war as regards their stay in a neutral port.

Hospital ships equipped by private individuals or relief societies of belligerent powers.

ARTICLE 2. Hospital ships equipped solely or in part by the moneys of private individuals, or officially recognized relief societies, shall likewise be respected and exempt from capture, provided the belligerent Power to whom they belong has given them an official commission, and has notified their names to the opposing Power at the commencement of or during hostilities, and in any case before they are employed. These ships must be furnished with a certificate from the proper authorities declaring that they had been under their control while fitting out, and on final departure.

Hospital ships equipped in neutral countries.

ARTICLE 3. Hospital ships equipped wholly or in part at the cost of private individuals or officially recognized societies of neutral countries, shall be respected and exempt from capture, if the neutral Power to whom they belong has given them an official commission and notified their names to the

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belligerent Powers at the commencement or during hostilities, and in any case before they are employed.

Regulations concerning all hospital ships.

ARTICLE 4. The ships mentioned in Articles 1, 2, and 3 shall furnish relief and assistance to the wounded, sick, and shipwrecked of the belligerents of either nationality. The Governments engage not to use these ships for any military purpose. These ships must not in any way hamper the movements of the combatants during and after an engagement; they shall act at their own risk and peril. The belligerents shall have the right to control and visit them; they can decline their aid, order them off, compel them to take a certain course and put a commissioner on board; they can even detain them if important circumstances require it. As far as possible, the belligerents shall inscribe in the sailing papers of the hospital ships such orders as they may give them.

The proposition to establish a particular code of signals for ships requesting or offering aid was negatived by the Committee, upon the ground that the accepted international code of signals now adopted by all seafaring nations is sufficient for all practical purposes.

In the words of Professor Renault, reporter of the Committee, regarding the prohibition of the use of these ships for military purposes: "The States enter into an engagement of honor by the very fact of their marking the vessels. It would be perfidy to violate this engagement."

An instance of "important circumstances" justifying the detention of a hospital ship on the part of

one of the belligerents, would be found in a case where secrecy regarding further naval operations was essential or desirable, and no other effective guarantee against unauthorized communication seems practicable.

Distinguishing marks of hospital ships.

ARTICLE 5. The military hospital ships shall be distinguished by being painted white outside with a horizontal band of green about one metre and a half in width. The ships mentioned in Articles 2 and 3 shall be distinguished by being painted white outside with a horizontal band of red about one metre and a half in breadth. The boats of the ships above mentioned, as also similar craft, which may be used for hospital work, shall be distinguished by similar painting. All hospital ships shall make themselves known by hoisting, together with their national flag, a white flag with a red cross provided by the Geneva Convention.

At the meeting of the full Committee at which the article was adopted, Mirza Riza Khan, First Delegate of Persia, made the following declaration in regard to the last paragraph of Article 5: —

Distinctive flag of Persia

"Pursuant to the instructions which I have just received from my Government, I am directed to inform the Committee that the Persian Government will claim as a distinctive flag a white flag with a red sun. The adoption of the red cross as the distinctive flag of hospitals was an act of courtesy on the part of the Signatory Powers of the Geneva Convention toward the Swiss Government, in that the national flag of Switzerland was adopted, simply

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changing the order of the colors. We would be happy to extend the same courtesy to the honorable Government of Switzerland, if it were not impossible on account of objections which would be raised in a Mohammedan army. I request the Committee to kindly take notice of this declaration, and to have the same inserted in the minutes of the meeting."

Similar declaration by Siam.

Official notice was taken of this declaration, as well as of another made on behalf of the Siamese Government by M. Rolin, to the effect that the Royal Government of Siam reserved the right to change the sign on the Geneva flag to a symbol sacred in the Buddhistic cult, and calculated to increase the saving authority of the flag.

Neutral vessels acting temporarily as hospital ships.

ARTICLE 6. Neutral merchantmen, yachts, or vessels having or taking on board sick, wounded, or shipwrecked of the belligerents, cannot be captured for so doing, but they shall be liable to capture for any violation of neutrality which they may have committed.

It will be seen that in this article no provision is made for the case of a merchantman belonging to one of the belligerent parties carrying sick or wounded. In consequence, such a vessel remains under the provisions of the common law, and is liable to capture. This provision would seem to follow logically from all the principles governing the case.

Inviolability of the staff of hospital ships.

ARTICLE 7. The religious, medical, or hospital staff of any captured ship is inviolable, and its mem-

bers cannot be made prisoners of war. On leaving the ship they shall take with them the effects and surgical instruments which are their own private property. The staff shall continue to discharge its duties while necessary, and may afterward leave the ship when the commander-in-chief considers it possible. The belligerents shall guarantee the payment of their full salaries to the staffs which shall fall into their hands. Chapter IV

ARTICLE 8. Soldiers and sailors who are taken on board when sick or wounded shall be protected and looked after by the captors, without regard to the nation to which they belong. All sick and wounded to be cared for alike.

ARTICLE 9. The shipwrecked, wounded, or sick of one of the belligerents who fall into the hands of the other, shall be prisoners of war. The captor shall decide, according to circumstances, whether it is best to detain them or send them to a port of his own country, to a neutral port, or even to a hostile port. In the last case, prisoners thus returned to their own country shall not serve again during the continuance of the war. Status of the captured.

It is, of course, understood that if the shipwrecked, wounded, or sick who are returned to their own country are so returned in consequence of an exchange, they are no longer regarded as prisoners of war under parole, but regain their own liberty of action.

[ARTICLE 10. The shipwrecked, wounded, or sick who shall be landed at a neutral port, with the consent of the local authorities, must, in the absence of a contrary arrangement between the neutral State and the belligerents, be guarded by the neutral State so Disposition of shipwrecked, wounded, or sick, landed at a neutral port.

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that they cannot again take part in the military operations. The expense of entertainment and detention shall be borne by the State to which the wounded, shipwrecked, or sick shall belong.]

Discussion of Article 10.

The provisions of this article led to lively discussions. It was finally adopted by a bare majority, as follows: —

Ayes: Germany, Austria-Hungary, France, Great Britain, Italy, Netherlands, Portugal, Roumania, Russia, and Turkey, (10).

Noes: United States of America, Belgium, China, Denmark, Spain, Japan, Siam, Sweden and Norway, and Switzerland, (9).

According to Professor Zorn (*Deutsche Rundschau*, January, 1900, p. 136): "It is still questionable whether the true solution has been found." According to Article 10 a neutral State certainly would have the right to receive wounded and shipwrecked without violating its duties as a neutral, provided only that both belligerents were treated alike, but Professor Zorn calls attention to the possibility of a war between Russia and France on the one side and Germany on the other, with the Baltic Sea as the scene of the naval operations. Denmark being a neutral State and receiving shipwrecked and wounded, might by that very act confer upon Russia and France an advantage which might conceivably be of determining importance. Germany, in signing the treaty, reserved special liberty of action under this Article, and the same course was taken by the United States, Great Britain, and Turkey.

In view of these facts, the Netherlands Government, on January 29, 1900, addressed an identical note to all the Signatory Powers, stating that the Convention had been signed with this reservation by these four Powers, and going on to say: "Under the circumstances, and also by reason of the desirability that there should be a uniformity established in the respective obligations resulting from this Convention for the Contracting Powers — a uniformity which would be endangered by the reservations of four of them, the Government of Her Majesty the Queen of the Netherlands deems that there should be a means of excluding the ratification of the said Article 10, which of itself, otherwise, is only of secondary interest. It is to be hoped that if this proposal is accepted, — and I am happy to be able to inform you that the Imperial Russian Government agrees with us in our views on this, — the subject of the exclusion of the above-mentioned Article — the ratification can be made with no further difficulty of internal form in the different countries, and it could be effected with little delay, which would be highly desirable." [1] Chapter IV

Exclusion of Article 10.

On April 30, 1900, the Minister of the Netherlands in Washington informed the State Department that "the proposition of the Government of the Netherlands, which formed the subject of M. de Beaufort's communication of January 29, suggesting the exclusion of the ratification of Article 10 of the Convention, has received the assent of all the States which up to

[1] Note by M. de Beaufort to Minister Newel. Mss. State Department.

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the present time had made known their views, — these Powers being in the majority, and the adoption of the proposition by the other interested States being probable, it is important that, with a view of expediting the filing of these acts of ratification, a uniform method for emphasizing this exclusion should be established now. The Cabinet of St. Petersburg suggests for the purpose a combination which consists in inserting in the act of Ratification a copy of the Convention in which the text of Article 10 would be replaced by the word "EXCLU" (excluded), while still preserving the proper numbering of the Articles. Copies prepared in conformity with the method above indicated will be placed at the disposal of these Governments who wish them." [1]

On May 1, 1900, the United States Government made known its acquiescence in this proposition of the Russian and Netherlands Governments, and the Convention with the word "EXCLU" inserted in the place of Article 10 was duly ratified, and as ratified duly proclaimed by the United States on August 3, 1900.

Binding clause.

ARTICLE 11. The rules contained in the above articles shall be binding only upon the Contracting Powers in case of war between two or more of them. Such rules shall cease to be binding from the time when in a war between Contracting Powers one of the belligerents is joined by a non-adhering Power.

Ratification.

ARTICLE 12. The present Convention shall be ratified as soon as follows.

[1] Baron de Gevers to Secretary Hay. Mss. State Department.

The ratifications shall be deposited at The Hague. Chapter IV
On the receipt of each ratification a *procès verbal* shall be drawn up, a copy of which, duly certified, shall be sent through the diplomatic channel to all the Contracting Powers.

Article 13. The non-signatory Powers who have accepted the Geneva Convention of August 22, 1864, shall be allowed to adhere to the present Convention. For this purpose they shall make their adhesion known to the Contracting Powers by means of a written communication addressed to the Netherlands Government, and by it communicated to all the other Contracting Powers. Adherence.

Article 14. In the event of one of the High Contracting Powers denouncing the present Convention, such denunciation shall not take effect until a year after the notification made in writing to the Netherlands Government, and forthwith communicated by it to the other Contracting Powers. This notification shall only affect the notifying Power. Denunciation.

The treaty embodying these Articles has since been ratified by all the Powers represented at the Peace Conference.

At a meeting of the full Committee, on June 20, Captain Mahan, on behalf of the United States of America, proposed the adoption of the following three additional Articles: — Additional articles proposed by Captain Mahan.

"1. In the case of neutral vessels of any kind, hospital ships, or others, being on the scene of a naval engagement, which may as an act of humanity save men in peril from drowning from the results of the engagement, such neutral vessels shall not be

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considered as having violated their neutrality by that fact alone. They will, however, in so doing, act at their own risk and peril.

"2. Men thus rescued shall not be considered under the cover of a neutral flag, in case a demand for their surrender is made by a ship of war of either belligerent. They are open thus to capture or recapture. If such demand is made, the men so rescued must be given up, and shall then have the same status as if they had not been under a neutral flag.

"3. In case no such demand is made by a belligerent ship, the men so rescued having been delivered from the consequences of the fight by neutral interposition, are to be considered *hors de combat*, not to serve for the rest of the war unless duly exchanged. The Contracting Governments engage to prevent, as far as possible, such persons from serving until discharged."

Their withdrawal.

These Articles were subsequently, on July 18, withdrawn by Captain Mahan, with the approval of the American Commission, for reasons which are fully stated in his report in the Appendix, to which special reference is hereby made.

Resolution favoring the revision of the Geneva Rules.

At the same meeting M. Asser of the Netherlands moved the adoption of the following wish, to be expressed by the Conference: —

"The Conference at The Hague, taking into consideration the preliminary steps taken by the Federal Government of Switzerland for the revision of the Geneva Convention, expresses the wish that after a brief delay there should be a meeting of a special

conference, having as its object the revision of the said Convention." Chapter IV

M. Beldiman, of Roumania, moved as an amendment to insert after the words, "after a brief delay," the words, "under the auspices of the Swiss Federal Council."

When this amendment was first put to a vote the result was as follows: Ayes — Germany, Austria-Hungary, China, Denmark, Spain, Italy, Japan, Luxemburg, Paris, Roumania, Servia, Siam, and Switzerland, (13); noes — The United States of America, (1); abstentions — Belgium, France, Great Britain, Greece, Mexico, Montenegro, Netherlands, Portugal, Russia, Sweden and Norway, and Bulgaria, (12).

By the ruling of the chairman of the Committee, M. de Martens, the amendment, not having received a clear majority of all the countries represented at the Conference, was considered lost.

A misunderstanding.

It soon appeared, however, that the vote of the United States of America on this amendment was cast under a misapprehension, and the American Commission to the Conference cordially and unanimously joined in the hope expressed by the Delegate from Roumania, that the Swiss Federal Government should continue to enjoy the well-merited honor of leadership in all matters pertaining to the Geneva Convention. After a brief interchange of views, it was decided that the best manner of correcting the unfortunate error, and of giving expression to this general desire, would be to have a special additional

resolution on the subject adopted by the Second Committee and reported by it to the Conference. This resolution was as follows: —

A second resolution on the same subject.

"In expressing the wish relative to the Geneva Convention, the Second Committee cordially endorses the declaration made by M. Asser, chairman of the First Sub-Committee, at the meeting of June 20, at which the Delegate of the Netherlands stated that all of the States represented at The Hague would be happy to see the Federal Council of Switzerland take the initiative, after a brief delay, in calling a conference with the view to a revision of the Geneva Convention."

At a meeting of the full Conference on July 5, this resolution was unanimously adopted, and the Swiss Federal Council may be counted upon to take all necessary further steps in due season.

II. The Laws and Customs of War

The second subject assigned to the Second Committee, and by this latter referred to a sub-committee, was the revision of the Declaration concerning the laws and customs of war, adopted in 1874 by the Conference of Brussels, but never ratified. This is the question referred to in the seventh paragraph of the circular of Count Mouravieff, of December 30, 1898.

War on land.

It should be remarked that the committee regarded the report of the Conference of Brussels as being concerned exclusively with the laws and customs of

war *on land*. Consequently the sub-committee of the Second Committee limited its own competence in a similar manner. In virtue of this decision the sub-committee simply entered the proposition of Captain Crozier of the United States of America upon the record, regarding the extension of the rules with respect to private property on land to the same property on the ocean.[1] For the same reason the committee referred the question of bombardments by naval vessels to a separate sub-committee, as a special question, not necessarily implied in the general subject referred to it. Chapter IV

The sub-committee which prepared the code of laws of war subsequently adopted by the Conference was presided over by M. de Martens of Russia. The other members were M. Beldiman of Roumania, Colonel á Court of Great Britain, Colonel Gilinsky of Russia, Major-General Gross von Schwarzhoff of Germany, Professor Lammasch of Austria, Professor Renault of France, General Zuccari of Italy, and M. Rolin of Siam, the latter being at the same time reporter of the committee. Professor Renault of France not being able to attend all meetings was occasionally represented by General Mounier. In the beginning of the discussion M. de Martens of Russia announced the purpose of the Imperial Government of Russia as follows: — Members of the sub-committee which prepared the code.

"The object of the Imperial Government has steadily been the same, namely, to see that the declaration of Brussels, revised so far as this Conference Speech of M. de Martens of Russia.

[1] For a further discussion of this proposition, see Chapter VI.

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Speech of M. de Martens of Russia.

may deem it necessary, should form the solid basis for the instructions which the Governments should hereafter, in case of war, issue to their armies on land. Without doubt, to the end that this basis should be firmly established, it is necessary to have a treaty engagement similar to that of the Declaration of St. Petersburg in 1868. It will be necessary that in a solemn article the Signatory Powers, who signify their adherence, should declare that they are in accord on the subject of uniform rules, which should be embodied in these instructions. This is the only manner of obtaining an obligation binding upon the Signatory Powers. It is well understood that the Declaration of Brussels shall have no obligatory force except for the Signatory States which declare their adherence."

According to these views of the Russian Government there could be no other question or object than that of entering into a treaty, providing that the adopted rules should not be obligatory as such, except upon the Signatory States. They would cease to be applicable even in the case where, in a war between Signatory Powers, one of the latter accepted the alliance of a Power not adhering to the treaty. The delegate from Russia enforced this view by comparing the work which was to be done with the formation or establishment of a mutual insurance company against the abuse of force in time of war,— a company to which States should be free to enter or not, but which must have its own by-laws obligatory upon the members among themselves. At the

same time, said M. de Martens, the founding of a mutual insurance company against the abuse of force in time of war, with the object of safeguarding the interests of populations, by no means legalized these disasters, but simply took account of the fact that they existed, just the same as insurance companies against fire, hail, or other calamities by their by-laws by no means legalize them, but simply take account of existing dangers. Chapter IV

The remarks of M. de Martens were in answer especially to a most able and interesting speech of M. Beernaert, the first Delegate of Belgium, made in the meeting of June 6. This speech of M. Beernaert was especially devoted to a consideration of Chapters 1, 2, and 5 of the Declaration of Brussels, relative to the occupation of hostile territory, the definition of belligerents, and the provisions regarding contributions either in kind or in money. M. Beernaert asked the question whether it was wise, in advance of war or in case of war, to legalize by law the right of the victor over the vanquished, and thus organize a régime of defeat. He was opposed to the adoption of any provision except such as would admit the fact, without recognizing the right of the victor, and which would imply an agreement on the part of the latter to be moderate in the exercise of his right. As a matter of fact, these observations of the Belgian Delegate had a very general bearing, being applicable really to all parts of the treaty or declaration which applies to the laws and customs of war. M. de Martens in response insisted very urgently Speech of M. Beernaert of Belgium.

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Reply of M. de Martens.

upon the necessity of not abandoning to the mere chance of warfare and international law the vital interests of peaceable and unarmed populations. The question really was whether the fear of appearing to legalize as a right, by an international rule, the exercise of brute force by the force of arms, should be a reason for abandoning the great advantage of a limitation of this very power, — besides, no member of the sub-committee had the idea that the Government of an invaded country should be asked to give in advance a sort of sanction to the brute force exercised by an invading and occupying army. On the contrary, the adoption of precise rules tending to limit the exercise of brute force appeared as a self-evident necessity in the higher interest of all peoples — for all might in turn be exposed to the fortunes of warfare. The sub-committee took account of the views and observations of M. Beernaert in adopting and making its own the declaration which M. de Martens read in the meeting of June 20. This declaration will be found below in the commentary upon Articles 1 and 2.

Resolution expressing the wish for a future Conference on the rights and duties of Neutrals.

At the meeting of June 3, the First Delegate of the Grand Duchy of Luxemburg, M. Eyschen, made a motion that the sub-committee should be requested to examine into the question of determining the rights and duties of neutral States. The sub-committee decided that this subject hardly came under the terms of the Declaration of Brussels, but it recommended the passage of a resolution which was subsequently adopted by the full Conference, ex-

pressing the hope that the question of the rights and duties of neutral States should be made the programme of a later Conference. Chapter IV

The following are the Convention and the articles upon the Laws and Customs of War finally adopted by the Conference, together with such commentaries, based to some extent upon the admirable report of M. Rolin, as seem useful for an elucidation of the text and an explanation of the reasons for the action of the Conference.

Convention with Respect to the Laws and Customs of War

Article 1. The High Contracting Powers shall issue instructions to their armed land forces, which shall be in conformity with the "Regulations respecting the Laws and Customs of War on Land" annexed to the present Convention. Instructions to land forces.

Article 2. The provisions contained in the Regulations mentioned in Article 1 are binding only on the Contracting Powers, in case of war between two or more of them. Binding clause.

These provisions shall cease to be binding from the time when, in a war between Contracting Powers, a Non-Contracting Power joins one of the belligerents.

Article 3. The present Convention shall be ratified as speedily as possible. Ratification.

The ratifications shall be deposited at The Hague.

A *procès verbal* shall be drawn up recording the receipt of each ratification, and a copy, duly certified, shall be sent through the diplomatic channel, to all the Contracting Powers.

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Adherence.

ARTICLE 4. Non-Signatory Powers are allowed to adhere to the present Convention.

For this purpose they must make their adhesion known to the Contracting Powers by means of a written notification addressed to the Netherlands Government, and by it communicated to all the other Contracting Powers.

ARTICLE 5. In the event of one of the High Contracting Parties denouncing the present Convention, such denunciation would not take effect until a year after the written notification made to the Netherlands Government, and by it at once communicated to all the other Contracting Powers.

This denunciation shall effect only the notifying Power.

In faith of which the plenipotentiaries have signed the present Convention and affixed their seals thereto.

Done at Hague, the 29th of July, 1899, in a single copy, which shall be kept in the archives of the Netherlands Government, and copies of which, duly certified, shall be delivered to the Contracting Powers through the diplomatic channel.

Treaty approved by nearly all powers.

This treaty has since been approved by all the Powers represented at the Peace Conference, with the exception of China and Switzerland, the hesitation of the latter country being founded on her careful regard for the right of *levée en masse* to repel an invasion.

In the United States the ratification of the treaty by the Senate has been delayed, notwithstanding a favorable report on the Regulations from the Judge-Advocate-General of the army.

Regulations Respecting the Laws and Customs of War on Land

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SECTION I. ON BELLIGERENTS

Chapter I. What constitutes a Belligerent?

Who entitled to the benefit of the laws and customs of war.

Article 1. The laws, rights, and duties of war apply not only to armies, but also to militia and volunteer corps, fulfilling the following conditions: — 1. To be commanded by a person responsible for his subordinates;

2. To have a fixed distinctive emblem recognizable at a distance;

3. To carry arms openly; and

4. To conduct their operations in accordance with the laws and customs of war.

In countries where militia or volunteer corps constitute the army, or form part of it, they are included under the denomination "army."

Resistance to an invader.

Article 2. The population of a territory which has not been occupied, who, on the enemy's approach, spontaneously take up arms to resist the invading troops without having time to organize themselves in accordance with Article 1, shall be regarded as belligerent, if they respect the laws and customs of war.

Both combatants and non-combatants recognized.

Article 3. The armed forces of the belligerent parties may consist of combatants and non-combatants. In case of capture by the enemy both have a right to be treated as prisoners of war.

When these Articles were discussed for the first time, M. de Martens read the following declaration, above referred to, which the sub-committee adopted

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immediately, and of which the text, as submitted to the Conference, is as follows: —

Declaration of the sub-committee.

"The Conference is unanimous in thinking that it is extremely desirable that the usages of war should be defined and regulated. In this spirit it has adopted a great number of provisions which have for their object the determination of the rights and of the duties of belligerents and of populations, and for their end the reduction and softening of the evils of war, so far as military necessities permit. It has not always been possible to come to an agreement that henceforth all these stipulations should apply to all practical cases. On the other hand, it could not possibly be the intention of the Conference that unforeseen cases should, in the absence of written stipulations, be left to the arbitrary decision of those who commanded the army. In awaiting the time when a complete code of the laws of war may be elaborated and proclaimed, the Conference considers it opportune to state that in cases not provided for in the Articles of this date, populations and belligerents remain under the safeguards and government of the principles of international law, resulting from the customs established between civilized nations, the laws of humanity, and the demands of public conscience. It is in this sense that especially Articles 2 and 3 adopted by the Conference should be clearly understood."

Withdrawal of M. Beernaert's objections.

The first delegate from Belgium, M. Beernaert, who had previously objected to the adoption of Articles 2 and 3, immediately announced that he would with-

draw his objections on account of this declaration, and unanimity was thereby established on an important and delicate question, relating to the fixing of the status of a belligerent, and giving the right to non-combatants forming part of the army to be considered belligerents, so that both combatants and non-combatants would have the right, in case of their capture by the enemy, to be treated as prisoners of war. Before the above declaration, adopted on the motion of M. de Martens, had been communicated to the sub-committee, General Sir John Ardagh of Great Britain proposed to add at the end of the first chapter the following provision: — Chapter IV

"Nothing in this chapter shall be construed as diminishing or denying the right belonging to the people of an invaded country to fulfil their duty of opposing the invaders by the most energetic patriotic resistance, and by all permitted means." Amendments proposed by Sir John Ardagh

The idea expressed in this proposition was warmly advocated by M. Beernaert, who claimed that too great a limitation of the term *belligerent* would practically mean the prohibition of patriotism. The first duty of every citizen was to defend his own country, and national uprisings against invaders form the grandest episodes of history. Colonel Kuenzli of Switzerland supported this view, and proposed to add to the article of Sir John Ardagh the further provision: "Reprisals are prohibited against any population which has openly taken arms to resist the invasion of its territory." and Colonel Kuenzli.

General Den Beer Poortugael of the Netherlands also supported this view, although he called atten-

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Opposition by General von Schwarzhoff and Colonel Gilinsky.

tion to the fact that operations on the part of an undrilled population against an army had become more and more hopeless. On the other hand, General Gross von Schwarzhoff of Germany, who was warmly supported by Colonel Gilinsky of Russia, protested against the proposition, which in his opinion would wipe out the distinction between a popular uprising or *levée en masse* in a country which was in danger of invasion, and a similar uprising in a district which had already been invaded by a hostile army. He claimed that he was the last to deny the rights and duties of patriotism; every one must be free to enter the army, and even civilians could organize independently. The most informal organization would suffice, as well as the simplest distinctive emblem. He considered that Article 2 in its present form was not without its dangerous omissions, in that the open carrying of arms and the having of a fixed distinctive emblem recognizable at a distance should also be required. While he had resolved to vote for the Article in a spirit of conciliation, "at this point, however," said the German Delegate, most emphatically, "my concessions must cease; it is absolutely impossible for me to go one step further, to follow those who speak of an absolute unlimited right of defence."

Humanity to soldiers.

Much was said on the subject of humanity, but in his opinion it was time to remember that soldiers too were human beings, and that tired and exhausted soldiers approaching their quarters after heavy combats and long marches had a right to feel sure

that apparently peaceable inhabitants should not suddenly prove to be wild and merciless enemies. Finally, the propositions of Sir John Ardagh and Colonel Kuenzli were both withdrawn, and the declaration proposed by M. de Martens was adopted unanimously, both as a compromise and as a substitute. Chapter IV

Withdrawal of the amendments.

Chapter II. On Prisoners of War

ARTICLE 4. Prisoners of war are in the power of the hostile Government, but not in that of the individuals or corps who captured them. They must be humanely treated. All their personal belongings, except arms, horses, and military papers, remain their property.

Status of the persons and property of prisoners of war.

ARTICLE 5. Prisoners of war may be detained in a town, camp, or any other locality, and bound not to go beyond certain fixed limits; but they can only be confined as an indispensable measure of safety.

Their detention.

ARTICLE 6. The State may utilize the labor of prisoners of war according to their rank and aptitude. Their tasks shall not be excessive, and shall have nothing to do with military operations.

Their labor for the State or private individuals.

Prisoners may be authorized to work for the Public Service, for private persons, or on their own account.

Work done for the State shall be paid for according to the tariffs in force for soldiers of the national army employed on similar tasks.

When the work is for other branches of the Public Service or for private persons, the conditions shall be settled in agreement with the military authorities.

The wages of the prisoners shall go towards improving their position, and the balance shall be

Wages.

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paid them at the time of their release, after deducting the cost of their maintenance.

Their treatment as regards food, quarters, and clothing.

ARTICLE 7. The Government into whose hands prisoners of war have fallen is bound to maintain them.

Failing a special agreement between the belligerents, prisoners of war shall be treated, as regards food, quarters, and clothing, on the same footing as the troops of the Government which has captured them.

Discipline.

ARTICLE 8. Prisoners of war shall be subject to the laws, regulations, and orders in force in the army of the State into whose hands they have fallen.

Any act of insubordination warrants the adoption, as regards them, of such measures of severity as may be necessary.

Escaped prisoners, recaptured before they have succeeded in rejoining the army, or before quitting the territory occupied by the army that captured them, are liable to disciplinary punishment.

Prisoners who, after succeeding in escaping, are again taken prisoners, are not liable to any punishment for the previous flight.

Discussion on attempts to escape.

Concerning Article 8 a long discussion took place in the Committee on the subject of the escape of prisoners of war. Finally it was admitted, as in the Brussels Convention of 1874, that an attempt at escape could not remain entirely unpunished, but that the degree of punishment should be limited, so as to forestall the temptation to regard such an attempted escape as something similar to desertion before the enemy, and therefore punishable

by death. In consequence, the restrictive words "disciplinary punishment" were adopted, it being understood that this restriction had no application to cases where the escape or the attempt to escape was accompanied by special circumstances, constituting, for example, a plot, a rebellion, or a riot. In such cases the prisoners would be punishable under the first paragraph of the Article, declaring them to be subject to the laws and regulations in force in the army of the State into whose hands they have fallen.

The proposal of the Brussels Conference contained the provision that it was permissible, after a summons to halt, to use arms against an escaping prisoner of war. This provision was stricken out of the present Articles. The Committee did not deny the right to fire on an escaping prisoner of war, if military regulations so provided, but it did not seem necessary or proper to provide such formal extreme measures in the body of these Articles.

Disclosure of name and rank.

ARTICLE 9. Every prisoner of war, if questioned, is bound to declare his true name and rank, and if he disregards this rule, he is liable to a curtailment of the advantages accorded to the prisoners of war of his class.

Parole.

ARTICLE 10. Prisoners of war may be set at liberty on parole, if the laws of their country authorize it, and, in such a case, they are bound, on their personal honor, scrupulously to fulfil, both as regards their own Government and the Government by whom they were made prisoners, the engagements they have contracted.

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Not obligatory.

ARTICLE 11. A prisoner of war cannot be forced to accept his liberty on parole; similarly the hostile Government is not obliged to assent to the prisoner's request to be set at liberty on parole.

Breach of parole.

ARTICLE 12. Any prisoner of war who is liberated on parole and recaptured bearing arms against the Government to whom he had pledged his honor, or against the allies of that Government, forfeits his right to be treated as a prisoner of war and can be brought before the Courts.

Correspondents, reporters, and camp-followers.

ARTICLE 13. Individuals who follow an army without directly belonging to it — such as newspaper correspondents and reporters, sutlers and contractors — who fall into the enemy's hands, and whom the latter see fit to detain, have a right to be treated as prisoners of war, provided they can produce a certificate from the military authorities of the army which they were accompanying.

Bureau of information.

ARTICLE 14. A Bureau of Information relative to prisoners of war shall be instituted, on the commencement of hostilities, in each of the belligerent States and, when necessary, in the neutral countries on whose territory belligerents have been received. This Bureau is intended to answer all inquiries about prisoners of war, and shall be furnished, by the various services concerned, with all the necessary information to enable it to keep an individual return for each prisoner of war. It shall be kept informed of detainments and changes, as well as of admissions into hospital, and deaths.

It shall also be the duty of the Bureau of Information to receive and collect all objects of personal use, valuables, letters, etc., found on the battlefields or left by prisoners who have died in hospital or

ambulance, and to transmit them to those interested. Chapter IV

ARTICLE 15. Relief Societies for prisoners of war, which are regularly constituted in accordance with the law of the country, with the object of serving as an intermediary for charity, shall receive from the belligerents, for themselves and their duly accredited agents, every facility, within the bounds of military requirements and administrative regulations, for the effective accomplishment of their humane task. Delegates of these Societies may be admitted to the places of detention, for the distribution of relief, as also to the stopping places of repatriated prisoners, if furnished with a personal permit by the military authorities, and on giving an engagement in writing to comply with all their regulations for order, and police ordinances. Rights and duties of Relief societies and their agents.

ARTICLE 16. The Bureau of Information shall have the privilege of free postage. Letters, money orders, and valuables, as well as postal parcels destined for the prisoners of war or despatched by them, shall be free from all postal duties, both in the countries of origin and destination, as well as in those through which they pass. Free postage and free entry for all parcels for prisoners of war.

Gifts and relief in kind for prisoners of war shall be admitted free of all duties of entry and others, as well as of payments for carriage by the Government railways.

ARTICLE 17. Officers taken prisoners may receive, if necessary, the full pay allowed them in this position by their country's regulations, the amount to be repaid by their Government. Pay of captured officers.

ARTICLE 18. Prisoners of war shall enjoy every latitude in the exercise of their religion, including Religious tolerance.

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attendance at their own church service, provided only they comply with the regulations for order and police ordinances issued by the military authorities.

Wills, death certificates, and burials.

ARTICLE 19. The wills of prisoners of war shall be received or drawn up on the same conditions as for soldiers of the national army.

The same rules shall be observed regarding death certificates, as well as for the burial of prisoners of war, due regard being paid to their grade and rank.

Repatriation.

ARTICLE 20. After the conclusion of peace, the repatriation of prisoners of war shall take place as speedily as possible.

Suggestions of M. Romberg-Nisard.

M. Beernaert of Belgium most properly called the attention of the Committee and of the Conference to the fact that the humane provisions contained in Articles XI to XX were first suggested by M. Romberg-Nisard, the Belgian philanthropist, who, after having been particularly active in relieving the sufferings of prisoners of war during the war of 1870, never ceased to agitate in favor of more humane treatment of the sick, wounded, and prisoners in wars of the future. At the Conference of Brussels of 1874, the Belgian Government, through Baron Lambermont, officially proposed the adoption of six Articles regarding societies for the relief of prisoners of war, and all of these suggestions are contained in the Articles as adopted at the Peace Conference.

Francis Lieber's Code of the laws of war.

The idea of codifying the laws of war in their entirety originated with the late Francis Lieber, Professor of Political Science and International Law at Columbia University, New York. He was also the

author of the code approved by President Lincoln and formulated in 1863 as General Order No. 100 for the government of the United States armies in the field by General Halleck. This Order, as was said by M. de Martens at The Hague, has remained the basis of all subsequent efforts in the direction of humanization of war. Chapter IV

Chapter III. Of the Sick and Wounded

ARTICLE 21. The obligations of belligerents with regard to the sick and wounded are governed by the Geneva Convention of August 22, 1864, subject to any modifications which may be introduced into it. Application of the Geneva Convention.

SECTION II. ON HOSTILITIES

Chapter I. Of Means of injuring the Enemy, Sieges, and Bombardments

ARTICLE 22. The right of belligerents to adopt means of injuring the enemy is not unlimited. Limitations.

ARTICLE 23. Besides the prohibitions provided by special Conventions, it is especially prohibited : — Special prohibitions.

(*a*) To employ poison or poisoned arms ;

(*b*) To treacherously kill or wound individuals belonging to the hostile nation or army ;

(*c*) To kill or wound an enemy who, having laid down arms, or having no longer any means of defence, has surrendered at discretion ;

(*d*) To declare that no quarter will be given ;

(*e*) To employ arms, projectiles, or material of a nature to cause superfluous injury ;

(*f*) To make improper use of a flag of truce, the national flag, or military ensigns, and the enemy's

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uniform, as well as the distinctive badges of the Geneva Convention;

(*g*) To destroy or seize the enemy's property, unless such destruction or seizure be imperatively demanded by the necessities of war.

Ruses permitted.

ARTICLE 24. Ruses of war and the employment of methods necessary to obtain information about the enemy and the country are considered allowable.

Prohibition of an attack on undefended places.

ARTICLE 25. The attack or bombardment of towns, villages, habitations, or buildings which are not defended, is prohibited.

The Articles adopted in the Brussels Conference of 1874 contained the provision: "Only fortified places can be besieged." This provision was stricken out upon the motion of General Gross von Schwarzhoff of Germany, for the reason that on the one hand it was superfluous, and on the other hand it seemed to leave out all account of temporary fortifications, which experience has shown to be of great importance. The German representative instanced the case of Plevna in the Russo-Turkish War, and soon after the adjournment of the Conference, his views upon this subject received very striking confirmation in the notable defences of Ladysmith, Kimberley, and Mafeking.

Upon the motion of the same delegate, it was expressly noted in the report of the Committee that this article by no means prohibited the destruction of any buildings, when required by military necessities.

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Warning of bombardment.

ARTICLE 26. The Commander of an attacking force, before commencing a bombardment, except in the case of an assault, should do all he can to warn the authorities.

Immunity for certain edifices and places.

ARTICLE 27. In sieges and bombardments, all necessary steps should be taken to spare as far as possible edifices devoted to religion, art, science, and charity, hospitals, and places where the sick and wounded are collected, provided they are not used at the same time for military purposes.

The besieged should indicate these buildings or places by some particular and visible signs, of which the assailants should previously be notified.

Pillage prohibited.

ARTICLE 28. The pillage of a town or place, even when taken by assault, is prohibited.

Chapter II. On Spies

Who is a spy.

ARTICLE 29. An individual can only be considered a spy if, acting clandestinely, or under false pretences, he obtains, or seems to obtain, information in the zone of operations of a belligerent, with the intention of communicating it to the hostile party.

Who is not a spy.

Thus, soldiers not in disguise who have penetrated into the zone of operations of a hostile army to obtain information are not considered spies. Similarly, the following are not considered spies: soldiers or civilians, carrying out their mission openly, charged with the delivery of despatches destined either for their own army or for that of the enemy. To this class belong likewise individuals sent in balloons to deliver despatches, and generally to maintain communication between the various parts of an army or a territory.

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Right to trial.

ARTICLE 30. A spy taken in the act cannot be punished without previous trial.

No punishment on subsequent capture.

ARTICLE 31. A spy, who after rejoining the army to which he belongs is subsequently captured by the enemy, is treated as a prisoner of war, and incurs no responsibility for his previous acts of espionage.

Chapter III. On Flags of Truce

Definition and community of flags of truce.

ARTICLE 32. An individual is considered as bearing a flag of truce who is authorized by one of the belligerents to enter into communication with the other, and who carries a white flag: he has a right to inviolability, as well as the trumpeter, bugler, or drummer, the flag-bearer, and the interpreter who may accompany him.

No obligation to receive it under all circumstances.

ARTICLE 33. The Chief to whom a flag of truce is sent is not obliged to receive it under all circumstances. He can take all steps necessary to prevent the envoy taking advantage of his mission to obtain information. In case of abuse he has the right to detain the envoy temporarily.

The Brussels Conference had proposed an express declaration that a belligerent was permitted to declare that he would not receive a flag of truce during a specified time, and adding that the bearers of a flag of truce who should present themselves after such a declaration, should lose their right of inviolability.

The Committee, on motion of Count Nigra of Italy, refused to admit that according to the principles of International Law a belligerent could ever be permitted to declare, even for a specified time, that no

flags of truce would be received. The military dele- Chapter IV
gates at the Peace Conference all considered that the
point was sufficiently covered by the provision of
Article 33, to the effect that a commander to whom a
flag of truce is sent is not obliged to receive it under
all circumstances. Accordingly the proposition of the
Brussels Conference was stricken out.

ARTICLE 34. The envoy loses his rights of in- Treachery.
violability if it is proved beyond doubt that he has
taken advantage of his privileged position to provoke
or commit an act of treachery.

Chapter IV. On Capitulations

ARTICLE 35. Capitulations agreed upon between Military honor.
the Contracting Parties must be in accordance with
the rules of military honor.

When once settled, they must be scrupulously
observed by both parties.

Chapter V. On Armistices

ARTICLE 36. An armistice suspends military opera- Definition and duration.
tions by mutual agreement between the belligerent
parties. If its duration is not fixed, the belliger-
erent parties can resume operations at any time,
provided always the enemy is warned within the
time agreed upon, in accordance with the terms of
the armistice.

ARTICLE 37. An armistice may be general or General or local armistice.
local. The first suspends all military operations of
the belligerent States; the second, only those between
certain fractions of the belligerent armies and in a
fixed radius

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Notification necessary.

ARTICLE 38. An armistice must be notified officially, and in good time, to the competent authorities and the troops. Hostilities are suspended immediately after the notification, or at a fixed date.

What communications permissible.

ARTICLE 39. It is for the Contracting Parties to settle, in the terms of the armistice, what communications may be held, on the theatre of war, with the population and with each other.

Violation by one of the parties.

ARTICLE 40. Any serious violation of the armistice by one of the parties gives the other party the right to denounce it, and even, in case of urgency, to recommence hostilities at once.

By private individuals.

ARTICLE 41. A violation of the terms of the armistice by private individuals acting on their own initiative, only confers the right of demanding the punishment of the offenders, and, if necessary, indemnity for the losses sustained.

SECTION III. ON MILITARY AUTHORITY OVER HOSTILE TERRITORY

What is occupied territory.

ARTICLE 42. Territory is considered occupied, when it is actually placed under the authority of the hostile army. The occupation applies only to the territory where such authority is established, and in a position to assert itself.

Order and safety.

ARTICLE 43. The authority of the legitimate power having actually passed into the hands of the occupant, the latter shall take all steps in his power to re-establish and insure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.

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ARTICLE 44. Any compulsion of the population of occupied territory to take part in military operations against its own country is prohibited. No conscription.

ARTICLE 45. Any pressure on the population of occupied territory to take an oath of allegiance to the hostile Power is prohibited. No oath of allegiance.

ARTICLE 46. Family honor and rights, individual lives and private property, as well as religious convictions and liberty, must be respected. Private property cannot be confiscated. Individual rights respected.

ARTICLE 47. Pillage is absolutely prohibited. Pillage prohibited.

ARTICLE 48. If, in the territory occupied, the occupant collects the taxes, dues, and tolls imposed for the benefit of the State, he shall do it, as far as possible, in accordance with the rules in existence, and the assessment in force, and will in consequence be bound to defray the expenses of the administration of the occupied territory on the same scale as that by which the legitimate Government was bound. Taxation.

ARTICLE 49. If, besides the taxes mentioned in the preceding Article, the occupant levies other money taxes in the occupied territory, this can only be for military necessities or the administration of such territory. Contributions.

ARTICLE 50. No general penalty, pecuniary or otherwise, can be inflicted on the population on account of the acts of individuals, for which it cannot be regarded as collectively responsible. No general penalty for individual acts.

ARTICLE 51. No tax shall be collected except under a written order and on the responsibility of a Commander-in-Chief. This collection shall only take Collection of taxes.

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place, as far as possible, in accordance with the rules in existence and the assessment of taxes in force. For every payment a receipt shall be given to the taxpayer.

Requisitions.

ARTICLE 52. Neither requisitions in kind, nor services can be demanded from communes or inhabitants, except for the necessities of the army of occupation. They must be in proportion to the resources of the country, and of such a nature as not to involve the population in the obligation of taking part in military operations against their country.

These requisitions and services shall only be demanded on the authority of the Commander in the locality occupied.

The contributions in kind shall, as far as possible, be paid for in ready money, if not, their receipt shall be acknowledged.

Taking of property.

ARTICLE 53. An army of occupation can only take possession of the cash, funds, and property liable to requisition belonging strictly to the State, depots of arms, means of transport, stores, and supplies, and, generally, all movable property of the State which may be used for military operations.

Railway plant, telegraphs, telephones, steamers, and other ships, apart from cases governed by maritime law, as well as depots of arms and, generally, all kinds of war material, even though belonging to Companies or to private persons, are likewise material which may serve for military operations, but they must be restored at the conclusion of peace, and indemnities paid for them.

Landing connections of submarine cables.

M. de Bille of Denmark proposed to add to the second paragraph of this Article a provision protect-

ing the landing connections of submarine cables within the maritime territorial limits of the respective States. The Government of Denmark had made a similar proposition in the Conference of Brussels of 1874. The Danish delegate declared that he would have preferred to extend the protection of this Article to all submarine cables in their full extent, but for practical reasons he confined his proposition upon this occasion to the protection of the landing connections within the limit of one league from the shore, hoping that the immense importance of the subject of protecting all submarine cables would cause it to be referred to a future conference. Lord Pauncefote, on behalf of Great Britain, declared that his Government could not consider this subject as falling properly within the jurisdiction of a Committee having charge of the rules of war on land; and the Danish delegate, under these circumstances, withdrew his proposition.

Railway plants.

ARTICLE 54. The plant of railways coming from neutral States, whether the property of those States, or of Companies, or of private persons, shall be sent back to them as soon as possible.

Trusteeship of occupying State.

ARTICLE 55. The occupying State shall only be regarded as administrator and usufructuary of the public buildings, real property, forests, and agricultural works belonging to the hostile State, and situated in the occupied country. It must protect the capital of these properties, and administer it according to the rules of trusteeship.

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No damage permitted to certain property.

ARTICLE 56. The property of the municipalities, that of religious, charitable, and educational institutions, and those of arts and science, even when State property, shall be treated as private property.

All seizure, destruction, or intentional damage done to such institutions, to historical monuments, works of art or science, is prohibited, and should be made the subject of civil and criminal proceedings.

SECTION IV. ON THE DETENTION OF BELLIGERENTS AND THE CARE OF THE WOUNDED, IN NEUTRAL COUNTRIES

Duty of neutrals as to belligerent troops.

ARTICLE 57. A neutral State which receives in its territory troops belonging to the belligerent armies shall detain them, if possible, at some distance from the theatre of war.

Their detention.

It can keep them in camps, and even confine them in fortresses or localities assigned for this purpose. It shall decide whether officers may be left at liberty, on giving their parole that they will not leave the neutral territory without authorization.

Supplies.

ARTICLE 58. Failing a special Convention, the neutral State shall supply the detained with food, clothing, and relief required by humanity. At the conclusion of peace, the expenses caused by the detention shall be repaid.

Passage of wounded or sick belligerents through neutral territory.

ARTICLE 59. A neutral State may authorize the passage, through its territory, of wounded or sick belonging to the belligerent armies, on condition that the trains bringing them shall carry neither combatants nor war material. In such a case, the neutral State is bound to adopt such measures of safety and control as may be necessary for the purpose.

Wounded and sick brought under these conditions into neutral territory by one of the belligerents, and belonging to the hostile party, must be guarded by the neutral State so as to insure their not taking part again in the military operations. The same duty shall devolve on the neutral State with regard to wounded or sick of the other army who may be committed to its care. Chapter IV

ARTICLE 60. The Geneva Convention applies to sick and wounded detained in neutral territory. Application of Geneva Convention.

Upon the general value of the two treaties set forth in this chapter, the judgment of two of the most eminent international lawyers of the Conference, may be quoted. The value of the treaties.

Professor Zorn[1] declares the treaty on the extension of the Geneva rules to naval warfare to be "a work which can and will receive the grateful approbation of all civilized States," and he considers the treaty on the laws of war to deserve equal commendation. "This work alone," he continues, "would suffice to give the lie to the ignorant and frivolous critics who endeavor to characterize the labors of The Hague with the words 'threshing out Russian straw.'" Professor Zorn's opinion.

Professor de Martens of Russia, in an article in the *North American Review*, for November, 1899, says: — Professor de Martens' opinion.

"The treaty on the laws and customs of war will certainly be as notable as the treaty on arbitration. By reason of this treaty the peaceful and unarmed inhabitants of the territory of belligerents will have

[1] *Deutsche Rundschau*, January, 1900, p. 136.

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Professor de Martens' opinion.

the right to demand that their lives, their religious convictions, and their private property shall be respected. Through it prisoners of war will be treated, not as enemies, but as disarmed and honorable adversaries, worthy of respect. Through it social institutions, beneficiary establishments, religious, scientific, and otherwise, which find themselves on disputed territory, shall have the right to demand and to exact of the enemy respect for the inviolability of their property and their interests.

"Finally, the Red Cross treaty for times of naval warfare, signed by the Conference at The Hague, is the happy solution of the question which the Powers of Europe have been studying for thirty years. Since 1868 the 'Additional Articles' to the Treaty of Geneva have existed, whereby the beneficent influence of the treaty of Geneva on wounded and sick soldiers was also extended to sea combats. For thirty-one years diplomatic negotiations have been carried on on this question; all the Red Cross conferences which have taken place in the last twenty years have proclaimed the necessity of recognizing the Red Cross treaty for the sick and wounded in naval warfare. But nothing effectual was accomplished up to the Conference at The Hague. It was this Conference that caused the final adoption by (twenty-six) Powers of the principle whereby the wounded in times of naval warfare shall have the same right to have their person, their life, their health, and their property respected as the wounded in case of warfare on land."

Although of secondary importance when compared to the chief work of the Conference, it is certainly a mistake for so-called "friends of Peace" to disparage the value and significance of these treaties. The humanizing of war, while not as inspiring an object as the peaceful adjustment of international differences, is a step in the same direction; for it tends, on a comparatively small scale, but still most effectively, to alleviate suffering and to save human lives. The argument that war should be made as terrible as possible, in order to prevent it, logically leads to savagery, no quarter, and the raising of the black flag. It is quite as illogical as the exploded theory of criminal law, according to which severity of punishment, torture, and corruption of blood were regarded as ordinary deterrent agencies, with the result of a frightful increase of the most heinous crimes, since the punishment for them was hardly more severe than for minor offences. The Conference has kept as closely as possible to the golden mean between the sentimentality which would impair the efficiency of National Power at a supreme crisis, and the demands of unbridled military license. Its work in this direction may confidently await the verdict of history.

Their value and significance should not be underestimated.

Fallacious argument regarding war.

CHAPTER V

THE WORK OF THE THIRD COMMITTEE: GOOD OFFICES, MEDIATION, INTERNATIONAL COMMISSIONS OF INQUIRY AND ARBITRATION

Diplomatic character of the work of the Third Committee.

THE deliberations of the First and Second Committees were largely, if not wholly, of a technical, military, or naval character, and the results obtained could, perhaps, have been accomplished by a meeting of experts, corresponding to the famous assemblies of Geneva and Brussels or to the Postal and Marine Conferences of a later date. The task allotted to the Third Committee, on the other hand, was essentially diplomatic in its nature, touching the sovereignty of States most directly, and comprising possibilities of great and serious danger. The analogy between this endeavor and the work of American Constitutional Conventions — notably the great Convention of 1787 — is not as remote as it may perhaps appear at first sight. A general code or Magna Charta, guaranteeing rights and imposing duties, even in the most indefinite manner, after all resembles a constitution rather than a treaty, and constructiveness is quite as essential to its preparation as the spirit of compromise.

Analogy with Constitutional Conventions.

The President and honorary Presidents.

The presidency of this Committee was conferred upon M. Leon Bourgeois, the former French Prime

Minister and Minister of Public Education, eminent both as an orator and as a statesman of practical judgment, — in other words, a happy combination of idealist and opportunist. The honorary Presidents, Count Nigra and Lord Pauncefote, were both renowned in diplomacy. Count Nigra had an unparalleled experience at Paris, London, and Vienna. Lord Pauncefote had won high distinction by his brilliant service in Washington during a particularly critical time, and especially by the Pauncefote-Olney Treaty of Arbitration, between the United States and Great Britain, which failed of ratification by the United States Senate. Chapter V

The Vice-Presidents were M. de Bille of Denmark, Baron d'Estournelles de Constant of France, Count Macedo of Portugal, M. Mérey de Kapos-Mére of Austria-Hungary, M. Pompilj of Italy, and Professor Zorn of Germany. The Vice-Presidents.

The other members of the committee were either diplomatists or lawyers, Germany alone having added General von Schwarzhoff and Captain Siegel, — military and naval experts, whereas Prince Münster was the only chief delegate from any country who was not a member, it being understood that the reason was his advanced age.

The complete list of members was as follows: — Members.

Germany: Dr. Zorn, General Gross von Schwarzhoff, Captain Siegel.

United States of America: Mr. White, Mr. Low, and Mr. Holls.

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Members.

Austria-Hungary: Count Welsersheimb, M. Okoliscanyi von Okoliscna, M. de Mérey de Kapos-Mére.

Belgium: Count de Grelle Rogier, Chevalier Descamps.

China: Yang Yu, Hoo-Wei-Teh, Lou-Tseng-Tsiang.

Denmark: M. de Bille.

Spain: The Duke of Tetuan, M. de Villa Urrutia.

France: M. Bourgeois, Baron d'Estournelles de Constant, M. Renault.

Great Britain: Lord Pauncefote, Sir Henry Howard.

Greece: M. Delyannis.

Italy: Count Nigra, Count Zannini, M. Pompilj.

Japan: Baron Hayashi, M. Moton, M. Arriga.

Luxemburg: M. Eyschen, Count de Villers.

Mexico: M. de Mier, M. Zenil.

Netherlands: Jonkheer van Karnebeek, M. Asser, M. Rahusen.

Persia: General Mirza Riza Khan, Arfa-ud-Dovleh.

Portugal: M. d'Ornellas Vasconcellos.

Roumania: M. Beldiman, M. Papiniu.

Russia: M. Staal, M. de Martens, M. de Basily, M. Raffalovich.

Servia: M. Mijatovitch, Dr. Veljkovitch.

Siam: M. Phya Suriya, M. Corragioni d'Orelli, M. Rolin.

Sweden and Norway: Baron Bildt, M. Konow.

Switzerland: Dr. Roth, Colonel Kuenzli, M. Odier.

Turkey: Turkhan Pacha, Noury Bey.

Bulgaria: Dr. Stancioff.

The full Committee held nine meetings, on May 23 and 26, June 5, and July 7, 17, 19, 20, 22, and 25. Chapter V

Communications to the press.

At the first meeting on May 23, Baron de Bildt of Sweden and Norway expressed the hope that the communications to be made to the press, on the subject of the work of the Committee, should be as full as possible.

The eminent Scandinavian diplomatist and scholar gave expression to a wish which was shared by many of his colleagues, but which, as it soon became evident, was utterly incapable of realization. In some respects this was most regrettable. No important undertaking, it may safely be said, has suffered more from misunderstanding and hostile or unjust criticism, than the Peace Conference, and this was largely, if not wholly, due to the attitude of the daily press during the continuance of the sessions. Prominent journalists from both hemispheres were present in great number on the day of the opening. Many of them apparently expected dramatic or even sensational developments, exuberant oratory, or perhaps interesting diplomatic combinations and intrigues. The spectacle of a hundred representative men, avoiding all ostentation or display, quietly and seriously proceeding to consider practical questions in a practical manner, seemed an anticlimax, and the "failure" of the Conference to "decree disarmament" was eagerly seized as a welcome pretext for a dismissal of the subject of the Conference with a contemptuous smile or a shrug of the shoulders. Most of the journalists left The Hague before the end of May.

The attitude of the press.

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Possibly fuller reports of the discussions, even in the Committees, would have sufficed to change the attitude of the press, — but it may well be doubted. On the other hand, there can be no question that but for the secrecy surrounding the deliberations, especially of the *Comité d'Examen*, it would have been impossible to remove some of the more serious difficulties, and the Conference would have broken up without, perhaps, accomplishing anything, and having by its very failure done immense and irreparable damage to every peaceful, progressive, and civilizing interest in the world.

Necessity of secrecy.

As it was, votes of no significance whatever, on purely routine questions, which leaked out, were magnified into alliances, and various myths about the attempts of this or that Power to "sow discord" or to "thwart the objects of the Conference" obtained currency and belief, which lingered after the adjournment of the Conference.

A departure for any reason from the safe rule of privacy during the continuance of the work would have done irreparable damage at The Hague, and the same is likely to remain true in future Conferences. That this need not imply the slightest neglect of the tremendous power of the press is shown by the fact that a thoughtful and thoroughly competent journalist, such as the correspondent of the London *Times*, found no difficulty in furnishing reports which, while violating no confidence, still kept his constituency fully and accurately informed of the general progress of the work of the Conference.

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As in the case of the discussion of the work of the First and Second Committees, repetition has been avoided by describing the action both of the various Committees and of the Conference under the head of the appropriate articles of the proposed treaties. A separate account of the consecutive meetings of the Third Committee is thereby rendered unnecessary.

The Comité d'Examen

At the session of the Third Committee on May 26, the Chairman, M. Bourgeois, suggested that all propositions on the subject of Good Offices, Mediation, and Arbitration should be first referred to a Special Committee of Examination (*Comité d'Examen*) which should be directed to report the text of a proposed treaty to the full Committee. Count Nigra of Italy made a formal motion to this effect, which was unanimously adopted.

Mode of appointment.

On motion of Chevalier Descamps of Belgium the appointment of this Special Committee was left to the "Bureau" of the Committee: viz., the Honorary Presidents, President, and Vice-Presidents, subject to the ratification of the full Committee. A recess was taken for the purpose of giving these officers an opportunity to confer.

Membership.

Upon the reassembling of the Committee, the following members were appointed on the *Comité d'Examen:* Messrs. Asser of Holland, Descamps of Belgium, Baron d'Estournelles de Constant of France, Holls of the United States of America, Lammasch of Austria-Hungary, De Martens of Russia, Odier of

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Membership.

Switzerland, and Zorn of Germany. The Chairman of the Third Committee, M. Bourgeois, usually presided at the meetings of the *Comité d'Examen*, and the Honorary Presidents, Count Nigra and Lord Pauncefote, were regular and active attendants. The President of the Conference, M. de Staal, M. Basily of Russia, and Jonkheer van Karnebeek of Holland, also attended with more or less regularity. Chevalier Descamps was chosen reporter of the Committee, and Baron d'Estournelles, secretary. The latter was ably assisted by M. Jarousse de Sillac, one of the secretaries of the Conference. Besides the members, various delegates attended particular meetings by invitation, notably Baron de Bildt of Sweden, Count Macedo of Portugal, Messrs. Beldiman and Papiniu of Roumania, Delyannis of Greece, Professor Renault of France, M. Rolin of Siam, and Messrs. Mijatovich and Veljkovich of Servia.

Importance of the committee.

The *Comité d'Examen* rapidly and quite unexpectedly became the centre of interest in the entire Conference. The most important declarations of the various Governments were made at its meetings, and it was soon evident that the question of the success or failure of the Conference as a whole depended almost entirely upon the chance of unbroken harmony in this Committee. Accordingly, when for a time there appeared to be danger that at least one great Power — the German Empire — might discontinue its coöperation in the establishment of the permanent Court of Arbitration, the sessions were suspended by common consent, in order to give an

opportunity to the German representative, Dr. Zorn, to proceed to Berlin in order to discuss the objections which had been raised, which were technical, though by no means frivolous, in their nature. At the suggestion of Prince Münster and Ambassador White, and with the cordial assent of the other members of the Committee, Mr. Holls of the United States also went to consult with Prince Hohenlohe and Count von Bülow upon the same subject, and the joint efforts of the two delegates were completely successful. Other similar crises were happily averted without friction or publicity.

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Negotiations at Berlin.

The Committee met at first in the famous Chinese room of the House in the Wood, but most of its sessions were held in the beautiful and historical *Salle de Trèves* in the Binnenhof, in the city of The Hague. The Committee held eighteen sessions, usually on Mondays, Wednesdays, and Fridays, most of them lasting from two till six in the afternoon, and the discussions were often of the greatest interest. While the ordinary language used was, of course, French, the familiarity of nearly all the members with English and German led to the occasional use of these languages — the secretary, Baron d'Estournelles, giving notable assistance in the way of immediate, accurate, and graceful translation.

Meetings.

Beyond any doubt, the work of this Committee will remain, to those who were privileged to take part, the most memorable feature of the entire Conference. Bound together by a common endeavor to accomplish what was recognized as an end as

Personal remarks.

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Personal remarks.

noble as it was difficult, the members soon dropped diplomatic reserve. Sincere personal esteem, as well as genuine good fellowship, appeased even the most serious differences of opinion. The absorbing interest shown in the work by the members themselves is evidenced by the fact that from first to last no member was absent from any meeting, save only M. Bourgeois, when summoned to Paris by the offer of the Premiership of France, and M. de Martens when on duty as President of the High Court of Arbitration between Great Britain and Venezuela. The plan and scope of this work preclude much narration of a personal nature, which otherwise might not be wholly without interest. It may, however, perhaps be permissible to make more than a passing reference to the delightful hours spent in the company of these men.

To listen to the diplomatic wisdom of veteran statesmen like Baron de Staal, Count Nigra, and Lord Pauncefote; to hear the profoundest problems of International Law debated thoroughly and most brilliantly by authorities like De Martens, Asser, Descamps, Lammasch, and Zorn; to observe the noble idealism of Baron d'Estournelles, the sound judgment of M. de Basily and Jonkheer van Karnebeek, and the unerring prudence of Switzerland's efficient representative, M. Odier, — and finally, to watch the perfection of decision and tact in the firm but most amiable management of all these various elements by the Chairman, M. Bourgeois, — all this would in itself be of sufficient general interest to

deserve an enduring record. Unfortunately, this is impossible, for in the absence of a stenographic report, by far the greater and better part of the debates — the animated discussions — are necessarily lost. The admirable *procès verbeaux* of Baron d'Estournelles summarize most accurately the action taken, as well as many of the speeches made, and they, together with the present writer's own recollections and memoranda, form the basis of most of the narrative which is hereinafter given, under the appropriate article. One further personal remark may be pardoned. Chapter V

To every member of the *Comité d'Examen*, without exception, the author is under the deepest obligation for acts of personal kindness and good will too numerous to mention, and the knowledge that these were intended also as proofs of friendship for the great Republic which he had the honor to represent, serves only to increase his sincere gratitude. From first to last, there is not one phase of the Committee's work, nor of his intercourse with each of its members, of which he cannot sincerely and thankfully say: *Haec olim meminisse juvabit.*

The Convention for the Peaceful Adjustment of International Differences

The Convention for the peaceful adjustment of international disputes, dated and signed July 29th. 1899, requires comparatively little commentary or explanation. A code of rules for international inter-

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course is naturally more simple than a code of law for individuals, since questions arising between States, multifarious and complex as they may be, are still simplicity itself when compared to the innumerable jural relations of private and municipal life.

The full text of the Convention is here given, and besides the official minutes, the report made to the Conference on behalf of the *Comité d'Examen* by Chevalier Descamps has of course been taken as the basis of the commentary, without, however, diminishing the present writer's own responsibility.

The Treaty begins as follows: —

Preamble.

The Sovereigns and Heads of State [here follow the names] represented at the Conference, animated by a strong desire to coöperate for the maintenance of general peace:

Resolved to second by their best efforts the friendly settlement of international disputes:

Recognizing the solidarity which unites the members of society of civilized nations:

Desirous of extending the empire of law, and of strengthening the appreciation of international justice:

Convinced that the permanent institution of a Court of Arbitration, accessible to all, in the midst of the independent Powers, will contribute effectively to this result:

Having regard to the advantages attending the general and regular establishment of arbitral procedure:

Sharing the opinion of the August Initiator of the

International Peace Conference that it is expedient to record in an international Agreement the principles of equity and right upon which repose the security of States and the welfare of peoples:

Being desirous of concluding a Convention to this effect, having appointed as their Plenipotentiaries, to wit: [here follow the names].

TITLE I. ON THE MAINTENANCE OF GENERAL PEACE

ARTICLE 1. With a view to obviate, as far as possible, recourse to force in the relations between States, the Signatory Powers agree to use their best efforts to insure the peaceable adjustment of international differences.

The maintenance of general peace.

This article, which is simply a general indication and declaration of purposes, is intentionally drawn so as to commit the Signatory Powers to the employment of "their best efforts" to insure, "as far as possible," the peaceful adjustment of any international differences, without respect to the question as to whether these latter may arise between Signatory Powers, or between a Signatory Power and a Non-Signatory Power, or between Non-Signatory Powers only. All the following provisions of the treaty regarding the application of any of the detailed regulations are carefully restricted in their application to differences between two or more Signatory Powers, and the employment of any one of the means suggested is restricted to cases "where circumstances permit."

The care will be noted with which the idea of the

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Respect for sovereignty once established.

complete sovereignty of each State, regardless of its size or power, has been safeguarded, provided only that this status has once been admitted, and that it is not itself the subject of controversy. While therefore the provisions of this article undoubtedly open the door to the employment of the best efforts of any or all of the Signatory Powers, to insure the peaceful adjustment of any or all international differences, even between two semi-civilized or savage States, the article could not be used as a cover for any effort to interfere in any struggle wherein the complete sovereignty or independence of either party is the real object at stake.

TITLE II. ON GOOD OFFICES AND MEDIATION

Good offices and mediation.

ARTICLE 2. In case of a serious disagreement or conflict, before an appeal to arms, the Signatory Powers agree to have recourse, as far as circumstances will allow, to the good offices or mediation of one or more friendly Powers.

This article reaffirms the principles of the Declaration of Paris of 1856, as follows: —

Declaration of Paris.

"The Plenipotentiaries in the name of their Governments express the solemn wish that States between whom a serious disagreement arises, may, before an appeal to arms, have recourse, as far as circumstances allow, to the good offices of a friendly Power."

The use of good offices and mediation finds its general justification in the ties which bind together the international society of civilized States, and is,

moreover, designed to discredit the use of armed conflicts as a means of settling international differences, in the general interest of humanity and peace. The incalculable damage which modern war may easily inflict even upon States which are strangers to the conflict itself, make the employment of good offices and mediation more necessary than ever before, whether for the prevention or settlement of armed conflicts. Chapter V

Justification for the articles.

There is a nominal difference only, between good offices and mediation, and practically both of these means of action are distinguished less by their intrinsic quality, than by the extent to which they contribute toward a friendly understanding. In other words, good offices constitute a mild and more general form of mediation. Very often mediation follows the extending of good offices, and a third Power which has begun to reëstablish relations between the Powers in conflict is requested to participate in the further negotiations: sometimes even to conduct them. Diplomatic usage therefore makes no real distinction between good offices and mediation, — the present treaty in using both expressions looks simply toward a conciliatory interposition.

Difference between good offices and mediation.

The great advantage of mediation, when compared to other means calculated to settle international conflicts, is, above all, the remarkable elasticity of its action, and the possibility which it affords of adapting itself to particular circumstances in each given case. Addressing itself to the free consent of the parties, mediation by no means threatens the principle of

Advantage of mediation.

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Advantage of mediation.

their sovereignty any more than the liberty or independence of States. It acts by influencing their free will, without in the least impairing it, or even throwing doubt upon it. By the very fact that good offices and mediation must proceed in the most friendly and courteous manner, and can never exceed the bounds of conciliatory advice, they offer the double advantage of first, leaving entirely intact the independence of the Powers addressed, and secondly, of being entirely available, not only for conflicts of right, but also for those of interest, thus adding materially to the resources available for the preservation of peace. It would seem that this instrument of ordinary diplomatic practice, handled with tact and skill, and directed by a sincere desire to serve the cause of peace, is destined to play in the future a striking and beneficial rôle. At the same time it must be confessed that up to this time mediation has played one of the most modest parts in the settlement of international controversies, and this fact will appear most clearly from the history of recent conflicts. If the reason is sought, it will be found that the question of mediation is usually put in a manner which is as unsatisfactory in theory as it is in the practice of International Law.

Former agreements unsatisfactory.

The treaty of Paris and the Protocol of the Congress of Paris, as well as the treaty regarding the Congo, signed in Berlin in 1885, all impose the obligation upon the parties in conflict of "having recourse to the mediation of one or more neutral Powers." This character of mediation, most irregular in theory, has

the further disadvantage of being quite unattainable in practice. The request for mediation necessarily presupposes a preliminary agreement between the interested States on the subject of the necessity for it, and of the existence of the proper occasion. Such an agreement is hardly ever possible in the excitement of a controversy between diametrically opposing interests. At all events, it is out of the question to make the recourse to mediation obligatory for the States whose interests are at stake, for the reason that the very request presupposes an agreement of the parties concerned regarding the choice of the mediator. If, nevertheless, treaties impose such a duty upon States in case of controversy, they generally remain a dead letter, for no treaty can oblige States in dispute to limit their choice to such or such a mediator. These facts are proven by the entire history of international relations since the time of the Congress of Paris of 1856. During this period there have been several cases when neutral States, on the basis of Article 23 of the Congress of Paris, have proposed their mediation or good offices to States in conflict, but *there has not been a single case* when any States in conflict have addressed to neutrals a request for mediation. In 1898, during the controversy between France and Great Britain, concerning Fashoda, neither one nor the other of these Powers dreamed of having recourse to the provisions established by the Conference of Berlin in 1885, and requesting the mediation of a third Power. Other and similar examples could easily be cited.

Mediation has not been invoked.

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Offer of mediation not favored heretofore.

As to the obligation of neutral States to offer their mediation to States in conflict, so far as it has not been defined by treaties, it has never been recognized or observed. In fact, so far as any such duty is concerned, many writers on International Law not only affirm that neutral States are not so obliged, but, more than that, they almost deny their right to offer their mediation to States in conflict.

Bluntschli and Heffter regarded mediation as dangerous and harmful meddling. Hautefeuille and Galiani advised States ordinarily to abstain from mediation, for fear of alienating, without any reason, the sympathies of one or the other parties to the conflict. Numerous examples of serious disagreements might be cited, which resulted in war, but which never suggested to neutral Powers an attempt at mediation; yet such an effort, especially in cases where it could be made simultaneously by several Powers, might have averted wars, the consequences of which have been incalculable for all the States constituting international society. In many cases the proposition of mediation has been made so late, and in such uncertain terms, that it could no longer prevent a declaration of war.

It was thus, for instance, that the French Government in 1870 refused the good offices of Great Britain at the outbreak of the conflict between France and Germany.

Mediation to terminate a war.

Mediation is often proposed, not with the object of preventing, but with that of terminating a war. Several recent wars — those between Austria and

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Prussia in 1866, between Chile, Peru, and Bolivia in 1882, and between Greece and Turkey in 1897, besides some others, were terminated through the mediation of neutral Powers. Had the same Powers shown half the energy in attempting to prevent these conflicts, it is fair to assume that, at least in the two latter cases, the outbreak of hostilities might have been averted.

Mediation established as a permanent institution.

In view of all these facts, it was but natural that the Conference should have established mediation as a permanent institution. The principle of isolation which hitherto has almost dominated the political existence of every nation, must hereafter give way to a close solidarity of interests and a common participation in the moral and material benefits of civilization. Modern States cannot remain indifferent to international conflicts, no matter where they may arise, and who may be the parties. Under present conditions, war, though between two States only, must be regarded as an international evil, which should be prevented wherever possible, by international means.

Not to be confounded with meddling.

It must not, however, be understood that the good offices of other Powers are unreservedly recognized as an every-day method of appeasing ordinary diplomatic differences. The language used is "In case of serious disagreements or conflicts, before an appeal to arms." Outside of these comparatively narrow limits, the offer of good offices or mediation would constitute simple meddling, without justification and not without danger.

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The restriction "as far as circumstances will allow."

In the discussion of this article in the *Comité d'Examen*, the use of the words "as far as circumstances will allow" was objected to upon the ground that such a limitation practically defeated the object of the article. M. Asser of Holland pointed out that an obligation which naturally had no sanction to enforce it, would seem to have become invalidated entirely with the addition of such a general clause, but the Committee shared the views expressed by M. Bourgeois of France, that the article was at best a very general statement of principle, the application of which, to the most diverse states of fact it was impossible to foresee. It seemed prudent to avoid making it absolute and thus incur an opposition which might be fatal to the entire Convention.

An attempt was made to have the qualifying phrase read "so far as exceptional circumstances may not prevent," but finally it was decided that the safest and most satisfactory expression was that of the text.

Article 3. Independently of this recourse, the Signatory Powers consider it to be useful, that one or more Powers who are strangers to the dispute should, on their own initiative, and as far as circumstances will allow, offer their good offices or mediation to the States at variance. The right to offer good offices or mediation belongs to Powers who are strangers to the dispute, even during the course of hostilities. The exercise of this right shall never be considered by one or the other of the parties to the contest as an unfriendly act.

The subject of this article — the offer of good offices and mediation — is most important. The right to make this offer has hitherto, with few exceptions noted above under Article 2, been regarded as inherent in every State in the interests of humanity at large, and by virtue of Article 27 of the present Convention, it must hereafter also be regarded in the light of a duty, based upon facts and conditions agreed upon by the society of civilized nations. The power to offer good offices is inherent in the independence and sovereignty of States, inasmuch as it is identical in most cases with the right of watching and protecting their own individual interests. The necessary safeguard is to be found, not in denying the existence of this right or in discouraging its exercise, but in the recognition of the corresponding right on the part of other independent nations to refuse the offer.[1] M. Veljkovitch offered an amendment to the

[1] A perfect example of the tender of good offices, as distinguished from mediation, may be found in the action of the American Government in answer to the petition of the South African Republics in March, 1900, although the correspondence in this case is characterized by an inaccurate use of the word "intervention," in the original request of the Republics. The Secretary of State communicated the request to the British Government, by way of friendly good offices, adding that the President "hoped that a way to bring about peace may be found," and saying that "he would be glad to aid in any friendly manner to promote so happy a result." In reply, the British Government "thanked the President for the friendly interest shown by him," adding that "Her Majesty's Government cannot accept the intervention of any other Power" — the word "intervention" being of necessity used, although "good offices" was really meant.

The general effort of the European Powers to avert the Spanish-American War of 1898 may also be cited in this connection, though

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Refusal of the offer.

Article recognizing the right to refuse the offer of good offices and mediation in terms, and stating that a refusal should not be considered as an unfriendly act. Although the correctness of his point of view was fully recognized, the Committee on Arbitration did not deem it wise or necessary to provide for such an eventuality in the very text of the Convention. The importance of the spontaneous offer of good offices and mediation on the part of a third Power will be recognized, when the difficulty is realized with which States, in controversy, or after the exchange of severe diplomatic notes, can ever be brought to an agreement regarding a joint recourse to some mediating Power. Unfortunately such an attempt has hitherto been surrounded by so many obstacles, that Powers who are most sincerely desirous of helping to safeguard the interests of peace are driven to content themselves with complete inaction. Under these circumstances, it seems most important to recognize in advance, and without ambiguity, in a Convention expressing the judgment of all, the exact status in International Law of useful efforts in this direction. In this manner, mutual good will is encouraged, and estrangement, by reason of an offer in the interests of peace, will be avoided. The limitation in the Article "so far as circumstances may allow" again indicates that there is no intention to encourage inopportune intervention. In other words, a precise

definition is more difficult in that case. The fact is, that hardly any two examples will be found to resemble each other closely, and the subject needs further development by experience.

knowledge of the facts and saving common sense are recognized as being not less important and necessary than a desire for peace. Chapter V

Upon the motion of Count Nigra the second paragraph giving the right to extend good offices or mediation even during the course of hostilities was inserted, and the same statesman was the author of the last paragraph, which is in the nature of a guarantee to Powers disposed to interest themselves on behalf of general peace, that in no event shall the expression of their good will be regarded in the International Law of the future as unfriendly, or lead to unpleasant complications.

ARTICLE 4. The part of the mediator consists in reconciling the opposing claims and in appeasing the feelings of resentment which may have arisen between the States at variance. Duty of the mediator.

ARTICLE 5. The functions of the mediator are at an end from the moment when it is declared either by one of the parties to the dispute or by the mediating power itself, that the methods of conciliation proposed by it are not accepted. When functions cease.

The function of the Power offering good offices or mediation, and the relations in which the very offer may leave all parties concerned, may be so indefinite that it becomes important to provide a method for immediately ending all possible doubt upon the subject. By leaving it within the power of either party concerned, or of the mediating State, to declare the exact time at which all further efforts shall cease,

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this point would seem to have been sufficiently safeguarded.

Advisory character of good offices and mediation.

ARTICLE 6. Good offices and mediation, whether at the request of the parties at variance or upon the initiative of Powers who are strangers to the dispute, have exclusively the character of advice, and never have binding force.

This Article emphasizes the most essential characteristic of good offices and mediation, namely, that of being simply advisory. Mediation is not arbitration, nor can it be in the nature of an intervention backed up by any physical force whatever. The proceeding which has heretofore been called "armed mediation" was improperly so named. According to the present convention the two terms "mediation" and "coercion" are absolutely contradictory. It was particularly stated and emphasized that no possible authority or right could arise under this title for any kind of hegemony or suzerainty, or the attempt to impose individual or collective views by way of obligation or restraint. Mediation must forever remain a friendly counsel, freely offered or asked, and as freely accepted or declined.

No interruption of preparations of war, or of hostilities.

ARTICLE 7. The acceptance of mediation cannot, unless there be an agreement to the contrary, have the effect of interrupting, delaying, or hindering mobilization or other measures of preparation for war. If mediation occurs after the commencement of hostilities, it causes no interruption of the military operations in progress, unless there be an agreement to the contrary.

This Article, of which Count Nigra is the author, seemed necessary in order to make the acceptance of good offices or mediation easy, or even possible, on the part of Powers having universal military service, and being ready for war at very short notice. No such Power could safely request or accept good offices or mediation if such a request or acceptance implied the slightest obligation to refrain from immediate and continued preparation for war. Moreover, even if the obligation to refrain from such preparations were mutual, the impossibility of control might easily lead to recriminations which would still further embitter feelings, complicate the situation, and increase instead of diminishing the danger of hostilities. Mediation will be all the more acceptable when it is totally dissociated from any fear of impaired defence or of danger to the State.

SPECIAL MEDIATION

Article 8. The Signatory Powers are agreed in recommending the application, when circumstances allow, of special mediation in the following form: —

In case of a serious difference endangering peace, the States at variance shall each choose a Power to whom they intrust the mission of entering into direct communication with the Power chosen by the other side, with the object of preventing the rupture of pacific relations. During the period of this mandate, the term of which, unless otherwise stipulated, cannot exceed thirty days, the States in conflict shall cease from all direct communication on the subject of the dispute, which shall be regarded as having been re-

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ferred exclusively to the mediating Powers, who shall use their best efforts to settle the controversy.

In case of a definite rupture of pacific relations these Powers remain charged with the joint duty of taking advantage of every opportunity to restore peace.

At the second session of the *Comité d'Examen*, May 29, the first draft of this Article was introduced by Mr. Holls of the United States, as a personal proposition, for which neither his Government nor his colleagues were in any manner responsible. No claim, whatever, is made for originality of the idea, which the author remembers to have seen made as a suggestion, years ago, in a source of which no trace whatever has been left in his recollection. More recently the idea was formulated with great force by M. de Nelidoff, the Russian Ambassador to Italy, as follows: —

M. de Nelidoff's suggestion.

"The first consideration is not to insist upon the parties submitting their dispute to the judgment of a tribunal — possibly impartial, but cold and indifferent, and moved only by the most general considerations regarding the interests or the honor of the parties themselves. What should be done is to insist that, before beginning hostilities, the contending parties should intrust the settlement of the affair to representatives in whom they can have absolute confidence: who will act according to instructions, and who will each defend the honor of his principal as he would his own. Everything should then be left to these seconds. They should first decide whether

the quarrel necessitates a duel, — then they should see whether no honorable means could be found to avoid an encounter. If they could not agree on this subject, they might call in a third party, or communicate their suggestions to their principals. But the final determination should always be left to the interested parties. If in the end the seconds decided that there was nothing to do but to have them 'fight it out,' they would do so. But if they resorted to arms without having had recourse to these preventive preliminaries, and a catastrophe resulted, the winner should be treated, not as a duelist, but as an assassin. This should also be the rule in the case of an international war." Chapter V

In the winter after the appearance of the second circular of Count Mouravieff, the late Lord Russell of Killowen, Lord Chief Justice of Great Britain, strongly recommended the same idea in a most happy after-dinner speech. It had been discussed by the author with intimate friends in America just previous to his departure for The Hague, and its introduction had the cordial indorsement of Ambassador White, President of the American Commission.

Upon its introduction, the Article was revised, as far as its language was concerned, by M. de Martens and Chevalier Descamps, and it was printed, distributed, and reported to the principal European Governments immediately. At the third session of the *Comité d'Examen* on May 31, it was unanimously adopted in principle, and thereafter it was put into its present final form. Adoption of the article.

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Analogy between warfare and duelling.

The striking parallelism between the development of warfare and the practice of duelling has often been pointed out by historians of international law. Increasing civilization has been uniformly directed toward safeguarding rights, however general, and diminishing unrestrained lawlessness or arbitrary methods in every field. Without entering at this time into the philosophical question of justification for either war or the duel, it is a well-known fact that the institution of duelling still exists, and has a commanding influence upon great classes of society. At the same time the trend of its development shows unmistakable signs of its gradual extinction. With the advancement of civilization and the continued introduction of new safeguards in the way of regulations, the element of force recedes as that of law advances. Whether in its mildest form, which may be illustrated by German student encounters, or in the border feuds which still disgrace some regions of the southern and southwestern states of the American Union, previous notification is considered absolutely indispensable, and sudden encounters — *duellum subitaneum* — shooting at sight, is considered not only criminal, but dishonorable. Where the institution is sincerely regarded as a protection to the honor of an officer and a gentleman, a duel is possible only after a previous elaborate agreement upon the subject. In the negotiations leading up to this agreement it is understood, and considered not only permissible but obligatory, by the highest authorities in the institution itself, that everything

should be done by the representatives of the parties in conflict to avoid the actual encounter, and to settle the difficulty peaceably; the number of permissible weapons has been greatly reduced, the conditions of the encounter are adapted to the circumstances of the case, and they are made as light as possible. The fact is that the duel is not nearly as deadly an affair as it has formerly been, and a fatal result invariably leads to universal regret and recriminations against the entire institution. In at least two chivalrous and progressive countries of the world, namely, the United States and the British Empire and its dependencies, the institution has become virtually extinct.

The analogy between this development of practice with regard to duelling and the history of some of the laws of warfare is surprisingly close and interesting. It may best be illustrated in the history of the subject in Germany, where unrestrained feudal warfare survived longest, and where even to this day the institution of duelling has its most earnest advocates and defenders.

The necessity of a challenge to a feud was undoubtedly the first restraint put upon promiscuous murder, and the first safeguard permitting a feudal lord to stir about without being in complete readiness, at least for defence, at any moment. In the year 1187, in a decree of the German Diet (*Reichsabschied*) at Nürnberg, the necessity of a declaration of hostilities — the so-called *diffidatio* — was proclaimed as follows: "We decree and direct by this edict that he who intends to do damage to an-

The necessity of a challenge.

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Necessity of a challenge.

other, or to injure him (*verletzen*), shall give him notice at least three days before, by a safe messenger." This decree seems to have been generally obeyed. Such a declaration of a feud (*Fehdebrief*) is quoted in the pamphlet of Dr. Emil Steinbach, *Zur Friedensbewegung*, Vienna, 1899, p. 56, as follows, dated 1430: "Know ye, the Burgomaster and Councillors of the City of Speyer, that I, Winrich von Fischnich, wish to be your enemy, on account of the complaint which I have against you, and damage may be done, however this may happen, nevertheless I wish to secure my honor against you and yours by this my open authenticated letter," etc., etc.

In war the necessity of a solemn declaration of hostilities, addressed direct to the opponent, was strictly required from antiquity down to the eighteenth century. Only in recent times has the practice become less formal in this respect, and either public explanations, diplomatic notes, manifestoes, proclamations, etc., in connection with the withdrawal of regular diplomatic representatives, have been substituted for a formal declaration of war. The reason of this change is obviously the fact, that with modern methods of international communication secrecy in preparing for war has become practically impossible, and unexpected raids or invasions at the time of a declaration need no longer be feared. At the same time some formal declaration of the existence of a state of war is made all the more important on account of the clearly defined duties of neutrals, and the omission of such a formality would meet with

universal reprobation. The most recent and by far the most striking illustration of this fact is to be found in the notice addressed by the British Government to all Governments with which it had diplomatic relations, announcing that a state of war existed between Great Britain and the South African Republic, notwithstanding the fact that the Government of Great Britain regarded the hostilities themselves only in the light of a military execution against a vassal State, where no formal declaration of war was required. Chapter V

With reference to the restraint upon the time, place, and method of the encounter, nothing needs to be added, so far as the duel is concerned. It is generally recognized as the duty of the seconds to carefully safeguard all these points. In the time of feudal warfare similar restraints were gradually introduced, often by the Church, and were later adopted in the decrees of the Diet of the Empire. Thus arose first the well-known limitation of feuds with regard to time — the command of God's Peace, according to which, during the holy periods of the Church year, as well as on several days in each week, generally from Thursday evening until Monday morning, an absolute armistice was proclaimed and every act of feud strictly prohibited. Then came the exemption of certain persons and places, according to Professor von Zallinger,[1] as follows : unarmed people, the clergy, women, peasants, and merchants were not to suffer by the feuds of the knighthood. The peace of con- Restraint as to time and place. Exemptions.

[1] Otto v. Zallinger, *Wesen und Ursprung des Formalismus im altdeutschen Privatrecht*, Vienna, 1898.

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secrated places, churches, and cemeteries, and of the village inside of its limits and the peace of public highways should not be disturbed by the feud. With particular emphasis, in several decrees of the peace of the land (*landfrieden*), the sanctity and inviolability of the home is proclaimed, and gradually the most interesting and significant principle is evolved that only such feuds shall be permitted as are directed immediately against the person, the body, and the life of the enemy, but not against his property. Zallinger cites two provisions of this kind from the end of the twelfth century: —

Feuds permitted against the person but not against property.

"*Si quis habet inimicum, persequitur eum in campo absque damno rerum suarum.*" (If any one has an enemy, let him pursue him in the field without injuring his property.)

"*Qui cumque habet manifestum inimicum, eam . . . in persona et non in rebus laedere potest.*" (He who has an open enemy may injure him in his person, but not in his property.)

The similarity in the development of the laws of war is manifest. Thus far there has been no attempt to limit the time of warfare, the going into winter quarters being obviously for entirely different reasons, and the attempts of some enthusiastic Sabbatarians to introduce a day of rest during the Spanish-American War having been generally dismissed with a smile. On the other hand, the exemption of particular persons and property from the consequences of warfare, — their "neutralization" according to the terminology of international law, — is now universally accepted

Neutralization.

as a matter of course in an increasing number of instances. Whole States have been neutralized, as, for example, Switzerland, Belgium, and Luxemburg, as well as single provinces, such as Chablais and Faucigny on the southern shore of the lake of Geneva, and the Suez Canal. The provisions adopted by the Peace Conference, regarding military hospitals and ambulances and the personnel connected therewith, as well as non-combatants in general, have been referred to in the discussion of the Convention on the Laws of War. Chapter V

The closest parallelism of similar phenomena, both in duelling and in the history of unrestrained feudal warfare, is to be found in the preventive measures. So far as duelling is concerned, these are well known, and need no lengthy discussion. The analogous development with reference to feudal warfare is characterized by the fact that by the middle of the thirteenth century, especially after the great law of peace of Frederick II. in the year 1235, the right to feudal hostility, which up to that time was absolutely unlimited, was thereafter restricted to cases in which no help was to be expected from the courts, and, therefore, hostilities were not to be begun until after an unsuccessful appeal to the courts. It was the beginning of compulsory arbitration. Not until two hundred and sixty years later, however, in 1495, was the celebrated decree of Eternal Pacification — *ewige Landfrieden* — issued by Emperor Maximilian the First, in which for the first time no difference was made between permitted and prohibited feuds, Preventive measures.

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and all private use of force was for the first time characterized as a breach of the peace of the land. It is reported that the Emperor himself was so appalled by the stupendous consequences of this decree that he brooded over it in solitude for two days before signing it. It was, moreover, a little ahead of time. After its promulgation serious feuds continued to rend the Empire, and even the celebrated penal code of the Emperor Charles V., issued in 1532 — the so-called Carolina — did not dare to draw the necessary consequences of the decree of Maximilian, and in Article 129 made penal only such feuds as were begun without righteous cause.

A consideration of these facts should be a sure preventative of undue pessimism, with respect to the further gradual development of the idea of universal peace.

The Article under discussion specially applies the provisions of what may be called the gentleman's code of duelling to international relations. The following remarks made by Mr. Holls upon introducing the proposition may serve, to a certain extent, as a commentary.

Remarks of Mr. Holls.

"Permit me to explain briefly the fundamental idea upon which the proposition now submitted to you is based. It was and is, first and foremost, the undeniable fact, that there are and always will be differences between nations and between governments which neither arbitration nor mediation, according to the usual acceptance of the term, are calculated to prevent. Nevertheless, it would be

wrong to say that every such controversy must necessarily end in hostilities, and although in a case where neither arbitration or mediation seem to be possible remedies, the chances of avoiding a conflict may be characterized as minimal, it is none the less true that in the interests of peace and in the light of experience the attempt should be made, especially if the means proposed are of a nature to be useful even in case peace should after all be broken. I beg most respectfully to observe that the project which is submitted to you affords this means. Chapter V

"It is an obvious truth which has found expression in private life by the institution of seconds or witnesses, in affairs of honor between gentlemen, that at the eve of what may be a fatal encounter, it is best to leave the discussion of the points in controversy to third parties rather than to the principals themselves. The second enjoys the entire confidence of his friend, whose interests he agrees to do his best in defending, until the entire affair may be settled; yet nevertheless, not being directly interested in the controversy, he preserves at all times the liberty of a mutual friend, or even of an arbitrator, but without the slightest responsibility. Advantages of a "second."

"In the second place, I would respectfully submit that every institution or custom which may receive the approval of the Peace Conference, having for its object the introduction of a new element of deliberation into the relations between States when the latter have become strained, certainly marks so much progress, and may conceivably be of vital importance at a A new element of deliberation.

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Remarks of Mr. Holls.

critical moment. As a matter of fact, and even with the new guarantees for peace which may be offered by the international court and the most solemn and formal declarations in favor of mediation and good offices, the negotiations between two States in controversy may arrive at a point when it becomes necessary for the representative of the one to say to the representative of the other, 'One more step means war.' If the proposition which is hereby submitted to you should be adopted, it will be possible to substitute for this formula another, 'One step further and we shall be obliged to appoint a second.' These words surely will have a grave significance, and yet it would seem that they will have, beside other advantages, that of producing all the good effects of a threat of war without having the aggressive character of a menace, pure and simple, or of an ultimatum. The *amour propre* of the two parties will remain inviolate, and yet all will have been said which must be said.

Question referred to mediating powers exclusively.

"To give to this idea all of its force it is necessary that the question in controversy should be referred during a given time exclusively to the jurisdiction of the mediating Powers. At the same time the word 'exclusively' need not necessarily be taken in the literal sense. The mediating Powers will represent third parties, and this clause will have for its principal effect the cessation of all direct communication between the interested parties on the subject of the question in dispute. Further diplomatic relations continue undisturbed, with this one

restriction. The mediating Powers will remain free, of course, to enter into negotiations on the subject of the controversy with other Powers if they shall judge it to be useful, and it may often result in simple mediation, possibly ultimately in arbitration. Chapter V

"Finally, and I hope this point is by no means the least important, it is recommended on account of its utility as an agency for peace even in time of war. It is not necessary to enlarge upon this idea. It is admitted that there are many circumstances where the intervention of mediatory Powers with recognized authority would suffice to convince one of the belligerent States, if not both, that satisfaction has been obtained, and thus to save many lives and many sufferings. An agency for peace even in time of war.

"In submitting this proposition I felicitate myself upon the fact that it has the privilege of being submitted to the examination of the most eminent of diplomats and statesmen, and of *savants* whose reputation is world-wide. I have the conviction that if you will give to the idea your sanction, even with some modifications, it will surely result, sooner or later, in a real gain for the cause of peace."

The discussion which followed these introductory remarks was most interesting, but has unfortunately not been reported. The great advantage of this form of mediation was pointed out in carefully safeguarding the honor of the most sensitive nation. Without the mandate conferred upon the mediating Powers under this Article, not even the most friendly neutral Power could venture to suggest to a defeated yet high- Discussion.

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spirited belligerent, the uselessness of a protraction of the war beyond the first really decisive battle. There would be, in such a show of friendliness, an element of spontaneous pity or compassion which would surely be resented, and which is wholly absent from the accepted duty of a second.

The interval of thirty days an agency for peace.

On behalf of the military experts of several of the Great Powers it was stated that the Article has one feature which would prove an agency for peace perhaps more effective than any other, and which was the least objectionable of all, from the military and naval point of view. This is the interval of thirty days which is provided for in the absence of a different stipulation, and which affords sufficient time to bring home directly to the peoples concerned the stupendous consequences of the impending conflict while it is yet time to retire with honor.

Upon the motion of M. d' Ornellas Vasconcellos of Portugal it was expressly recognized by the Conference that the provisions of Article 7 were applicable to the institution of special mediation.

While it is not supposed that the appointment of seconds would necessarily be followed immediately by the mobilization of all the national forces, it would nevertheless bring such a mobilization within the limits of probability. The political, financial, and economic effect of a war could well be discussed without the strain which the existence of an actual state of war must necessarily exercise. The result would naturally be a searching of hearts which ought, but seldom does, precede a momentous national deci-

sion. If this decision should finally be for war, the element of deliberation would do no harm, for any loss by delay would be more than made up by the moral strength which any people must gain in their own eyes, as well as in those of the world, by the consciousness of acting, not from a sudden impulse, but from what would be equivalent to a deliberate sense of duty. Chapter V

The diplomatic *modus operandi* under this Article will probably vary according to the circumstances of each particular case. Very often the mediating Powers may find it possible to act through their respective representatives accredited to one of the litigating States; in serious cases, however, it may be assumed that special representatives will be appointed, and that they will meet in a neutral place. Scarcely any duty can devolve upon the Chief Executive or any Minister of Foreign Affairs more delicate or more momentous than that of acting, under this Article, on behalf of a friendly State, in what must necessarily be a critical and perilous situation. Special plenipotentiaries, of recognized standing and experience, would seem to be the natural agents for such a purpose, at least where the direct action of the Chief Executives or Foreign Ministers is for any reason impracticable. Method of procedure.

The results of the negotiations between the mediating Powers should be embodied in a protocol or an identical note addressed to both litigants, and, in a proper case, communicated to other Powers. It is to be hoped that, as a general rule, all diplomatic

correspondence or action under this Article will be communicated by the interested parties to the International Bureau at The Hague, in the manner provided by Article 22, for the case of special Arbitration Tribunals, to become part of the general archives of International Law which should eventually be gathered there.

Attention was called by Chevalier Descamps to the fact that existing treaties might have effects, which it was not possible accurately to forecast, upon the choice of seconds by some of the European States. He instanced the case of Belgium in its relations with the Powers guaranteeing its neutrality, under the provisions of the treaty of April 15, 1839.

The practical value of the article.

Upon the practical value of Article 8, experience alone can give a truly satisfactory judgment. The introduction or recognition of something akin to the duelling code has been criticised as an unnecessary concession to the so-called "military spirit." It must however be remembered that this very concession operates as a restraint. Appealing, as it perhaps does, to prejudices and habits of thought of the military class, this Article reaches the very persons who are apt to be impervious to other restraining influences, and who have hitherto not infrequently turned the scale in favor of war.

The best guarantee of future usefulness, however modest in its scope, is to be found in the fact that it was unanimously adopted by so careful, conservative, able, and eminent a body of men as the Peace Con-

ference. With this initiatory endorsement the Article may confidently await the judgment of the future. Chapter V

TITLE III. ON INTERNATIONAL COMMISSIONS OF INQUIRY

ARTICLE 9. In differences of an international nature involving neither honor nor vital interests, and arising from a difference of opinion on matters of fact, the Signatory Powers recommend that parties who have not been able to come to an agreement by diplomatic methods, should, as far as circumstances allow, institute an International Commission of Inquiry to facilitate a solution of the differences by elucidating the facts, by means of an impartial and conscientious investigation.

Not an innovation.

The institution of International Commissions of Inquiry is, strictly speaking, by no means an innovation. Numerous instances of more or less importance, especially on questions of fact regarding occurrences upon or near boundary lines, have frequently been investigated by a commission composed wholly or partly of neutrals. The true line of a boundary has often been fixed by neutral surveyors, and in one recent case, beyond no doubt the most notable of all, a commission was appointed by a Power nominally neutral, viz., the United States of America, to report upon the true boundary between Venezuela and British Guiana, preparatory to a declaration guaranteeing the boundary so found to Venezuela. Experience has no doubt shown that an international commission,

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selected by the parties to a controversy, is the most efficacious method which has thus far been found, to settle a question of fact, which otherwise might, by uncertainty or misconstruction, easily become the germ of a dangerous conflict. It is unnecessary to enlarge upon the dangers to peace arising in many cases merely from uncertainty or positive misinformation regarding questions of actual fact. The half-forgotten Schnäbele affair, regarding an alleged occurrence upon the Franco-German frontier, will serve as a special example. The growing recklessness of the sensational press in every civilized country, and the paralysis which seems to have overcome their Governments, so far as attempts to effectively check this evil are concerned, make the necessity for an impartial and efficient method of inquiry more urgent than ever. At the same time, no subject before the Conference was involved in greater difficulties, or bore within it greater dangers.

Difficulties in the way.

It will readily be seen that it would be comparatively easy in any case to consider the proposition for the appointment of a Commission of Inquiry as an implied reflection upon the character or sufficiency of some national institution or governmental agency, with the result of creating as much or more imbitterment of national feeling than the very errors of fact which it was sought to correct. Moreover, this danger would very likely be greatest where the necessity for the commission might be most urgent, especially in States having a comparatively brief legal and administrative experience, or such as

labor under the disadvantages of conflicting racial and religious interests among their population. That the idea should nevertheless have been adopted unanimously with all the rest of the Convention, constitutes one of the most surprising and encouraging advances made by the Conference, the credit for which is due not only to the intrinsic merits of the proposition, but also to the extreme diplomatic skill with which the negotiations and deliberations preceding its adoption were conducted. Nothing would have been easier than to have frightened all, or nearly all, of the minor Powers represented, into an attitude of uncompromising hostility, by merely emphasizing the fact, which could not be denied, but which without special emphasis was made less objectionable, namely: that the institution of commissions of inquiry is quite likely to be of far greater practical importance, at least in the near future, than any other result of the Conference. The efforts of the friends of the proposition in this direction were almost neutralized by the well-intended but ill-advised proceedings of some private "friends of peace" on the outside of the Conference. In an extremely able account of the Conference,[1] the following language is used: "It was the fashion at the Conference to belittle the significance of the international *Commissions d' Enquête*. It was expressly set forth that these commissions shall have nothing of an arbitral character, but one chief object, which will be sedulously set

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Difficulty of securing adoption.

[1] By Mr. William T. Stead in the London *Review of Reviews*, Aug. 15, 1899.

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before the people, will be to counsel the importance of the international *Commissions d'Enquête* and to give them as much as possible of an arbitral character."

It must surely now be understood, both by the writer and by the many excellent people whom he undoubtedly represented, that by no other method than by refraining from unduly emphasizing the significance of the commissions of inquiry could the idea ever have been adopted, and while it is perfectly proper for private individuals and associations to influence the public opinion of the world in such a manner as to invest them with as much dignity, arbitral character, or any other desirable attribute, as possible, it was quite another matter to propose having this done by the representatives of the Powers establishing the institution. Whatever may be said of the friends of the proposition in the Conference, they are certainly not open to the reproach of not having been fully aware all the time of the tremendous possibilities for good involved; nor should they be criticised severely for the insertion of the words, "affecting neither honor nor vital interests."

The object of the title.

The object of the title, and its bearing upon the general work of the Conference was set forth by its author, M. de Martens of Russia, in a speech of great clearness and eloquence, in the course of which he said: —

Speech of M. de Martens.

"The object of commissions of inquiry is the same as that of arbitration, good offices, and mediation, namely: to point out all the means of appeasing conflicts arising among nations, and to prevent war. This is the only object, and there is no other. The

commissions provide the means for this by an impar- Chapter V
tial examination of the circumstances and of the facts. It is not necessary to cite cases in which these commissions of inquiry can render great service to the peace of the world, but let us take one case. Suppose the authorities on a frontier arrest somebody on foreign territory. A most serious conflict can arise from this — the more obscure the circumstances are, the more objections are raised. Newspaper articles, interpellations in Parliament, may force the hands of the Governments and involve them in conduct even opposed to their intentions. One can compare the commissions of inquiry to a safety valve given to the Governments. They are allowed to say to the very excited and ill-informed public opinion, 'Wait, — we will organize a commission which shall go to the spot, which shall furnish all the necessary information — in a word, it shall shed light.' In that way time is gained, and in the life of peoples a day gained may save the future of a nation. The object of the commissions of inquiry is therefore clear. They are an instrument of pacification. A misunderstanding seems to exist in regard to their operation, but one should not forget that the litigating Powers are always free to accept them or refuse their services.

"Gentlemen, I fully share the opinion that the floor of a diplomatic conference is not a tribune from which one can afford to make great speeches. Our Conference has been called an International Parliament, — yet whatever be the name given to the

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Speech of M. de Martens.

Conference, all the delegates know that this High Assembly is not concerned with the politics of the day, nor with the international treaties which regulate the actual relations among States.

"We have in common the object of giving a more solid basis to peace, to concord, and to friendship among nations. Such is, gentlemen, the object indicated by my August Sovereign, and accepted by you all. It is certain that, especially at the beginning of our work in this Conference, the diversity of opinions and ideas was great among us, but as we entered into our common labors we have come to know one another better, to understand one another, and to have greater mutual esteem, and the growing conviction that we are working not for a political, — but for a humanitarian purpose, not for the past nor for the present, but for the future. This is why the relations among us members of this Conference have become day by day more hearty, the handshakes more warm; the feeling of following a common path together has filled all of us with the desire to succeed in presenting to our Governments a good, great, and noble work, from which all questions of sovereignty and politics should be formally excluded.

"Gentlemen, if in private life that man is happy who takes the bright view of things, in international life that man is great who takes the brightest view. We must elevate our ideas to broaden our horizon. We must do all we can to understand one another, for with mutual understanding comes mutual esteem. Consider for a moment the example

offered us by this small and charming country in which we are abiding. Why has little Holland played such a great part in history? Why have her commerce and her ships spread over all the oceans? It is because the Dutch have not remained behind their dunes; they have stood upon them and breathed in the air of the sea. They saw before them a vast horizon, and they followed the paths spread before them and which have put them into direct communication with all the nations of the universe. It is the expansion of that cosmopolitan spirit which at all times has distinguished the statesmen, the artists, and the writers of this little country. But, gentlemen, Holland has done far more in her fight against the invasion of the sea; she has constructed locks by means of which her land waters and those of the sea mingle and unite, just as the ideas, institutions, and customs of the Dutch nation, thanks to its international relations, have been developed, made clear and, so to speak, have crystallized.

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The example of Holland.

"Could it not be said, to continue the simile, that in view of the common horizon of humanity national ideas broaden and become harmonized. To reach the results attained by Holland, let us follow that country's example: rise above our dunes and look upon a broader horizon. The barriers of prejudice must fall, and then shall we see all questions enlightened by a spirit of understanding and of mutual confidence.[1]

[1] M. de Martens' reference to Holland, and his exhortation to follow the example of that country was, at the moment, misunderstood by the very able and energetic Delegate from Roumania,

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Perfect accord, gentlemen, should be the motto and the object of our labors."

"Honor and vital interests."

The Roumanian delegation made itself the voice of those Powers which desired the insertion of the qualifying phrase, "affecting neither honor nor vital interests," but it was not done with a hostile spirit, and it may be most emphatically stated that Roumania was by no means alone in her opposition. Greece and Servia were the only other States which openly supported the Roumanian proposition to strike out the entire title, but it was generally understood that the demand for the qualification above referred to would, if necessary, be seconded by other Powers. Under these circumstances the vituperation which was heaped upon the learned, able, and conscientious representatives from the progressive and enlightened kingdom on the lower Danube, was cruelly unjust. There are many points involving both honor and vital interests, especially of a weak Government, where the refusal to permit an International Commission of Inquiry to investigate the facts would by

M. Beldiman, who said that Roumania would surely be happy to contemplate, in her history, centuries of civilization, of struggles, and of progress, but that, unhappily, his country had been called only about thirty years ago to live a modern life. Being in such a condition of inferiority, he would have preferred if no such example had been invoked. The chairman, M. Bourgeois, immediately declared that he would himself have taken occasion to repel the comparison if he had understood it to have been made in the spirit taken by M. Beldiman. He was sure, however, that, M. de Martens was not referring specially to Roumania, but that he had appealed to all members of the Conference to rise above the frontiers of their own countries, and to consider only the boundaries of humanity.

no means imply that the facts themselves could not bear the light. Chapter V

In all discussions of questions touching the sovereignty, honor, and essential interests of an independent State, too much stress cannot be laid upon the memorable dictum of Cesare Balbo, that "unimpaired sovereignty is to a Nation what her character is to a woman." A Government which wishes the respect of others, and hence, first of all, must have its own, must be free in all proper cases to take up an attitude of dignified reserve. It must necessarily itself be the judge of the questions of propriety involved. The phrase, "national honor or vital interests," was intentionally made broad and general, and the Conference was well aware that in so doing, not only a proper degree of reserve, but also possibly a great amount of guilty concealment, was being made possible, and provided with diplomatic safeguards. At the same time, it will be admitted that the Convention for the Peaceable Adjustment of International Differences is infinitely stronger for the inclusion of this title, even with its limitations, and this alone amply justifies their inclusion, for without them the adoption of the whole idea would have been out of the question. The general importance of the title is correctly stated in the article above referred to, from which more may be quoted:—

Importance of the new institution.

"What we shall say, and say with reason, is that the international *Commissions d'Enquête* give the Governments of the world an opportunity of having an investigation of the facts in dispute, without the

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Importance of the new institution.

compulsion of undertaking to accept the result arrived at by the commission of inquiry (see Article 14). For practical purposes I expect that we shall use the international *Commissions d'Enquête* nine times for once that we shall use the permanent court of arbitration in any questions of serious importance. The difficulty of securing an impartial investigation of the dispute is, that when it is most needed, the disputants are in the worst possible mood to assent to it. They are distrustful, angry, and inclined to believe the worst of everybody and everything; to ask disputants in such a temper to agree to refer their dispute to an international court of investigation is to secure an almost certain refusal if you ask them at the same time to bind themselves to accept whatever the court or commission may decide.

"'Always arbitrate before you fight,' was a formula which did good service in the peace crusade in England, but in order to avoid confusion of terms it is better to say, 'Always investigate before you fight,' and the great advantage of international *Commissions d'Enquête* is that they open the door to a full, impartial, conscientious investigation as to the facts in dispute, without exacting as a preliminary a promise to abide by the judgment embodied in the report of the investigators. We shall do well, therefore, to magnify to the utmost the functions of the international *Commissions d'Enquête*, to declare on every occasion that they are virtually international courts of arbitration whose verdicts are not binding upon either litigant."

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Refusal to submit to investigation.

With reference to a possible refusal to submit to an investigation upon the ground that national honor or vital interests are involved, the writer says with some force that without the justifiable cause, to which reference has been made above, "the plea of honor will be regarded as the last refuge of the dishonorable. There is no one who talks so loudly of honor as the man who plays with marked cards, and the sharper who is challenged to produce his pack before a *Commission d'Enquête* is certain to plead that his honor is too much at stake to permit him to do so, but all his opponents know perfectly well how to interpret such a plea. It would be merely an euphemious formula for admitting that he was a rogue. So, any nation which uses the plea of honor to avoid a conscientious and impartial examination into facts by an international *Commission d'Enquête* will come to be regarded as a nation whose honor cannot bear the light of day, and whose practices are such that they must be impenetrable to the searchlight of the *Commission d'Enquête.* In like manner, the phrase as to 'essential interests' can similarly be turned against the advocates of darkness, for how can it be alleged that essential interests can be endangered by inquiry, without admitting that it is essential to the essential interests which you defend that the truth should not come to light. Every one knows what a jury thinks in a court of law when a witness is compelled to admit that he has suppressed the essential evidence, and if he were further to admit that he had suppressed essential evidence be-

cause it was contrary to his essential interests, the verdict of that jury would be a foregone conclusion."[1]

Objections of Roumania, Servia, and Greece.

In the course of the debate on this article M. Beldiman complained that the proposition for International Commissions of Inquiry had never been submitted to a general discussion. A private committee had been directly charged with its preparation, and even the chiefs of the various delegations had had no means of participating in the debates or communicating with their Governments. Moreover, he considered it remarkable that in the different phases of the preparation of the report the representatives of the press seemed to have enjoyed a veritable privilege in the matter of private information.

[1] While these pages are passing through the press, the situation in the Chinese Empire affords the most striking example possible, not merely of the class of questions which heretofore have almost invariably led to war, and which under this Convention most certainly can and should be settled by peaceful methods, but more particularly of the necessity of a preliminary impartial investigation of the facts by an international Commission of Inquiry. It is only after a judicial, careful, and thorough inquiry into all the facts which led up to the hostilities during the summer of 1900, that the civilized Powers will be in a position to do justice to China and to adjust among themselves the minor questions of interest arising from their different duties and responsibilities. It is, indeed, an ideal occasion for the work of a Commission of Inquiry, which, if rightly constituted and conducted, may easily avert great perils and accomplish results of far-reaching importance. Under this treaty, the consent of a responsible Chinese Government would be requisite, but this consent might justifiably be compelled under the exceptional circumstances of the case. Where a just cause for war evidently and unquestionably exists, the right to make the readiness to agree to an impartial investigation a condition of peace cannot be doubted, and such compulsion would violate neither the letter nor the spirit of the present treaty.

M. Bourgeois at the end of the first reading announced that before the second reading the *Comité d'Examen* would consider the amendments offered on this day, together with other proposals, and added: "All of the objections which have inspired the delegates of Roumania, Servia, and Greece have repeatedly occurred to most of the members of the Committee. If they had believed that the propositions which were adopted contained anything whatever in impairment of the sovereignty or the dignity of any Power, great or small, they would not have received the vote of a single member. It does not seem to me that there can be any true objection on the merits, but it is possible that the form may well be capable of improvement. We are ready to make every effort to agree with our distinguished colleagues, appealing to the sentiment which has often animated us in the course of our deliberations, namely: the wish for unanimity in our decisions. I say to M. Beldiman and to the delegates of Servia and Greece, come to the *Comité d'Examen*, and together we shall endeavor to weigh in the balance the objections which have been raised against the proposition. We shall endeavor to give you every satisfaction, and, in consequence of this interchange of opposing views, we shall be able to say that we have done everything possible for the sake of obtaining unanimity."

Agreement for a commission.

ARTICLE 10. International Commissions of Inquiry shall be constituted by a special agreement between

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the parties to the controversy. The agreement for the inquiry shall specify the facts to be examined, and the extent of the powers of the Commissioners. It shall fix the procedure. Upon the inquiry both sides shall be heard. The procedure to be observed, if not provided for in the convention of inquiry, shall be fixed by the Commission.

This Article was adopted on the proposition of M. Eyschen, First Delegate from Luxemburg, and it is based on the experience of similar commissions heretofore. The provision that merely a special agreement shall be necessary to constitute the Commission of Inquiry was inserted upon the motion of Count Nigra, who called attention to the embarrassment which might occur under present diplomatic usage, if commissions, which were to proceed according to regular procedure, and whose reports might therefore become precedents, were appointed sometimes by an act of a sovereign treaty-making power, and then again merely by an informal agreement between diplomatic representatives. In view of the fact that the report of the Commission, according to Article 14, is not to have any binding force, it was not the opinion of the Committee that a convention for a Commission of Inquiry must in all cases be a formal treaty.

Treaty-making power.

This point is of essential importance in the United States of America on account of the power of the Senate. The appointment of a Commission of Inquiry, having no further necessary consequences than the providing for each party's share of necessary expenses, would seem to be within the ordinary diplomatic func-

tions of the President and the Department of State by memorandum or protocol, whereas an agreement to submit any question to a court of arbitration, the decision to be binding upon the parties, must necessarily take the form of a treaty requiring the constitutional coöperation of the Senate. The provisions for a regular procedure, for the hearing of both sides with the necessary implication of communicating to each side everything brought forth by the other, and giving a reasonable opportunity of contradiction, is based, as was shown by M. Eyschen, upon practical experience. Commissions proceeding without these safeguards are apt to confide different phases of the question before them to different members. In the expressive language of one of the members of the Committee, they are quite as likely to be influenced by the opinions of their neighbors at a *table d'hôte* as by statements made to them while nominally in the exercise of their duty. The requirement fixing a stated order of business will no doubt greatly contribute to their general efficiency. Chapter V

ARTICLE 11. The International Commissions of Inquiry shall be formed, unless otherwise stipulated, in the manner fixed by Article 32 of the present convention. Method of appointment.

Under Article 32 each party appoints two members, and the four are to select the fifth. The American representative, in the course of the discussion in the *Comité d'Examen*, called attention to the fact that the reasons for this method which are

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given in the case of arbitration under Article 32 do not necessarily apply to commissions of inquiry. It is more important, in this latter case, to have a majority of the commission consist of persons not nominated by either party, inasmuch as the facts may easily be different from the contention of either side. If the commission were constituted according to Article 32, each State would have two members, and there would be only one neutral, who would generally have to agree entirely with either side in order to make any report possible, whereas, if a majority of the commission consisted of neutrals, the report, though perhaps not wholly satisfactory to either party, would have a greatly increased moral authority. The Committee contented itself with spreading this observation upon the minutes, leaving it free, however, to the parties to stipulate according to the exigencies of each particular case.

Facilities to be supplied.

ARTICLE 12. The Powers in dispute agree to supply the International Commission of Inquiry, as fully as they may consider it possible, with all means and facilities necessary to enable it to arrive at a complete acquaintance and correct understanding of the facts in question.

An important limitation of this Article is contained in the words, "as fully as they may consider it possible" — the danger being that an ill-advised or secretly hostile commission might demand information directly compromising the security of the State.

ARTICLE 13. The International Commission of Inquiry shall present to the parties in dispute its report signed by all the members of the commission. Chapter V Report.

This, of course, does not require unanimity in the findings of the facts, but it does require the signature of all members to the report stating what members, if any, have been able to agree as to facts, and the exact terms of their agreement. The refusal of any one member of an international commission of inquiry to sign such a report, which it will be seen is really in the nature of a record of proceedings, would therefore make the entire institution nugatory, so far as this Convention is concerned. It is not probable, however, that this will ever prove to be a material objection in practice — all the more, since an arbitrary refusal of a minority to sign would hardly affect the moral authority of a report signed by a majority.

ARTICLE 14. The report of the International Commission of Inquiry shall be limited to a statement of the facts, and shall in no way have the character of an arbitral award. It leaves the Powers in controversy freedom as to the effect to be given to such statement. No binding force.

Whatever essential effect and authority a report of the commission of inquiry may have, must accrue to it through its intrinsic merit, and not from any authority, direct or implied, based upon the provisions of this Convention.

As was shown from the quotations made above,

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this feature is the very strength of the title. It may frequently secure recourse to this institution in circumstances where the state of the public mind makes arbitration or even mediation impossible, and one great object, the gaining of time, will certainly be attained. Experience has shown that national outbursts of passion cool down almost as rapidly as they arise — the difficulty being only to find some obviously reasonable occasion for delay. This occasion is certainly afforded by this title, the practical working of which will surely be awaited with great interest.

TITLE IV. INTERNATIONAL ARBITRATION

Chapter I. On Arbitral Justice

Object of arbitration.

ARTICLE 15. International arbitration has for its object the determination of controversies between States, by judges of their own choice, upon the basis of respect for law.

International arbitral justice does not attempt to supplant direct negotiations, — it is concerned with controversies which cannot be settled by diplomatic means. Reference will be made hereafter to the fact that the establishment of an international court of arbitration is likely to have the effect of elevating rather than lowering the standard of diplomacy, and of creating a demand for an even higher class of men than has hitherto been drawn to the diplomatic profession.

Moreover, arbitration does not interfere with

Mediation; on the contrary, it leaves the field open for the most effective method of Mediation, in that it supplies an end to which, in many instances, the efforts of mediators may well be directed. Chapter V

ARTICLE 16. In questions of a judicial character, and especially in questions regarding the interpretation or application of international treaties or conventions, arbitration is recognized by the Signatory Powers as the most efficacious and at the same time the most equitable method of deciding controversies which have not been settled by diplomatic methods. Character of questions recognized as suitable for arbitration.

With reference to this Article the delegation of Roumania made the following declaration: —

"The Royal Government of Roumania, while entirely acquiescing in the principle of voluntary arbitration, of which it appreciates the high importance in international relations, is nevertheless not ready to make an engagement, by virtue of Article 16, to accept arbitration in all the cases which are therein mentioned, and it believes it to be its duty to formulate these express reservations in this respect. It cannot, therefore, vote for this Article except with this reservation." [1]

This Article is of special importance, in that it emphasizes the particular questions which are above

[1] No reason was ever given for this and similar declarations made by Roumania and other Balkan countries. A certain exaggerated racial and national sensitiveness is perhaps not unnatural in the states of this storm centre of Europe, where exceptions to the rules formulated in the present treaty may in all probability first become necessary.

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all others regarded as suitable for arbitration. They are judicial questions, and such as arise from the interpretation or application of existing treaties. A determination by judges can, properly speaking, only be had regarding a judicial question, or a question arising upon a particular document. Conflicts of interest and political differences are not, strictly speaking, proper subjects for arbitration in the restricted sense of the term. The distinction here made between the two kinds of arbitration, first, judicial, second, general, is by no means unimportant, and a disregard of this difference has frequently led to disappointment, as well as to the casting of a certain amount of discredit upon the entire principle involved.

In his final argument before the Arbitration Tribunal upon the Venezuelan boundary question, ex-President Harrison of the United States, emphasizing this point, uses this language (p. 2982) : —

Remarks of Ex-President Harrison in Paris.

"Mr. President: It has been to me a matter of special interest that the President of this tribunal, after his designation by these two contending nations for that high place which assigned to him the duty of participating in practical arbitration between nations, was called by his great Sovereign to take part in a Convention which I believe will be counted to be one of the greatest assemblies of the nations that the world has yet seen, not only in the personnel of those who are gathered together, but in the wide and widening effect which its resolutions are to have upon the intercourse between nations in the centuries

to come. There was nothing, Mr. President, in your proceedings at The Hague that so much attracted my approbation and interest, as the proposition to constitute a permanent court of arbitration. It seems to me that if this process of settling international differences is to commend itself to the nations, it can only hope to set up for the trial of such questions an absolutely impartial *judicial* tribunal. If conventions, if accommodation, and if the rule of 'give and take' are to be used, then let the diplomatists settle the question; but when these have failed in their work, and the question between two great nations is submitted for judgment, it seems to me necessarily to imply the introduction of a judicial element into the controversy."

Importance of the form of statement of the question.

It will readily be seen that almost everything depends upon the form of the statement of the question to be submitted. If it is stated as a proposition of law, the decision must necessarily be without reference to the interests of either or any party. If, on the other hand, it is stated as a question of conflicting interests — political, territorial, commercial, or otherwise — compromise accommodation, the rule to give and take, as President Harrison puts it, is not only permissible but almost indispensable. The Venezuelan Tribunal, judging from its award, seems to have regarded the question submitted to it as one of the latter class; whereas the Behring Sea Tribunal of 1889 undoubtedly regarded its task as strictly judicial.[1] In both cases

[1] It will be useful to compare the statement of the questions submitted for arbitration as stated in the treaties covering both these

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Importance of the form of statement of the question.

the decision seems to have followed logically from the method of stating the question, and the lesson of these two recent and very important cases is not likely to be lost upon the diplomatists or arbitrators

instances. With regard to the Behring Sea controversy, the language of the treaty is as follows: —

Article VI. In deciding the matters submitted to the Arbitrators, it is agreed that the following five points shall be submitted to them, in order that their award shall embrace a distinct decision upon each of said five points, to wit: —

1. What exclusive jurisdiction in the sea now known as Behring's Sea, and what exclusive rights in the seal fisheries therein, did Russia assert and exercise prior and up to the time of the cession of Alaska to the United States?

2. How far were these claims of jurisdiction as to the seal fisheries recognized and conceded by Great Britain?

3. Was the body of water now known as the Behring's Sea included in the phrase "Pacific Ocean," as used in the treaty of 1825 between Great Britain and Russia; and what rights, if any, in the Behring's Sea were held and exclusively exercised by Russia after said Treaty?

4. Did not all the rights of Russia as to jurisdiction, and as to the seal fisheries in Behring's Sea east of the water boundary, in the Treaty between the United States and Russia of March 30, 1867, pass unimpaired to the United States under that Treaty?

5. Has the United States any right, and if so, what right of protection or property in the fur-seals frequenting the islands of the United States in Behring Sea when such seals are found outside the ordinary three-mile limit?

With reference to the boundary of Venezuela and British Guiana the treaty of February 2, 1891, provides: —

Article 1. An arbitral tribunal shall be immediately appointed to determine the boundary line between the Colony of British Guiana and the United States of Venezuela; and

Article 4. In deciding all matters submitted the arbitrators shall ascertain all facts by them deemed necessary to a decision of the controversy, and shall be governed by the following rules, which are agreed upon by the Contracting Parties as rules to be taken as applicable to the case and by such principles of international law not inconsistent therewith, as the arbitrators shall determine to be applicable to the case.

Rules

A. Adverse holding or transcription during a period of fifty years shall make a good title. The arbitrators may deem exclusive politi-

of the future. See upon the entire subject, Heffter (Ed. Geffken), § 109, and the full and admirable discussion in Calvo, *Droit International*, sections 1703–1806. Chapter V

ARTICLE 17. An agreement of arbitration may be made with reference to disputes already existing or those which may hereafter arise. It may relate to every kind of controversy or solely to controversies of a particular character. Agreements of arbitration in general.

This Article does not impose any special obligation upon the signatory powers, but it indicates in a useful manner a possible extension and further development of this convention. An agreement to submit a controversy already existing to arbitration is recognized as the ordinary method of procedure. An agreement to submit future controversies to arbitration now exists in an obligatory form for all the members of the International Postal Union so far as postal questions are concerned, and several treaties having this particular object have been concluded between various Powers, notably the treaty between Holland and Portugal of July 5, 1894, and the

cal control of the district, as well as actual settlement thereof, sufficient to constitute adverse holding or to take title by transcription.

B. The arbitrators may recognize and give effect to rights and claims arising on any other ground whatever, valid according to international law and of any principles of international law which the arbitrators may deem to be applicable to the case and which are not in contravention of the foregoing rules.

C. In determining the boundary line of territory of one party found by the arbitrators to have been at the date of this treaty in the occupation of the subjects or citizens of the other party such effect shall be given to such occupation as reason, justice, the principles of international law and the equities of the case shall in the opinion of the tribunal require.

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treaty of arbitration between Italy and the Argentine Republic of July 23, 1898. Among the projects for similar treaties the most notable are the proposition for such a treaty between Switzerland and the United States, dated July 24, 1893, the arbitration treaty elaborated by the Pan-American Conference, October 2, 1889, and the proposed Treaty between Great Britain and the United States, dated November 12, 1896.

The Roumanian Government made the following declaration with reference to this Article: "The Royal Government of Roumania declares that it cannot adhere to Article 17 except upon the express reservation entered upon the minutes, that it has decided not to accept, in any case, international arbitration for controversies or differences anterior to the conclusion of the present Convention."

Obligation to submit to the award.

ARTICLE 18. The agreement of arbitration implies the obligation to submit in good faith to the decision of the arbitral tribunal.

Without this implied agreement arbitration would rapidly sink into a purely academic institution, and the force of intelligent and civilized public opinion is relied upon as a sufficient sanction to enforce this as well as other obligations imposed by this Convention.

Further agreements to be made.

ARTICLE 19. Independently of existing general or special treaties imposing the obligation to have recourse to arbitration on the part of any of the Signatory Powers, these Powers reserve to themselves the right to conclude, either before the rati-

fication of the present Convention, or subsequent to that date, new agreements, general or special, with a view of extending the obligation to submit controversies to arbitration to all cases which they consider suitable for such submission. Chapter V

Obligatory Arbitration

In the original Russian proposal regarding International Arbitration, Article 10 read as follows: —

"From and after the ratification of the present treaty by all the Signatory Powers, arbitration shall be obligatory in the following cases, so far as they do not affect vital interests or the national honor of the contracting States: —

"I. In the case of differences or conflicts regarding pecuniary damages suffered by a State or its citizens, in consequence of illegal or negligent action on the part of any State or the citizens of the latter.

"II. In the case of disagreements or conflicts regarding the interpretation or application of treaties or Conventions upon the following subjects: —

"(1) Treaties concerning postal and telegraphic service and railways, as well as those having for their object the protection of submarine telegraphic cables; rules concerning the means of preventing collisions on the high seas; Conventions concerning the navigation of international rivers and inter-oceanic canals.

"(2) Conventions concerning the protection of literary and artistic property, as well as industrial and proprietary rights (patents, trade-marks, and commercial names); Conventions regarding monetary affairs, weights, and measures; Conventions regarding sanitary affairs and veterinary precautions and measures against the phylloxera.

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"(3) Conventions regarding inheritances, extradition, and mutual judicial assistance.

"(4) Boundary Conventions or treaties, so far as they concern purely technical, and not political, questions."

Provisions concerning international rivers, inter-oceanic canals and monetary affairs stricken out on motion of the United States.

At the first meeting of the *Comité d'Examen*, at which this Article was discussed, the American representative promptly moved to strike out the sentence relating to "Conventions regarding the navigation of international rivers and inter-oceanic canals," and also the words "monetary affairs" in the next paragraph. The reason for both omissions, though clear enough to an American, had to be carefully explained to the Committee.

There can be no doubt that any proposition involving the possible submission, to a Court almost necessarily composed mostly of Europeans, of such purely American questions as might arise concerning the navigation of the St. Lawrence, the Rio Grande, the Columbia, or the Yukon, could not possibly be accepted by any American Government or ratified by an American Senate. The same is true, perhaps even to a greater extent, regarding questions concerning an Isthmian Canal uniting the Atlantic and Pacific oceans. The experiences of the Spanish-American War, notably the memorable voyage of the *Oregon*, have, without doubt, wrought a complete and fundamental change in the attitude and the diplomacy of the United States of America, so far as such a canal is concerned. Whatever arguments may be adduced from history or tradi-

tion in favor of limited rights and powers, cannot avail in the face of the evident and almost unanimous determination of the American people to regard this canal, when built, as part of their own coast line, and to insist upon complete and exclusive American control as the best possible guarantee for the interests, not only of the United States, but of humanity at large. Chapter V

With reference to the paragraph about conventions regarding monetary affairs, weights, and measures, the American representative called attention to the fact that the very inclusion of these different subjects under one head would give offence to an important part of the American people, including many responsible statesmen whose cordial approval was indispensable to the ratification of the treaty. A great political party maintained that it was fundamentally incorrect and unjust to classify laws and treaties concerning money, with those concerning weights and measures, for the reason that the agency of government in fixing the monetary standard and in giving a legal tender quality to coin or paper, introduces an element so peculiarly appurtenant to the sovereignty of the State itself, as to make a radical distinction necessary, from a political as well as a scientific point of view. The American representative protested against the inclusion in the treaty of any provision which might have the deplorable result of making the ratification of the treaty a party question in the United States. The motion made on behalf of the United States was, after some discussion, carried

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unanimously, and various verbal changes were made in the rest of the Article as proposed by Russia. Finally, at the meeting on July 4, Dr. Zorn, on behalf of the German Empire, moved to strike out the entire Article.

The entire article stricken out on motion of Germany.

It was understood that one of the conditions upon which the German Empire had accepted the institution of a Permanent Court of Arbitration was the suppression of all provisions for compulsory arbitration, and this arrangement was unanimously and cheerfully ratified both by the Committee and the Conference. The American representative especially, having taken personal part in the negotiations which were carried on in Berlin, for the purpose of overcoming the objections of the German Empire to the institution of a permanent Court of Arbitration, maintained that the provision for compulsory arbitration, especially with the limiting phrase "so far as vital interests and national honor are not affected," was of no importance whatever, compared with the institution of the permanent Court by the unanimous and cordial coöperation of all the great Powers. The refusal of any one of the latter to consent to the establishment of the Court would, in all probability, have been fatal to the idea, and consequently to the success of the entire Conference. On the other hand, the provision for compulsory arbitration would have no greater sanction enforcing it than any other portion of the treaty, and it is expressly provided in Article 19, that the Signatory Powers reserve the right to conclude

various treaties with a view of extending obligatory arbitration to all cases to which they shall deem it applicable. Under these circumstances the rejection of this provision may well be regarded as one of the wisest and most conservative steps taken by the Peace Conference. Chapter V

Chapter II. On the Permanent International Court of Arbitration

No proposition before the Conference was received with more sympathy and favor than the plan for the establishment of a permanent Court of Arbitration. It formed from the first the keystone of the proposals formulated and presented on behalf of the United States, and almost from the moment of their arrival at The Hague, the American representatives declared that the realization of this idea was their chief object at the Conference.[1] The Government of Great Brit- The most important subject considered by the Conference.

[1] The number of official attempts, — apart from the efforts of private or religious bodies, — in the history of the United States, to establish a system of peaceable adjustment of differences arising between nations is both significant and instructive. 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. Historical note on the attitude of the United States on the subject of arbitration.

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.

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ain shared this view most cordially, and the honor of taking the lead in the practical effort of securing its adoption belongs to the eminent First Dele-

Historical note on the attitude of the United States on the subject of arbitration.

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 cannot be satisfactorily adjusted by amicable negotiation in the first instance, before 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 into 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 mem-

gate from that country. At the session of the full Committee on Arbitration, on May 26, Lord Pauncefote took the floor immediately after the

bers of the British Parliament, urging the conclusion of a treaty of arbitration between the United States and Great Britain, and reinforced 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 cannot 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 nations of America."

For special reasons the enterprise was temporarily abandoned, but was afterward 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

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reading of the minutes, and made the following remarks: —

Address of Lord Pauncefote.

"Mr. President: Permit me to inquire whether before entering in a more detailed manner upon our

Historical note on the attitude of the United States on the subject of arbitration.

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 learned 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 cannot 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

duties it would not be useful and opportune to sound the Committee on the subject of a question which in my opinion is the most important of all, namely: the establishment of a permanent international tribunal

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 cannot 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 do not affect a general treaty directed toward a similar end.

The traditions of American diplomacy have been fully maintained by Secretary John Hay, who in his instructions to the American Commission to the Peace Conference, uses this language: "'The prevention of armed conflicts by pacific means' — to use the words of Count Mouravieff's circular of December 30 — is a proposition well worthy of a great international convocation, 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 secondary only 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 repre-

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Address of Lord Pauncefote.

of arbitration, such as you have mentioned in your address. Many proposed codes of arbitration and rules of procedure have been made, but up to the present time the procedure has been regulated by the arbitrators, or by general or special treaties. Now it seems to me that new codes and regulations of arbitration, whatever may be their merit, do not greatly advance the grand cause for which we are gathered here. If it is desired to take a step in advance, I am of the opinion that it is absolutely necessary to organize a permanent international tribunal which can be called together immediately at the request of contending Nations. This principle once established, I believe we shall not have any

Historical note on the attitude of the United States on the subject of Arbitration.

sents so deep a respect and so firm 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 publication by this Government of the exhaustive "History and Digest of the International Arbitrations to which the United States has been a party," six volumes, by Professor John Bassett Moore, former Assistant Secretary of State, is a significant event in the history of arbitration. This work shows 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 a valuable body of precedents 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. The Delagoa Bay award was made subsequently to the publication of this "History and Digest," otherwise one more striking example, illustrating the same idea, might have been added.

difficulty in agreeing upon details. The necessity of such a tribunal and the advantages which it confers, as well as the encouragement and in fact the prestige which it will give to the cause of arbitration, have been demonstrated with as much eloquence as force and clearness by our distinguished colleague, M. Descamps, in his interesting essay on arbitration, of which an extract will be found among the Acts and Documents so graciously furnished to the Conference by the Netherlands Government. I have no more to say upon this subject, but I would be very grateful to you, Mr. President, if before proceeding any further you would consent to elicit the ideas and sentiments of the Committee upon the proposition which I have the honor of submitting to you, touching the establishment of a permanent international tribunal of arbitration."

While this speech called forth no immediate reply, it nevertheless struck the keynote, as it were, of the subsequent discussions. It was immediately followed by the production of the Russian proposal for a permanent court, and it prevented a waste of time in desultory discussions of preliminaries. It was the right word, said at the right time, and marked a turning-point in the history of the Conference.

There can be no doubt that the establishment of a permanent court of arbitration satisfies one of the most profound aspirations of civilized peoples. In view of the progress hitherto attained in the mutual relations of States this great institution can and ought to be a mighty power making for the cause of

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right and justice throughout the world. The organization of such a court was soon found to present no insurmountable obstacles — upon the one condition, however, that it must be founded upon the principle that the community of nations is one of coördination and not of subordination, and that this new organ of international justice must always retain, as M. Descamps expressed it, the character of "a free tribunal in the midst of independent States."

In the elaboration of the plans for the Court by the *Comité d'Examen* the project submitted by Lord Pauncefote on behalf of Great Britain was, by common consent, accepted as the basis of the discussion. Besides this the delegations from Russia and from the United States presented plans of which the more valuable features were incorporated in the final report of the Committee. The distinctive features of the British proposal were as follows: —

The British proposal.

1. The appointment by each Signatory Power of an equal number of arbitrators, to be placed upon a general list entitled Members of the Court; 2. The free choice from this list of arbitrators, called to form a tribunal for the particular cases submitted to arbitration by the various Powers; 3. The establishment at The Hague of an international Bureau acting as chancellery of the Court; 4. The establishment of a council of administration and control, composed of the diplomatic representatives of the Powers accredited to The Hague; the Minister of Foreign Affairs of the Netherlands being added as President upon the suggestion of Ambassador White.

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The Russian project had for its fundamental ideas the following: 1. The designation, by the present Conference, for a period which should last until the meeting of another similar Conference, of five Powers, to the end that each of these in case of an agreement for arbitration, should nominate one judge either from among its own citizens or from without; 2. The establishment at The Hague of a permanent Bureau with the duty of communicating to the five Powers appointed the request for the appointment of arbitrators by the contending parties.

The Russian proposal.

The American plan differed from the others chiefly in the following features: 1. The appointment by the highest court of each State of one member of the international tribunal; 2. The organization of the tribunal as soon as nine Powers should adhere to the Convention; 3. The appointment of a particular bench, to sit for each case submitted, according to the agreement between the contending States. This agreement might call for the sitting of all the members of the tribunal, or for a smaller given number, not less, however, than three. Whenever the Court consisted of not more than three judges none of the latter should be a native, subject, or citizen of either of the litigating States. 4. The right of the litigating States, in particular cases and within certain limits of time, to have a second hearing of the question involved before the same judges.

The American plan.

The preliminary discussion upon the subject of the permanent Court of Arbitration in the *Comité d'Ex-*

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The discussion in the *Comité d' Examen.*

amen was one of particular importance and interest, and took place on the 9th of June in the *Salle de Trèves* in the Palace of the Binnenhof at The Hague, where most of the sessions of the Committee were held. At the opening of the session, M. Bourgeois, the Chairman, on behalf of the French Delegation, read a statement to the effect that the French Delegation, recognizing that a common purpose animated the different projects submitted to the Committee, and that the principles involved were sufficiently stated in one or the other of these projects, had come to the conclusion that it was not necessary on their part to submit a separate project, but, under the double guaranty of entire liberty in having recourse to the tribunal, and the liberty of choosing arbitrators, the delegation did not hesitate to give from the start its cordial adhesion to the proposed new institution. "Under this double guaranty," said M. Bourgeois, "we do not hesitate to support the idea of the permanent institution, always accessible and charged with applying rules and following the procedure established between the Powers represented at the Conference at The Hague. We also accept the establishment of the international Bureau, which should be established to give, as it were, continuity, and serving as a chancellery, clerk's office, and archives of the arbitral tribunal. We believe that it is particularly useful that it should be continuous in its service, not only for the purpose of preserving at one common point the judicial intercourse between the Nations, and for the purpose of rendering more certain the

The declaration of the French Delegation.

unity of procedure, but also for the purpose of reminding incessantly the spirit of all peoples by a conspicuous and respected sign, of the superior idea of right and of humanity, which the invitation of His Majesty the Emperor of Russia calls upon all civilized States to follow in common up to the point of realization. The French Delegation at the same time believes that it is possible to invest this permanent institution with an even more efficacious rôle. It is of the opinion that the Bureau might be invested with an international mandate, strictly limited, giving it the power of initiative, and facilitating in most cases the recourse of Powers to arbitration.

Proposed mandate to the Bureau.

"In case there should develop between two or more of the Signatory States one of the differences recognized as being a proper subject for arbitration, the permanent Bureau should have the duty of reminding the litigating parties of the Articles of this Convention, having for its object the right or the obligation to have recourse, by consent in such a case, to arbitration.

"It would therefore offer its services to act as an intermediary between them, in putting into motion the procedure of arbitration, and opening unto them access to its jurisdiction. It is often a legitimate prejudice and an elevated sentiment which may prevent two nations from coming to a pacific arrangement in an excited state of public opinion, — whichever of the two Governments first requested arbitration might fear having its initiative considered in its

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Proposed mandate to the Bureau.

own country as an exhibition of weakness, and not as bearing witness to its entire confidence in its good right.

"In giving to the permanent Bureau a particular duty of initiative, we believe this offer would be made acceptable. It is the recognition of an analogous difficulty that has led the Third Committee not to hesitate, in cases even more serious and more general, to recognize the right of neutrals to offer their mediation, and in order to encourage them in the exercise of this right, the Commission has declared that their intervention cannot be considered as an unfriendly act. *A fortiori*, in the special cases to which this present convention has reference, it is possible to give to the permanent Bureau a precise duty of initiative. It will be charged with reminding the parties of those Articles of this Convention, which would seem to the Bureau to cover the difference between them, and it would ask them, therefore, whether they would consent under conditions foreseen by themselves to arbitral procedure—in other words, simply to carry out their own engagements. To a question thus asked, the answer will be easy, and the scruple on the score of dignity which might otherwise prevent such recourse, will disappear.

"In order to put in motion one of the mighty machines by which modern science is transforming the world, it is sufficient simply to push a finger at the point of contact. Still, it is necessary that some one should be charged with the duty of making this simple movement. The French Delegation believes

that the institution to which such international mandate may be confided, will play in history a rôle which will be nobly useful."

It will be seen that the ideas expressed in the last paragraph of the statement of the French Delegation afterward took form in a somewhat different shape in Article 27 of the present Convention, and reference will be made thereto in the discussion of that Article.

At the close of the presentation of the statement from the French Delegation, Lord Pauncefote read the following statement: —

Statement by Lord Pauncefote.

"Before entering upon the extremely interesting question which is to engage our attention to-day, I wish to take occasion to express my thanks to my colleagues from Russia and America who have kindly consented that the plan for a permanent international tribunal of arbitration which I have had the honor to introduce in the Committee should be the basis of our deliberations. In the projects which they have themselves introduced, improvements of my own may be found, and the Committee will surely appreciate their value as well as that of the other amendments which no doubt will be introduced. I wish also to thank the First Delegate of France for the declaration which he has just read, and in which he has informed the Committee that he also was willing to take my plan as the basis of the discussion, and at the same time I thank the other members of the Committee who have done me the honor of expressing themselves to the same effect. I am per-

suaded that in view of the exceptional talents which are to be found in this Committee, we shall attain a result worthy of the mandate so nobly confided to the Conference by His Imperial Majesty the Emperor of Russia."

The Chairman of the Committee, M. Bourgeois, thereupon opened the discussion upon the question of the permanent tribunal of arbitration. Chevalier Descamps of Belgium first spoke as follows: —

Remarks by Chevalier Descamps.

"The institution of a permanent Tribunal of Arbitration will represent the common juridical conscience of civilized peoples. It will correspond to the progress hitherto realized in the life of nations; to the modern development of international controversies; to the necessity which to-day drives States to seek in our day a justice more accessible, in a state of peace less precarious. It may well be a mighty instrument toward the solemn establishment of the sentiment of justice in the world. The presentation of three plans upon this subject by three great Powers is a fact of the highest importance. These projects are diverse in character, but it seems possible to harmonize them in a manner which will accomplish all the results immediately attainable. The establishment of permanent arbitral jurisdictions is by no means an innovation without precedent in international law. The Convention of Berne of October 14, 1890, provides for the establishment of a free Tribunal of Arbitration, to which the German Delegation, at the very first Conference in 1878, wanted to confide most important duties and attributes.

"The establishment of the permanent Tribunal of Arbitration presents no insurmountable difficulties, and it may easily be the most important factor in the international problem before the Conference of The Hague. The difficulties which the magnanimous views and wishes of His Majesty the Emperor of Russia encountered in other respects are one more reason for us to turn our attention to the organization of Mediation and Arbitration. It is necessary to develop and consolidate the organic interests of peace. It is upon this subject that general attention in all countries has been directed to this Conference, with hopes which cannot be disappointed without great and serious damage. The propositions which we shall formulate and upon which we hope to harmonize the States here represented will no doubt be modest. The future will develop and enlarge those features of our work capable of such enlargement for the good of all peoples and for the progress of humanity. As for the delegates at this Conference, it will no doubt be one of the greatest sources of happiness in their life, to have coöperated in the accomplishment of this grand result — the fraternal *rapprochement* of peoples and the stability of general peace."

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Looking to the future.

After this general introduction, M. Descamps stated that according to his views one of the most advantageous features of the permanent tribunal of arbitration would be this, that the members designated by the different States could meet, say every three months. They would elect a President who should

Suggestions by M. Descamps.

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be re-eligible, and they would have the function of appointing from among their number a bench to sit in vacation. This would help the disposition of States who wanted to have recourse to the Tribunal on matters which might not seem to have sufficient importance to warrant a meeting of the entire court. To his view this simplification would present many advantages, by avoiding the necessity of constituting for each case a complicated and costly mechanism, and by such an arrangement the Peace Conference would have constituted a Court which would really be permanent, in place of a simple international tribunal. He expressed the ardent hope that these conclusions would be approved, especially by the delegates from England, Russia, and the United States.

Impossibility of having a President of the entire court.

The particular suggestions of M. Descamps were not pressed, and the idea of having a President of the entire proposed court was found to be absolutely unacceptable to several of the continental Powers. The very questions of rank and precedence which the existence of such an exalted functionary might raise, were found to be by no means trifling. And it was felt that whatever advantages might accrue from such an emphasizing of the idea of permanence, they nevertheless seemed to be more than counterbalanced by the corresponding embarrassments.

The critical moment of the discussion.

The critical moment of the discussion had now arrived, when Professor Zorn, on behalf of the German Empire, took the floor for the purpose of opposing the idea of a permanent tribunal. His speech

was a model of diplomatic tact, being animated throughout by the most conciliatory spirit and a lofty idealism.

Speech of Professor Zorn.

Professor Zorn stated that he had listened with the greatest attention and with profound emotion to the preceding declarations. He recognized to the fullest extent the solemnity of this hour, when the representatives of the greatest civilized Powers were called upon to pronounce judgment upon one of the gravest problems which could be presented to them, and he desired to express the sincere hope that the day would come when the noble wish of the Czar might be accomplished in its entirety, and when conflicts between States might be regulated, at least in the great majority of cases, by a permanent international court. At the same time, he added that, while he personally was animated by this wish and hope, it was not possible for him to give way to illusions; and this was, no doubt, the attitude of his Government.

Objections of the German Government to a permanent court.

The German Government considered it necessary to emphasize the fact that the proposition now proposed and submitted to the judgment of this Committee was an innovation of a most radical character, and while it was a most generous project, it could not be realized without bearing with it great risks and even great dangers which it was simple prudence to recognize. He asked whether it would not be better to await, upon a subject of such profound importance, the results of greater preliminary experience, for in a word he declared that in the opinion

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of the German Government the plan for the permanent International Tribunal was at least premature. If the experience of occasional tribunals proved successful, and if they realized the hopes reposed in them, the German Government would not hesitate to coöperate to that end, and would now accept the experiment of arbitration having far greater scope than anything which had been in practice up to this day; but it could not possibly agree to the organization of the permanent Tribunal before having the preliminary benefit of satisfactory experience with occasional arbitrations. "In this situation," said Professor Zorn, "notwithstanding my intense desire to assist with all my might in bringing the work of this Committee to a successful conclusion, I regret to be compelled to move that Article 13 of the original Russian project be made the basis of further discussion instead of the plans for the permanent Tribunal, inasmuch as this Article accurately represents the views of the Imperial German Government upon the subject."

Motion to strike out the provision.

The original Russian proposal.

Article 13 of the original Russian project was as follows: "With a view to facilitating recourse to arbitration, and the successful application of the principle, the Signatory Powers have agreed to set forth by common accord for cases of international arbitration, the fundamental principles which should be followed in the establishment of the arbitration tribunal, and the rules of procedure which should be followed during the course of the litigation, up to the rendering of the arbitral decision. The application

of these fundamental principles, as well as of the arbitral procedure referred to in the Appendix of the present article, may be modified by virtue of a special agreement between the States having recourse to arbitration." Chapter V

The motion made on behalf of the German Empire being preliminary in character, was immediately taken up and the Chairman briefly opened the discussion on the subject.

M. Asser of the Netherlands recognized that it would certainly be useful to have experience, but according to him this experience had already been had, in the occasional arbitrations which had heretofore occurred. What was left to try was precisely the plans now proposed, for they all implied the establishment of a court which should be entirely voluntary. It seemed to him that the conclusion which Professor Zorn had arrived at need not be quite so absolute, and that without receding from the opinion which he had just stated, in a manner which had deeply impressed the Committee, he might still postpone further opposing the establishment of the permanent tribunal of arbitration, and might consent to look upon it, according to the expression of Count Nigra, as a "temporary permanent tribunal." Speech of M. Asser.

Professor Zorn was not unmindful of the validity of M. Asser's argument, but he raised another objection. There was obviously a great difference between an occasional arbitration, and the institution of a tribunal permanently charged with exercising the rôle of an arbitrator according to a code of procedure and Reply of Professor Zorn.

certain rules determined in advance. Besides, the German Delegate wished to remind the Committee that the Russian Government had modified its first project. The German Government had accepted the original Russian project and no other, as the basis of the work of the Conference. He could therefore not to-day accept this experimental establishment of a permanent tribunal, even provisionally: first, because such an establishment had not, according to his view, been foreshadowed in the initial programme of the Russian Government; and secondly, because practically it was very probable that a provisional permanent tribunal would not be long in becoming definitely and actually permanent. Under these circumstances the German Delegate insisted upon his motion.

Speech of Count Nigra.

Count Nigra of Italy appealed directly to the spirit of conciliation which the German Delegate had so clearly shown, and in a brief speech of great force and beauty he called attention to the consequences of a negative decision, upon a question which interested all civilized humanity to so great a degree. The hopes and aspirations with which public opinion was waiting for the results of our labors had become so great that it would be positively dangerous to disappoint them entirely, by rejecting the idea of a permanent tribunal. If to all these aspirations the Conference returned a curt *non possumus*, the dissatisfaction and disappointment would be tremendous. In such a case the Conference would incur most grave responsibilities before history,

before the peoples represented here, and before the Emperor of Russia. In conclusion Count Nigra earnestly requested the German Delegate not to refuse categorically to go on with the discussion, but to refer the question once more to his Government.

Provisional coöperation of the German representative.

Professor Zorn responded that he recognized the force of Count Nigra's remarks to their fullest extent, and that he would therefore not abstain from coöperating further with the work of the Committee in the direction of the permanent tribunal, although it must be clearly understood that he could by no means bind his Government.

This declaration of Professor Zorn was entered upon the minutes, it being well understood that it reserved his entire liberty of action and ultimate decision.

Statement by M. de Martens.

M. de Martens made the following statement on behalf of Russia: "When the Russian Government formulated its first proposals concerning arbitration, it doubtless had in view the general outlines of the project which was distributed, but this project was nothing but an outline, and necessarily required many amendments and additions, and some of these had now been presented on behalf of the Russian Government." He had always thought, without going into the details of the question, that this was the time and place to provide for the procedure and for the establishment of arbitral tribunals, always giving to the Powers in litigation complete liberty in choice of arbitrators. The Russian Government considered that its duty was complete when it suggested to the

Powers the result of its reflections without wishing to impose its opinion upon any one. There were provisions in all of the projects under discussion which naturally would give rise to the fears expressed by Professor Zorn, but these were misunderstandings which it ought to be easy to dispose of during the discussion which was sure to arise. Might it not be possible, for example, to adopt at the head of all the provisions about the permanent tribunal an article recognizing the absolute liberty of the parties in litigation to make their own free choice. It might be expressed as follows: —

"In the case of a conflict between the signatory or adhering Powers they shall decide whether the controversy is of a nature to be brought before a tribunal of arbitration, constituted according to the following Articles, or whether it is to be decided by an arbitrator or a special tribunal of arbitration."

The Chairman thought that as the Committee were agreed in declaring that the permanent tribunal of arbitration should not be obligatory upon any one, and as we were all in accord upon this principle, it might be best to reserve the question as to whether it should be expressed in a preliminary article or otherwise. The Committee being of the same opinion as the Chairman upon this point, M. Odier of Switzerland wished to adhere expressly to the declarations previously made by M. Descamps and Count Nigra in favor of the establishment of the permanent tribunal of arbitration. There had arisen in the world more than a hope — it was an expecta-

Speech of M. Odier.

tion — and public opinion was convinced, especially on the question of arbitration, that important results would come from this Conference. It was not possible to deny that practically we had it in our power to take at this moment a new and decisive step forward, in the road of general human progress. If we recoil or reduce to insignificant limits the innovations which every one expects from us, we would cause a universal disappointment of which the responsibility would rest forever upon us and upon our Governments. The one important innovation which we can present to humanity at large is the establishment of a permanent institution which will always be in evidence before the eyes of the world, a tangible result, so to speak, of the progress which had been made. While recognizing the force of the objections raised on behalf of Germany, M. Odier, therefore, cordially joined in the wish expressed by Count Nigra that the German Delegate would once more refer the question to his Government.

Speech of Professor Lammasch.

Professor Lammasch of Austria-Hungary also wished to express his opinion and his reserves. Notwithstanding the fact that the circular of Count Mouravieff had made no mention whatever as to the possibility of the establishment of the permanent tribunal, he had not opposed the acceptance by the Committee of the project of Lord Pauncefote as the basis of the discussion, but he was not empowered to act so far as to declare that Austria-Hungary was ready to indorse the establishment of a permanent tribunal. This institution

might, indeed, be established in many ways, some of which might be objectionable, according to the further decisions of the Conference. Professor Lammasch concluded by saying that he accepted the project of Lord Pauncefote as the basis of the discussion, in order not to delay or hinder the very important work of the Committee, and that he was ready to take part in the discussion with all possible good will, but under the express reserve that his participation in the debate could have no other character than that of a preliminary examination of the question, and that it could not for the present in any way commit his Government. This discussion and reserve of Professor Lammasch was duly entered upon the minutes.

Mr. Holls, on behalf of the United States of America, made a declaration, of which the following is a summary: —

Speech of Mr. Holls.

"I have listened with the greatest attention to the important exchange of opinion which has just taken place between the representatives of different great European States. It has seemed proper to me, representing, as it were, a new Power, that precedence in the discussion should naturally be given to the delegates of the older countries. This is the first occasion upon which the United States of America takes part under circumstances so momentous in the deliberations of the States of Europe, and having heard, with profound interest, the views of the Great European Powers, I consider it my duty to my Government, as well as to the Committee, to express upon

this important subject the views of the Government of the United States with the utmost frankness. I join most sincerely and cordially in the requests which have been addressed to the honorable delegate of the German Empire. Chapter V

"In no part of the world has public opinion so clearly and unmistakably expressed its adherence to the noble sentiments of His Majesty the Emperor of Russia, which have led to the calling of this Conference, as in America, both North and South. Nowhere do more sincere wishes, hopes, and prayers ascend to heaven for the success of this Conference. The Commission of the United States of America has received hundreds of expressions of sympathy and support, not only from the United States, but from the entire American Continent, and these manifestations come, not only from individuals, but from secular organizations of the highest standing and the widest influence and from great and powerful churches — some of them representing millions of members. In consequence we, the members of this Conference, are bound, so to speak, by a most solemn moral obligation, incurred, not between the Governments, but between the peoples of the civilized world. As it was most fittingly expressed in a great national crisis of my own country by its greatest modern statesman, Abraham Lincoln, 'we cannot escape history. We, of this Conference and of this Committee, will be remembered in spite of ourselves — no personal significance or insignificance can spare one or another of us.'

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Speech of Mr. Holls.

Let me ask the honorable members of this Committee to approach the question before us in a practical spirit, such as is generally attributed to us Americans; let us observe the true state of public opinion. Public opinion, all over the world, is not only eagerly hoping for our success, but it should be added that it has become uneasy and anxious about it. The powers of unrest and discord are even now exulting over what they hope will prove to be our ignominious failure.

"On the other hand, the fear is abroad, most unmistakably, even among our friends and well-wishers, that by reason of conflicting interests of a political nature, or for other causes which cannot be discussed openly, the results of this Conference may turn out to be purely platonic, inadequate, unsatisfactory, perhaps even farcical; and, moreover, it should be clearly recognized and remembered that public anxiety on this point is based upon recent experience in a case presenting many analogies to the situation before us. A Conference was called not many years ago upon the noble and generous initiative of His Majesty the German Emperor, upon a subject profoundly interesting to mankind; namely, the proper protection of the interests of labor, and it met at Berlin, having a most distinguished and representative membership; but what was the result? Resolutions of a purely academic character were adopted, and that Conference is even now almost forgotten.

"Civilized, educated, progressive public opinion,

which is beyond all question the most potent and the one irresistible moral influence in the world to-day — remembering former failures — will not pardon us if we offer it a new acute rebuff, and the very hopes which are now concentrated upon us and our work will be the measure of the disappointment which would follow our failure. Moreover, the establishment of a permanent International Court is the one great success which is hoped for, not only as being brilliant and striking, but also as being attainable, — in fact, within our very grasp. Without doubt the honorable delegate from the German Empire is correct, when he regards even the Russian project as a decided step in advance over the present condition of affairs as regards arbitration, but from the point of view of the practical man — the point of view of efficient and critical public opinion all over the world — I venture to say most emphatically that we shall have done nothing whatever if we separate without having established a permanent tribunal of arbitration."

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This closed the preliminary discussion, and the Committee thereupon proceeded to the adoption of the following Articles — the cordial adherence of the German Empire having been subsequently obtained and announced to the Committee at a later meeting by Professor Zorn, who stated that his Government "fully recognized the importance and the grandeur of the new institution."

Subsequent cordial adherence of Germany.

ARTICLE 20. With the object of facilitating an immediate recourse to arbitration for international

A court to be organized.

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differences which could not be settled by diplomatic methods, the Signatory Powers undertake to organize a permanent Court of Arbitration accessible at all times, and acting, unless otherwise stipulated by the parties, in accordance with the rules of procedure included in the present Convention.

Jurisdiction.

ARTICLE 21. The permanent court shall have jurisdiction of all cases of arbitration, unless there shall be an agreement between the parties for the establishment of a special tribunal.

The proposition of Count de Macedo of Portugal to indicate in the body of this Article a preference on the part of the Signatory Powers for recourse to the permanent tribunal, was not adopted, for the reason that it appeared to the Committee, and subsequently to the Conference, that such preference was sufficiently indicated by the very fact of the establishment of the permanent tribunal, and the desire to avoid everything which could by any possibility be regarded as limiting, even by suggestion, the entire liberty of the Powers.

Bureau and record office.

ARTICLE 22. An international Bureau shall be established at The Hague, and shall serve as the record office for the Court. This Bureau shall be the medium of all communications relating to the Court. It shall have the custody of the archives, and shall conduct all the administrative business. The Signatory Powers agree to furnish the Bureau at The Hague with a certified copy of every agreement of arbitration arrived at between them, and of any award therein rendered by a special tribunal. They also undertake to furnish the Bureau with the laws,

rules, and documents, eventually declaring the execution of the judgments rendered by the Court. Chapter V

The United States of America endeavored to add to this Article a provision looking to the publication of documents and records, and requiring the Bureau to furnish any one paying the cost of transcription and certification, with duly authenticated copies of any papers filed in the record office. The Committee was of the opinion that such a rule might conceivably interfere with the rights and interests of litigating Powers, especially if no restriction were adopted regarding the time of making the application for such copies. It was thought best to leave this question to the regulation of the Bureau itself and the council of administration, in the hope that every possible facility would be given, in the interests of the development of the science of international law, to the free publication of all documents connected with litigations before the court which may be of scientific or general interest. Publication of documents.

ARTICLE 23. Within three months following the ratification of the present act, each Signatory Power shall select not more than four persons, of recognized competence in questions of international law, enjoying the highest moral reputation, and disposed to accept the duties of arbitrators. The persons thus selected shall be enrolled as members of the Court, upon a list which shall be communicated by the Bureau to all the Signatory Powers. Any alteration in the list of arbitrators shall be brought to the knowledge of the Signatory Powers by the Bureau. Appointment and term of office of judges.

Two or more Powers may unite in the selection of one or more members of the Court. The same person may be selected by different Powers. The members of the Court shall be appointed for a term of six years, and their appointment may be renewed. In case of the death or resignation of a member of the Court his place shall be filled in accordance with the method of his appointment.

According to the American plan, each Signatory Power was to appoint one member of the permanent tribunal. In the English proposal this number was made two, but the Committee on Arbitration, on motion of Professor Zorn on behalf of the German Empire, adopted the present provision, "not more than four." The reason for this amendment was given on behalf of the German Empire as being the desirability of having the Court composed not solely of international lawyers or jurists. As the Article stands a Government may, if it deems it advisable, appoint a military, scientific, or geographical expert, as well as a member of the legal profession, the only qualification being that each appointee shall be of recognized competence in questions of international law and enjoy the highest moral reputation, as well as be disposed to accept the duties of arbitrator.

Acceptance of the duties of arbitrator.

The latter qualification is of particular importance. It is to be supposed that each State will select men of the highest professional standing for these positions, and the question of payment, except when actually sitting on a particular bench of arbitration, is left entirely to the States themselves. The obliga-

tion of each appointee to accept the duty of arbitrator, without regard to his personal convenience or the possible comparative insignificance of the questions involved, is absolute. Under this convention the highest professional talent of each civilized country is meant to be put at the disposal of every country in the world, large or small, rich or poor, for the settlement of international differences. In the beginning, and while the charm of novelty lasts, it is not likely that any arbitrator selected will refuse to act upon any question properly before the Court. If, however, the tribunal shall prove to be as successful as its promoters hope, a large number of questions of minor or technical interest may very likely be brought before it hereafter, and it should be clearly understood that in the opinion of the Committee an arbitrator will have no more right to select only important or interesting cases upon which to sit than a member of a jury panel in an ordinary Court. Under these circumstances the readiness of a member of the tribunal to leave what might very likely be a lucrative practice or employment at home, for the purpose of indefinite service at The Hague, should certainly be an element in the agreement between such arbitrator and the Government appointing him, on the subject of his compensation.

Appointment by the highest Court in each State rejected.

The American plan for the permanent international Court of Arbitration provided for the appointment of judges by the members of the highest court in each of the Signatory States. This feature, which undoubtedly commends itself at first blush more than

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Appointment by the highest Court in each State rejected.

any other to the public opinion of America, was found to be entirely impracticable, as well as absolutely unacceptable to the Continental Powers.

There is no highest Court for the entire Empire of Austria-Hungary, and the peculiar relations between the different parts of that Empire are not calculated to make joint action by the two highest Courts practicable or desirable. In Russia the highest Court consists of a senate of one hundred members, whose coöperation in the matter of appointments would contradict all national traditions. Similar objections, based, however, entirely upon the anticipated actual workings of the scheme, were raised by many members of the Conference. The American representative on the *Comité d'Examen* thereupon proposed the amendment in a permissive form, to the effect that it should apply wherever practicable or wherever the circumstances permitted. But even this plan was emphatically negatived, the only vote in its favor being that of the United States of America. The British Delegate, Lord Pauncefote, abstained from voting, explaining that while he favored the idea in the abstract, he was convinced that it was impossible of application in Continental countries. During the discussion one representative after another of the States having members on the *Comité d'Examen* announced that the idea had been suggested to his Government, but that it had been received with positive disfavor, not only because of its alleged impracticability, but as being, according to Continental ideas, vicious in principle. The organization of the Courts

in nearly all Continental countries is based upon the traditions of Roman jurisprudence, and these do not favor any action on the part of a judicial tribunal having reference to the selection of a man or men for any particular purpose, even if the latter be judicial in its nature. Furthermore, in several large European States, notably Germany, the rules governing the practice of the law are such as to prevent the members of the highest Court from having any direct knowledge of the ability or reputation of many of the most noted judges and lawyers in the country, since practice before the highest Court is restricted to residents of the city of its location and to members of its particular bar. Under these circumstances the members of these particular Courts are not, like the justices of the American Supreme Court or the members of the Privy Council of Great Britain, the best possible advisers, with reference to the selection of a creditable representative upon the great tribunal, and it was even stated that they were, in many countries, about the last authority to whom the appointing power would be likely to turn with success for such advice and coöperation. Out of courteous regard for the United States, and in order to recognize the fundamental idea upon which this proposal was based, the *Comité d'Examen* directed its reporter to emphasize in the official report the importance of a complete disregard of all political considerations in the choice of members of the Court. The American representative cordially acquiesced in this decision.

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Manner of selection of the members of particular tribunals.

ARTICLE 24. Whenever the Signatory Powers wish to have recourse to the permanent Court for the settlement of a difference that has arisen between them, the arbitrators selected to constitute the Tribunal which shall have jurisdiction to determine such difference, shall be chosen from the general list of members of the Court. If such arbitral tribunal be not constituted by the special agreement of the parties, it shall be formed in the following manner: Each party shall name two arbitrators, and these together shall choose an umpire. If the votes shall be equal, the choice of the umpire shall be intrusted to a third Power selected by the parties by common accord. If an agreement is not arrived at on this subject, each party shall select a different Power, and the choice of the umpire shall be made by the united action of the Powers thus selected. The Tribunal being thus constituted, the parties shall communicate to the Bureau their decision to have recourse to the Court, and the names of the arbitrators. The Tribunal of arbitration shall meet at the time fixed by the parties. The members of the Court, in the discharge of their duties, and outside of their own country, shall enjoy diplomatic privileges and immunities.

It is believed that this Article will be found to provide for every possible eventuality in any actual dispute. It is quite probable that in many cases the four arbitrators selected by the parties may not be able to agree among themselves upon the subject of the umpire. It is also conceivable that the same third Power charged with the duty of selecting the umpire would not be agreeable to both litigants. It is, however, hardly probable that two neutral Powers, each

selected in analogy to the appointment of "seconds" under Article 8, should not be able to agree between themselves upon a suitable arbitrator or umpire for any conceivable controversy. Chapter V

The chief delegate from Sweden and Norway, Baron de Bildt, proposed to provide expressly that either litigating Power might object to the choice of the umpire, selected even with the aid of its own chosen arbitrators. It was, however, pointed out in the debate by M. Asser of Holland and Mr. Holls of the United States, that the agreement to arbitrate is not complete under this Article until each party has communicated its willingness to arbitrate to the international Bureau, together with the names of all the arbitrators whose judgment is to be invoked, including, of course, the umpire. It follows that the votes for umpire on the part of the arbitrators first selected by the parties are subject to the ratification and approval of the two Powers in controversy, inasmuch as either might decline to communicate the name of an obnoxious member of the tribunal to the international Bureau. In other words, in voting for the umpire, the arbitrators first selected act simply as agents for the Government which has selected them, and the possibility of any Power being bound by the judgment of a court, a majority of whose members might be selected without the concurrence of each litigating Power, is carefully excluded. Any different provision would infringe upon national sovereignty, and hence be entirely inadmissible.

The choice of the umpire subject to ratification by the litigating States.

These opinions were, on motion of Baron de Bildt, spread upon the minutes as authoritative interpretations of the Article, so far as his Government was concerned. Chevalier Descamps dissented very emphatically from the views of his colleagues, holding that the Governments were bound by the choice of their nominees, and the question was not decided by the *Comité d'Examen* as a body.

Dissent of Chevalier Descamps.

Diplomatic privileges and immunities.

The exact extent of the diplomatic privileges and immunities to be enjoyed by members of the Court outside of their own country, and also within its limits, if the tribunal of arbitration should be convened there, has not been fixed in detail. It was recognized by the Committee that the subject might well be left to the good sense of the parties concerned, with the result that satisfactory rules of procedure and precedence would no doubt be evolved in time. It will no doubt tend to increase the dignity and importance of the Court itself, if its members are recognized the world over, and even when not selected to sit upon any particular bench, as bearing an international or diplomatic character, and holding, as it were, a particular trust in behalf of peace and humanity. It would, however, defeat the very object of the Court, if any questions personal to the members themselves were permitted to assume the character of serious international problems, even to the extent which has been true in the history of international law, regarding the rights and privileges of ordinary diplomatic representatives. In this respect, as in many others, much will depend upon

the precedents established by the good sense and tact of the members first appointed. Chapter V

ARTICLE 25. The Court of Arbitration shall ordinarily sit at The Hague. Except in cases of necessity, the place of session shall be changed by the court only with the assent of the parties. Place of sitting.

The expression in the original treaty for the word necessity is *force majeure* or *vis major*, which has a well-recognized meaning in the Roman Law. It is therefore only in cases of compulsion by violence, either of war, riot, or governmental action, that the parties to the controversy lose control of the question of the seat of the Court of Arbitration.

ARTICLE 26. The International Bureau at The Hague is authorized to put its offices and its staff at the disposal of the Signatory Powers, for the performance of the duties of any special tribunal of arbitration. The jurisdiction of the permanent court may be extended under conditions prescribed by its rules, to controversies existing between non-Signatory Powers, or between Signatory Powers and non-Signatory Powers, if the parties agree to submit to its jurisdiction. Facilities placed at the disposal of special tribunals. Jurisdiction of court may be extended.

THE DUTY OF SIGNATORY POWERS, AND THE MONROE DOCTRINE

ARTICLE 27. The Signatory Powers consider it their duty, in case a serious dispute threatens to break out between two or more of them, to remind these latter that the permanent court of arbitration is open to them. Consequently they declare that the fact of reminding the parties in controversy of the pro-

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visions of the present convention, and the advice given to them, in the higher interests of peace, to have recourse to the permanent court, can only be considered as an exercise of good offices.

The French proposition.

This Article is the particular contribution of the French Delegation to the present convention, and its provisions were foreshadowed in the statement read to the arbitration committee by M. Bourgeois, as given on page 240. Originally the French Delegation favored a provision conferring upon the Bureau at The Hague the particular duty, in the form of a mandate from every Signatory Power, to remind any Power, before the outbreak of hostilities, of the provisions of the present convention, and to give the advice, in the superior interests of peace, to have recourse to the permanent court of arbitration. It was, however, pointed out in the debate by M. de Martens, that the chief of the international Bureau at The Hague could hardly be regarded as enjoying any particular moral authority, and that a communication from him, especially at a time when public opinion in the States in controversy might be excited and sensitive, would incur the danger of being not only disregarded, but resented or repelled with a snub, bringing discredit not only upon the Bureau, but also upon the Court and the whole principle of arbitration. The Committee adopted this view by a majority vote, France, England, and Switzerland favoring the original proposition, Germany, Belgium, Italy, Austria, and Russia voting "No," and Holland and the United States abstaining. The American

representative refrained from voting against the proposition, because he favored the principle, while dissenting from the proposed method of its realization. M. Bourgeois immediately modified the proposition, which was then submitted to the vote of its present form and was unanimously approved, the American representative qualifying his approval by reserving the right to make a declaration on behalf of his Government regarding the traditional policy of the United States as to purely European or purely American questions, after consultation with his colleagues.

Reservation by the American representative.

According to this Article every Signatory Power recognizes a new international obligation, as a duty toward itself and every other Signatory Power. Next to the establishment of the Permanent Court of Arbitration this Article undoubtedly marks the highest achievement of the Conference, for no doubt the establishment of the court would have been incomplete, if not nugatory, without this solemn declaration, which is undoubtedly "the crown of the whole work," as it was declared to be by one of the American representatives in the Committee on Arbitration. At the same time, there was just one Power whose vital interests might be directly and unfavorably affected by this Article, if adopted without qualification, and that Power was the United States of America. The declaration, for which Mr. Holls made a reservation in the *Comité d'Examen*, and which was afterward carefully formulated, is for the United States of America by no means the least

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important part of the entire convention, and reads as follows: —

Text of the American 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 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 Monroe Doctrine.

The adoption of the treaty without any qualification of Article 27, would undoubtedly have meant, on the part of the United States, a complete abandonment of its time-honored policy known originally as the Monroe Doctrine. This is not the place to discuss the merits of that policy, or the truth and wisdom of that doctrine. It is, however, a fact that the United States of America is determined more firmly than ever before in its history, to maintain this policy and the Monroe Doctrine, in its later approved and extended form, carefully and energetically. Not even in the supposed interest of universal peace would the American people have sanctioned for one moment an abandonment or the slightest infraction of a policy which appeals to them as being founded, not only upon legitimate national desires and requirements, but upon the highest interests of peace and progress throughout the world. To recognize the American Continents as proper objects of any kind of European

expansion, or interference on the part of one or more Powers, would not promote or increase the peace, prosperity, or happiness of a single human being; and assuming, in ever so small a degree, the responsibility for the status of so large a part of the earth's surface, it is only fair that the great peace power of the West should not be required to interfere against its will in any other quarrel. Nor is any meritorious interest in the world unfavorably affected by this attitude of the United States — an attitude assumed and maintained, not as a challenge, not boastfully toward Europe, nor patronizingly toward its sister States on the American Continent, but simply in pursuance of a wise and far-seeing recognition of obvious facts and their logical bearings.

The declaration accepted.

The declaration was presented in the full session of the Conference on July 25, read by the Secretary of the Conference, and unanimously directed to be spread upon the minutes, and added to the Convention by a reference opposite the signatures of the American plenipotentiaries.

Its importance.

The importance of this proceeding, so far as the United States of America is concerned, will readily be seen. Never before that day had the Monroe Doctrine been officially communicated to the representatives of all the great Powers, and never before was it received with all the consent implied by a cordial acquiescence, and the immediate and unanimous adoption of the treaty upon that condition. An express acceptance or recognition was, of course, impossible, but there can be no doubt that the decla-

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ration, as presented, constitutes a binding notice upon every Power represented at the Conference, forever estopping each one of them from thereafter quoting the treaty to the United States Government in a sense contrary to the declaration itself. The greatest advantage of the latter, however, is the fact that it leaves to the United States absolute and perfect freedom of action, and this, in view of the recent extension of American power, especially in the far East, is of incalculable importance.

Cordial welcome to the United States.

Whatever may be the view of certain critics in America, there can be no doubt that the representatives of Europe at The Hague were impressed with the spectacle of the great Republic of the West, crowned with the prestige of a recent brilliantly successful war, proclaiming itself, nevertheless, in the most solemn manner possible, a member of the family of civilized States, — abandoning its time-honored but inadequate policy of selfish isolation, and, without departing in the least from the true ideals of Washington and Monroe, still coöperating cordially with European and Asiatic nations for the highest objects of human endeavor. Nor did any of them, it may safely be assumed, agree with the curious and preposterous contention that the consequences of the Spanish-American War, especially in the far East, had in the slightest degree impaired the value or force of the Monroe Doctrine. It was with particular pleasure that the United States, having safeguarded the principal interests committed to it, by this declaration, coöperated most cordially and unre-

servedly with the delegation from the great Republic of Europe, in impressing the idea of the duty of joint efforts for peace on the part of all civilized nations, into the international law of the future. Chapter V

The representatives of the Balkan States, notably of Servia and Roumania, made strenuous efforts to omit the word "duty," and their repeated reference to the distinctions between great and small Powers gave occasion for a spirited reply from Professor Zorn of Germany, in which the cordial adherence of the German Empire to the Convention as reported by the Committee was most forcibly and unreservedly declared, and later on for a speech from M. Bourgeois, which ended with an outburst of eloquence which electrified the Conference and led to a withdrawal of all hostile motions: — Efforts to strike out the word "duty."

"The moral duty," said M. Bourgeois, "of the provisions of Article 27 is to be found entirely in the fact that a common duty for the maintenance of peace among men is recognized and affirmed among the nations. Do you believe that it is a small matter that in this Conference — not in an assembly of theorists and philosophers, debating freely and entirely upon their own responsibility, but in an assembly where the Governments of nearly all the civilized nations are officially represented — the existence of this international duty has been proclaimed, and that the idea of this duty, henceforth introduced forever into the conscience of the people, is imposed for the future upon the acts of the Governments and of the nations? My colleagues who oppose this Article Speech of M. Bourgeois.

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Speech of M. Bourgeois.

will, I hope, permit me to say this: I fear their eyes are not fixed on what should be their real purpose. In this question of arbitration they appeared to be concerned with the conflicting interests of the great and small Powers. I say, with Count Nigra, here there are no great, no small Powers; all are equal in view of the task to be accomplished. But should our work give greater advantages to any Powers, would it not assuredly be to the weakest?

"Yesterday, in the *Comité d'Examen,* I spoke in the same strain to my opposing colleagues. Is not every establishment of a tribunal, every triumph of an impartial and well-considered decision over waring interests and passions, one more safeguard for the weak against the abuses of power?

"Gentlemen, what is now the rule among individual men will hereafter obtain among nations. Such international Institutions as these will be the protection of the weak against the powerful. In the conflicts of brute force, where fighters of flesh and with steel are in line, we may speak of great Powers and small, of weak and of mighty. When swords are thrown in the balance, one side may easily outweigh the other. But in the weighing of rights and ideas disparity ceases, and the rights of the smallest and the weakest Powers count as much in the scales as those of the mightiest.

"This conviction has guided our work, and throughout its pursuit our constant thought has been for the weak. May they at least understand our idea, and justify our hopes, by joining in the

effort to bring the future of Humanity under the majesty of the Law." Chapter V

ARTICLE 28. A permanent administrative Council composed of the diplomatic representatives of the Signatory Powers accredited to The Hague, and of the Netherlands Minister of Foreign Affairs, who shall act as President, shall be constituted in that city as soon as possible after the ratification of the present Act by at least nine Powers. This Council shall be charged with the establishment and organization of the International Bureau, which shall remain under its direction and control. It shall notify the Powers of the Constitution of the Court and provide for its installation. It shall make its own by-laws and all other necessary regulations. It shall decide all questions of administration which may arise with regard to the operations of the Court. It shall have entire control over the appointment, suspension, or dismissal of officials and employees of the Bureau. It shall determine their allowances and salaries, and control the general expenditure. At meetings duly summoned five members shall constitute a quorum. All decisions shall be made by a majority of votes. The Council shall communicate to each Signatory Power without delay the by-laws and regulations adopted by it. It shall furnish them with a signed report of the proceedings of the Court, the working of the administration, and the expenses. The administrative council.

This Article as originally reported by the Committee restricted the membership of the administrative council to diplomatic representatives "residing" at The Hague. Upon motion of Baron de Bildt on behalf of Sweden and Norway, this was changed to

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"accredited to The Hague." It was found that quite a number of Powers accredited one minister to various other Powers besides Holland, and such representatives, of course, had no permanent residence at The Hague. It was recognized, however, that all Powers who share in the expense of the Court should be represented, if they chose, in the administrative council.

Provision for the expenses of the Bureau.

ARTICLE 29. The expenses of the Bureau shall be borne by the Signatory Powers in the proportion established for the international bureau of the International Postal Union.

According to the rules of the international postal union the Signatory Powers are grouped in classes according to their size and presumptive wealth, and each class divides among its members equally the burden of bearing a fixed proportion of the total charges. This method has worked equitably and without objection, and was therefore indicated as the most practical rule to follow with reference to the Court of Arbitration. The expense of each particular litigation is regulated in Article 57.

Chapter III. On Arbitral Procedure

The remaining Articles of this Convention form a simple Code of Procedure for use in all cases, where the parties themselves do not provide rules of their own, for the particular case to be submitted. The desirability of such a code has been hitherto recognized in almost every case of international arbitra-

tion. The basis for the present provisions was a most admirable system of rules of procedure adopted by the tribunal which decided the question of the true boundary line between Venezuela and British Guiana. These rules were understood to be the joint production of the distinguished President of that tribunal, M. de Martens of Russia, and of Mr. Justice Brewer of the United States Supreme Court, and Lord Justice Collins of the English High Court of Judicature. Chapter V

ARTICLE 30. With a view to encouraging the development of arbitration the Signatory Powers have agreed on the following rules, which shall be applicable to the arbitral procedure unless the parties have agreed upon different regulations. Rules.

ARTICLE 31. The Powers which resort to arbitration shall sign a special act (*compromis*) in which the subject of the difference shall be precisely defined, as well as the extent of the Powers of the arbitrators. This act implies an agreement by each party to submit in good faith to the award. Agreement to arbitrate.

The importance of the manner of stating the question to be submitted has been fully discussed in the Commentary to Article 16.

ARTICLE 32. The duties of arbitrator may be conferred upon one arbitrator alone, or upon several arbitrators selected by the parties, as they please, or chosen by them from the members of the Permanent Court of Arbitration established by the present act. Failing the constitution of the Tribunal by direct Manner of constituting the arbitral tribunal.

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agreement between the parties, it shall be formed in the following manner: —

Each party shall appoint two arbitrators and these shall together choose an umpire. In case of an equal division of votes the choice of the umpire shall be intrusted to a third Power to be selected by the parties by common accord. If no agreement is arrived at on this point, each party shall select a different Power, and the choice of the umpire shall be made by agreement between the Powers thus selected.

Sovereign or Chief of State to fix procedure.

ARTICLE 33. When a Sovereign or Chief of State shall be chosen for an arbitrator, the arbitral procedure shall be determined by him.

The umpire to preside.

ARTICLE 34. The umpire shall preside over the Tribunal; when the Tribunal does not include an umpire, it shall appoint its own presiding officer.

The Committee recognized the great importance of having an uneven number of arbitrators wherever possible. At the same time tribunals with an even number may sometimes be preferred, as in the case where such a tribunal was expressly provided for, under Article 6 of the proposed treaty of arbitration between Great Britain and the United States.

How vacancies are to be filled.

ARTICLE 35. In case of the death, resignation, or absence, for any cause, of one of the arbitrators, the place shall be filled in the manner provided for his appointment.

The original Code of procedure submitted by the Russian Government provided that in case of the death or resignation of an arbitrator, the entire

agreement for arbitration should be considered void. This would seem to be more in accord with the principle previously laid down, requiring the assent of both litigants to the appointment of every member of the Court. After careful discussion[1] the Committee, however, decided that the Article as it stands contains the safest general rule for such a contingency, and that it would be better for the parties to understand that in the absence of a contrary stipulation, the same authority, appointing an arbitrator, might be called upon in a proper case to fill the vacancy. Chapter V

ARTICLE 36. The parties shall designate the place where the Tribunal is to sit. Failing such a designation, the Tribunal shall sit at The Hague. The place of session thus determined shall not, except in the case of overwhelming necessity, be changed by the Tribunal without the consent of the parties. Place of sitting.

ARTICLE 37. The parties shall have the right to appoint agents or attorneys to represent them before the Tribunal and to serve as intermediaries between them and it. Appointment of attorneys, agents, and counselors.

They are also authorized to employ for the defence of their rights and interests before the Tribunal counselors or solicitors named by them for that purpose.

There is no doubt that the practice before the international court of arbitration will attract to its bar the chief international jurists of every signatory power. The question whether any person enrolled as a member of the Court should be permitted to

[1] For which, see 4 Official Record 141.

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Judges not to practice in certain cases.

practice before it was raised by Mr. Low of the American Delegation, and was referred by the Third Committee to the *Comité d'Examen* for consideration and report. This Committee unanimously agreed to recommend that no member of a particular bench should be permitted, during the exercise of such function, to appear before another bench, on another case, in the capacity of counsel. The English rule of "once a judge always a judge," suggested by Lord Pauncefote, seemed to the Committee to be too drastic. Mr. Holls of the United States suggested that the rule be made so as to prohibit a member of the Court from appearing as counsel for any country except the country of which he was a citizen or by which he was appointed. This view received the weighty indorsement of Professor Lammasch of Austria, but the Committee finally decided upon having it merely spread upon the record in the *procès verbal*, and permitting the question as a whole to remain in comparative uncertainty, trusting that the good sense and propriety of the members of the Court, as well as of its bar, would finally evolve a rule without inconvenience, and with sufficient safeguards for the unsullied reputation of the bench for disinterestedness and impartiality.

Language.

ARTICLE 38. The Tribunal shall decide upon the choice of languages used by itself, or to be authorized for use before it.

Two phases of procedure.

ARTICLE 39. As a general rule the arbitral procedure shall comprise two distinct phases — preliminary

examination and discussion. Preliminary examination shall consist in the communication by the respective agents to the members of the Tribunal and to the opposite party, of all printed or written acts, and of all documents containing the arguments to be invoked in the case. This communication shall be made in the form and within the period fixed by the Tribunal, in accordance with Article 49. The discussion shall consist in the oral argument before the Tribunal. The discussion shall consist in the oral development before the Tribunal of the argument of the parties. Chapter V

This Article in effect provides for a procedure similar to that now in existence before ordinary American or English appellate tribunals. The documents in the case or the so-called "printed case on appeal" is filed with the Court, and served on the opposite side within the time limit set by the rules, and at the proper day the oral argument is heard by the Court.

ARTICLE 40. Every document produced by one party must be communicated to the other party. Communication of documents.

ARTICLE 41. The discussions shall be under the direction of the president. They shall be public only in case it shall be so decided by the Tribunal, with the assent of the parties. They shall be recorded in the official minutes drawn up by the secretaries appointed by the president. These official minutes alone shall have an authentic character. The proceedings in open court.

There can be no doubt that publicity will be the rule, with reference to the proceedings of the international Court of Arbitration. At the same time,

exceptional cases may occur where privacy, at least for a limited period, may be of importance.

Rules of practice.

ARTICLE 42. When the preliminary examination is concluded, the Tribunal may refuse admission of all new acts or documents, which one party may desire to submit to it, without the consent of the other party.

Powers of the Tribunal.

ARTICLE 43. The Tribunal may take into consideration such new acts or documents to which its attention may be drawn by the agents or counsel of the parties. In this case the Tribunal shall have the right to require the production of these acts or documents, but it is obliged to make them known to the opposite party.

ARTICLE 44. The Tribunal may also require from the agents of the party the production of all papers, and may demand all necessary explanations. In case of refusal the Tribunal shall take note of the fact.

In these three Articles the Tribunal is invested with that complete control of pleadings, practice, and procedure which now appertains to all equity courts.

No technical points or pitfalls are permitted to exist to entrap an unwary practitioner. It will not be possible to defeat a just claim or an equitable defence otherwise than by a decision squarely upon the merits of the case.

Oral arguments.

ARTICLE 45. The agents and counsel of the parties are authorized to present orally to the Tribunal all the arguments which they may think expedient in support of their cause.

ARTICLE 46. They shall have the right to raise objections and to make incidental motions. The decisions of the Tribunal on these points shall be final, and shall not form the subject of any subsequent discussion. Chapter V Objections and motions.

ARTICLE 47. The members of the Tribunal shall have the right to put questions to the agents or counsel of the parties, and to demand explanations from them on doubtful points. Neither the questions put nor the remarks made by members of the Tribunal during the discussion or argument shall be regarded as an expression of opinion by the Tribunal in general, or by its members in particular. Questions and explanations.

ARTICLE 48. The Tribunal is authorized to determine its own jurisdiction, by interpreting the agreement of arbitration or other treaties which may be quoted in point, and by the application of the principles of international law. Tribunal to determine its own jurisdiction.

The powers herein conferred are necessary for the proper working of arbitration, but it must be admitted that they are liable to abuse. The penalty for any undue enlargement of the jurisdiction of the Tribunal must of course be found in the refusal of both litigants to abide by the decision, as was done in 1841 in the case of Great Britain and the United States, when the king of Holland, who had been appointed arbitrator for the northeastern boundary, exceeded his powers in drawing a boundary line which satisfied neither party.[1] With tribunals as sensitive to their own reputations as those of the permanent

[1] 1 Moore, *Arbitration*, p. 137.

Court are likely to be, a recurrence of similar experiences is hardly within the limits of probability.[1]

When France and the Netherlands, by the treaty of November 29, 1888, agreed to submit the question of the true boundary between their respective colonies of French Guiana and Surinam to the arbitration of the Emperor of Russia, the latter (Alexander III.) declined to act if he was required to adopt, without modification, the boundary line proposed by one party or the other. Accordingly, by the agreement of August 28, 1890, the litigating Powers expressly conferred upon the arbitrator the right to fix the boundary according to his own decisions upon the equities of the case.

Special rules of procedure.

ARTICLE 49. The Tribunal shall have the right to make rules of procedure for the direction of the trial to determine the form and the periods in which parties must conclude the argument, and to prescribe all the formalities regulating the admission of evidence.

End of the hearing.

ARTICLE 50. The agents and the counsel of the parties having presented all the arguments and evidence in support of their case, the President shall declare the hearing closed.

Deliberations with closed doors.

ARTICLE 51. The deliberations of the Tribunal shall take place with closed doors. Every decision shall be made by a majority of the members of the

[1] Geffcken (Heffter, § 109, note 5) denies the right of a Tribunal of Arbitration to determine its own jurisdiction, but without reason. Calvo (§ 1757) distinctly affirms it, and The Hague treaty wisely settles the question, probably forever.

Tribunal. The refusal of any member to vote shall be noted in the official minutes. Chapter V

ARTICLE 52. The award shall be made by a majority of votes, and shall be accompanied by a statement of the reasons upon which it is based. It must be drawn up in writing and signed by each of the members of the Tribunal. Those members who are in the minority may, in signing, state their dissent. Award by a majority, and accompanied by an opinion.

The requirement, on motion of Professor Zorn, of an "opinion," with each arbitral award, stating the reasons upon which it is based, was vigorously attacked in the *Comité d'Examen* by M. de Martens. He recognized the advantage of creating a body of international Jurisprudence by means of a series of decisions and opinions of great authority, but he strongly objected to the idea of obligation to write, on the part of the arbitrators. The latter were not only judges, but very often also representatives of the governments in litigation. The prevailing opinion might contain serious criticism of one of the parties, and its representative would be constrained to withhold a concurrence, which in the case of a simple award might have been obtained. A decision concurred in by the nominees of the defeated party was more important even for the future of arbitration than the most learned or eloquent opinion. There was nothing to prevent the judges, in proper cases, from writing opinions, but whether they should do so or not was surely a question which could safely be left to their discretion. Mr. Holls warmly sup- Discussion on the requirement of opinions.

ported this view, but the *Comité d'Examen* adopted the proposition of Professor Zorn, Chevalier Descamps declaring that the required statement might be made so short as to be entirely unobjectionable.

Public reading of the award.

ARTICLE 53. The award shall be read in a public sitting of the Tribunal, the agents and counsel of the litigants being present or having been duly summoned.

Final decision.

ARTICLE 54. The award duly pronounced and notified to the agents of the parties in litigation shall decide the dispute finally and without appeal.

Rehearing.

ARTICLE 55. The parties may reserve in the agreement of arbitration the right to demand a rehearing of the case. In this case, and in the absence of any stipulation to the contrary, the demand shall be addressed to the Tribunal which has pronounced the judgment; but it shall be based only on the discovery of new facts, of such a character as to exercise a decisive influence upon the judgment, and which at the time of the judgment were unknown to the Tribunal itself and to the parties demanding the rehearing. The proceedings for a rehearing can only be begun by a decision of the Tribunal, stating expressly the existence of the new fact and recognizing that it possesses the character described in the preceding paragraph, and declaring that the demand is admissible on that ground. The agreement of arbitration shall determine the time within which the demand for a rehearing shall be made.

The American Plan for an international tribunal contained the following paragraph: —

"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 contained a substantial error of fact or of law." Chapter V

When this article was offered as an amendment in the *Comité d'Examen* it was vigorously opposed by M. de Martens of Russia, who thought that any provision looking toward a second hearing would diminish the moral authority of the tribunal and the weight otherwise given to its first decisions. He therefore demanded a preliminary vote upon the question of the principle of a rehearing in any case. The Committee decided in favor of the principle, by the votes of Holland, Germany, Austria, Italy, Great Britain, and the United States, against those of Switzerland, Belgium, and Russia. Accordingly an article substantially embodying the American view was reported to the full Committee on Arbitration. M. Asser of Holland, in the general Committee, on July 17, offered the article as it now stands as a substitute for the American proposition. A summary of the speeches made for and against the proposition will suffice, for all practical purposes, as a commentary, and it is therefore subjoined. Debate on rehearing.

M. de Martens spoke as follows: "During the entire course of the Conference you have always honored me with a most respectful attention, whenever I deemed it necessary to intervene in the discussion, for the purpose of dissenting or explaining Speech of M. de Martens.

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Speech of M. de Martens.

the ideas which have been put upon the programme on the part of Russia. I thank you most sincerely.

"Permit me once more at this time to count upon such good will, and I beg your most serious attention, because the question which now occupies us is one of the very greatest importance. It is a vital question for the entire institution of international arbitration, which is certainly dear to all of our hearts. The honorable delegate from the United States, Mr. Holls, and my friend, M. Asser, have said that it is necessary to save the principle of a rehearing of arbitral award. I regret infinitely not to be able to share this opinion. I am a member of the society for the relief of the shipwrecked and of the Red Cross society, but in this present case I deem it my duty to be cruel and inhuman. I cannot possibly hold out my hands for the saving of Article 55, and I wish from the bottom of my heart that it shall be shipwrecked even on these hospitable shores of Holland.

"But, gentlemen, in what does the importance of this question consist? Is it true that a rehearing of a judicial award based upon error or upon considerations not sufficiently founded is not desirable? Ought we not, on the contrary, to desire that an error should be eliminated by new documents or new facts which may be discovered after the close of the arbitration? No, gentlemen, it would be absolutely wrong and unfortunate to have an arbitral sentence duly pronounced by an international tribunal subject to being reversed by a new judgment.

It would be most profoundly regrettable if the arbitral award did not terminate, finally and forever, the conflict between the litigating nations, but should provoke new dissensions, inflame the passions anew, and menace once more the peace of the world. A rehearing of the arbitral award as provided for in Article 55 must necessarily have such a disastrous effect. There should not on this point be left the slightest doubt. The litigating Power against which the arbitral award has been pronounced will not execute it, certainly not during three months, and it will make all imaginable efforts to find new facts or documents. The litigation will not have been ended, but it will be left in suspense for three months with this serious aggravation, that the Government and the nation which have been found to be culpable will once more be put upon the plane of recrimination and of reciprocal dangerous accusation. This is the explanation which makes it very significant that in this *Comité d'Examen* Article 55 received five votes against four.

"The end of arbitration is to terminate the controversy absolutely. The great utility of arbitration is in the fact that from the moment when the arbitral judgment is duly pronounced everything is finished, and nothing but bad faith can attack it. Never can an objection be raised against the execution of an arbitral sentence. Now, if we accept the principle of a rehearing, what will be the rôle of the arbitrators before and after the sentence? Actually they will enjoy the greatest moral authority, because they have the possibility of ending forever an inter-

national conflict, and experience has shown that on the morning after the award, journals, legislative chambers, public opinion — every one bows in silence to the decision of the arbitrators. If, on the contrary, it is known that the sentence is suspended for three months, the State against which judgment has been given will do its utmost to find a document or a new fact. During this time the judgment will be delivered over to the debate of public opinion. It will not finish or cut off anything. On the contrary, it will raise a tempest in the press and in the parliaments. Everything will be attacked — the arbitrators, the hostile government, and, above all, the home government. They will be accused of having held back documents and concealed new facts. For three months the discussion upon the judgment will be open. Never can a judgment given on such conditions have the moral obligatory force which is the very essence of arbitration. On the other hand, the arbitrators will not have the same sentiment of responsibility as when by one word they are able to determine a controversy between two nations. This idea of a rehearing is the saddest blow which could be struck against the idea of arbitration. Apropos of my first remarks at the beginning of these sessions I apply to myself the words, '*dixi et salvavi animam meam.*' I now change them and I say, '*dixi et salvavi arbitrationem.*' "

Count Nigra remarked that the Committee was in the presence of two opinions, both of which were too radical. There was a great deal of truth in the

arguments of M. de Martens; but errors always happen, and if it is truly an error, evident to the eyes of the public, why should it be held necessary to consecrate it? Why not revise it? On the other hand, the wording of Article 55 seemed to him to be too unlimited. The expression "new facts exercising a decisive influence" did not seem to him sufficiently precise or definite to limit the cases of a rehearing. The instructions of the Italian Government directed him to pronounce himself in favor of a rehearing. If the principle of a rehearing is maintained, it seemed to him preferable to adopt the text of the treaty of arbitration between Italy and the Argentine Republic, which limits the reasons for a rehearing to facts regarding the case in litigation in the following two cases: First, if the judgment was pronounced on the basis of a forged or erroneous document; second, if the judgment, wholly or partly, is the consequence of a positive or negative error of fact resulting from the acts or documents in the case. Chapter V

Mr. Holls spoke as follows: —

"I cannot forbear to express, at the outset, the great reluctance and hesitation with which I find myself in disagreement, on a question of such great importance, with the gentleman who may perhaps be called the most eminent representative in the entire world, of the idea of arbitration, the President of the one tribunal of arbitration which is sitting at present, our most honorable colleague from Russia, M. de Martens. If there were in my mind the slightest doubt as to the soundness of the proposition which is Reply of Mr. Holls.

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at present before us, I would be inclined to dismiss all further consideration and assent to the opinion of an authority so eminent, especially when that opinion is expressed with so much force and eloquence. But all of my hesitation does not prevent me from expressing my very great surprise at the arguments of which M. de Martens has just made use. In effect, they show to my mind that he has completely misunderstood the proposition which has been inserted at the request of the United States of America into the code of arbitral procedure. I agree most emphatically with all that M. de Martens has said about the necessity of putting a definite end to international litigation. In differences between States, the maxim '*interesse populi ut sit finis litium*' is even more true than in those between individuals. The supreme end of arbitration is, as M. de Martens said, to settle definitely the questions upon which recourse has been had, and everything which unreasonably retards the decision or leaves it in suspense will be objected to, most decidedly, by the delegates of the United States as well as by him.

"Moreover, Mr. President, our proposition for a rehearing is by no means based upon a fantastic idea, as though it were possible to evade or correct all the errors which must occasionally slip into arbitral decisions. We by no means ignore the fact that error is and always will be an inherent element in every human institution or decision.

"Our point of view is eminently practical, and this

is the theory upon which the Article proposed by us reposes. It is above all extremely desirable and even necessary that the project of arbitration which this Conference is about to propose to the world should provide for the possibility of rectifying evident errors, in a regular and legal manner, without incurring the danger of having the decision repudiated by the aggrieved party.

"Permit me to say at this point that the importance of our Article does by no means solely repose upon its practical effect in each case, but perhaps even more in the circumstance that it will constitute an important feature of the general project of arbitration which is being elaborated by the Conference. Everything which we are creating here has a general, voluntary, and facultative character. We are not occupied at the present time with rules for any particular difference whatever. It will soon be the duty of the members of this Conference to appear before their different peoples and explain to them the projects which we have elaborated with so much labor and so much care. According to the view of the American Delegation, this project will contain a fatal omission if it does not provide any method whatever for dealing with an evident error. For we may be sure that if this Article shall not be adopted, and a manifest error shall hereafter be discovered, the aggrieved party which loses its case will not accept the decision with good grace, even if it may yield to force. There is a limit to the principle established by M. de Martens, that the chief end of arbitration

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is to settle forever the questions about which it has been invoked. That limit has well been declared by our American statesman, Abraham Lincoln, in his celebrated saying, 'Nothing is settled until it is settled right.' Our Article seems to find a golden mean between two extreme dangers, that of perpetuating an injustice, and that of leaving a difference unsettled. The objection has been raised that the new fact might be discovered one day after the expiration of the term fixed in this Article. But this possibility is an inconvenience which exists always when an arbitrary term is fixed for any end whatever, and it will exist in equal measure if we adopt a period of six months in place of three. The theory upon which our Article is based, so far as this point is concerned, is that immediately after the rendering of the decision it is subjected to criticisms and investigations of the most minute character, and then, if ever, is the opportunity for discovering new facts or important errors.

"It may well be, as M. de Martens has said, that the criticism to which the arbitral decision will be subjected in this manner will take the character of an attack, and may cause discussion in the journals and pamphlets in a form most undesirable. But, on the other hand, it is also true that the decision will be examined most minutely by all the experts of international law in the entire world, and by all of those who, on account of their public or private position, have followed the proceedings of the litigation and who are interested in it and in its result. This

is the best guarantee possible for the discovery of any hidden fact which might have the effect of correcting an error, or of making reparation for an injustice. New facts cannot be forged nor manufactured, at least not by civilized Governments. In fact, every Government will hesitate to expose its country to the humiliation which would undoubtedly attach to an unsuccessful attempt for a rehearing of the litigation upon a pretended discovery of new facts, the existence of which would be denied by the tribunal. Moreover, one should not lose sight of the fact that for the purpose of having a rehearing, the very tribunal, composed of the same judges who have pronounced the award, must declare that a manifest error has been committed. This is saying, in other words, that the new fact which has been discovered is of a nature to have influenced the decision of the tribunal. Before the decision has been rendered it is not always possible to know what species of fact or what argumentation has made the greatest impression upon the judges and has determined their decision. Chapter V

"Take, for example, the question in controversy at this moment before the Court of Arbitration of which our honorable colleague from Russia is acting so worthily as president — the question of the frontier between British Guiana and Venezuela. In this case the delay of three or six months could not be truly called anything but minimal, in view of the fact that this difference has existed and gone on for three or four years, and, in a form more or less obscure, for more than eighty years. It would therefore be un-

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important whether the decision should be rendered on the first of October or the first of January, by comparison with the danger arising from a manifestly erroneous or unjust decision. Among other things this controversy implies the interpretation of treaties made more than two hundred and fifty years ago; it includes a great number of historical precedents, of questions about colonization, of jurisdiction over barbarous tribes, as well as questions of the weight and authority to be given to different maps. Upon these latter both parties will lay great stress, in order to prove that their contentions have already been recognized and admitted. Up to the moment of the decision of the tribunal it will be impossible to know what kind of facts and what argumentation have determined the award. Now the seeking of new facts is limited to that category. If that inquiry should be successful, for example, if a new map or a new document of incontestable and unquestioned authority should be found, it is evident that the interested party would refuse to submit to an award which could not be rectified in a legal and regular manner.

I confess that I was greatly astonished to hear M. de Martens say that the moral authority of the Court of Arbitration would be impaired by our Article, and that the sentiment of responsibility would disappear in the minds of the arbitrators. On the contrary, I maintain that the moral authority of the judgment will be enhanced by the fact that there is in existence a provision for correcting errors, of

which the losing party may take advantage, during a term which should not be too long, and that at the end of that term the civilized world ought to admit, and surely will admit, that substantial justice has been done between the two parties. Furthermore, the responsibility of the arbitrators is enhanced rather than diminished by their power and their duty to reconvene again upon their own judgment in a proper case. It seems to me that M. de Martens most assuredly made a mistake in saying that tradition and the force of precedent is opposed to a rehearing in cases of arbitration. I must admit that in all the treaties of arbitration for special cases up to this time, there has not been a provision for a rehearing, and in the particular special treaties of the future there will no longer be any necessity for it. The reason for this is that the entire idea of arbitration is relatively new, and that it has hitherto been considered only as a temporary method of settling controversies as they arose. The only general treaty of arbitration which has been ratified, and which is to-day in force, is that concluded between the Kingdom of Italy and the Argentine Republic. This provides for a rehearing, showing the tendency of public opinion and also of the most competent opinion of experts in international law.

"But, as I have already said, our duty in this Conference is not to legislate for particular cases, but to uphold an ideal, to declare to the world that which the representatives of all the civilized nations consider desirable and practically attainable. We can-

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not possibly put professional regularity or pedantic rules of procedure above the attainment of substantial justice. We have succeeded, after much labor and by reason of mutual concessions, in elaborating a project for the peaceable settlement of international conflicts. It is of the last importance that this project should contain, however simply, at least all essential features guaranteeing in the greatest possible measure international justice.

"The representatives of the United States of America considering this Article, or some other provision equally efficacious to rectify manifest errors, as an essential part of an acceptable project, would have to ask for new instructions from their Government, giving them power to join their colleagues of the Conference in any plan which should not contain a similar provision. It is for this reason that they make a most warm and urgent appeal to the Committee to leave intact the principle expressed in the Article proposed in the name of the Government of the United States."

Speech of Chevalier Descamps.

Chevalier Descamps said that he had listened with great attention to the two arguments upon the subject of a rehearing. That which, according to his idea, constituted the difficulty of the subject was the conflict of two principles, equally just, which either side had put forth. It was right that justice should be done; therefore, how was it possible to accept the establishment of an evident error? It was also right that controversies between nations should not be allowed to go on indefinitely. How could this result

be attained and still leave open the door for a new judgment? Chapter V

The defenders of the rehearing, according to him, had the side which was the more noble and beautiful. Their ideal of justice was perhaps somewhat higher than that of their adversaries, but these again are struck by the fallibility of all human justice, and believe that for the redressing of exceptional errors it was not right to compromise the force and stability of the judicial system. Was it not to be feared that solicitude for a few very rare cases might endanger the entire principle?

The partisans of a rehearing, according to him, did not put the question of a rehearing in its proper position. In general rules for all controversies of all States, was it right to formulate a principle at the risk of impairing the entire institution of arbitration? It seemed to him more natural to put into an international code nothing but principles which should consolidate the institution. Contracting parties who are impressed from the point of view of justice, with scruples like those of the United States, should foresee the case and provide for a rehearing in a special agreement. To have no rehearing was more in conformance with the efficiency of arbitration, so that this should be the rule, and a rehearing the exception. We should be doing a poor service to the Governments in permitting a rehearing as the general rule. The Governments would risk being no longer their own masters, they would be forced and every one would try to have them invent new facts to

begin an unsuccessful arbitral litigation over again. M. Descamps, therefore, thought it was dangerous and difficult to introduce a provision like Article 55 into a general code of arbitral procedure. He hoped that even the form which was proposed by M. Asser would not be admitted, for he was formally opposed to the principle. At the same time, for the sake of making a unanimous decision, he would join in supporting the proposition of M. Asser in a spirit of conciliation.

Reply of M. de Martens.

M. de Martens wished to ask some questions. What would be the position of the arbitrators during the delay of suspension of three or six months? If the Government which had not gained its cause was impelled and forced by public opinion to try to find a new fact in order to begin the procedure over again, where would it find arbitrators? The members of the arbitral tribunal will be dispersed; they may be absent, ill, or dead. What should be done then? It was necessary to distinguish clearly two points of view. From the point of view of the lawyer it was not doubtful that one ought to provide for a rehearing and even an appeal. But from the point of view of the practical man, it is the love of peace which is the most important. In order to save that, it was necessary to cut short all controversies by a radical means. The pacification of the two litigating peoples was a result so important, in the eyes of the lover of peace, that he would not wish to risk compromising or impairing it in order to protect some material interest, which might possibly be injured.

This last point of view seemed to him the most necessary and the most important, and therefore he asked that the Committee should pronounce against Article 55.

Speech of Mr. Low.

Mr. Seth Low spoke as follows: "In the organization of ordinary justice in almost all the countries represented here, if not in all, a recourse for the purpose of rectifying errors has been provided. This precaution has been taken because experience has shown that such recourse, or rehearing, or revision increase the chances of doing substantial justice between men. I know that our international arbitration is not like the questions of ordinary justice. It does imply, as M. de Martens has said, the idea of ending international controversies in the interest of peace, even if the solution may be imperfect. But the necessities of excepting in such a large measure this imperfection is precisely the weakness, and not the strength of arbitration. I recognize, as some one has said, that all arbitration which has occurred up to this time has been in virtue of an agreement that has not foreseen or provided for a rehearing. But, on the other hand, the Conference will remember that in the only two treaties which contain a clause for permanent arbitration — the Italian-Argentine Treaty, to which reference has already been made, and the Anglo-American Treaty, which was not ratified — a provision was inserted for the purpose of permitting a rehearing under certain determined conditions. This signifies, as I suppose, that a system of permanent arbitration as distinct from special

apter V

arbitration in isolated cases, necessarily implies the idea of making justice just as perfect as possible, and that this idea should be balanced with the desire of terminating the controversy. I have confidence and hope that this Conference will receive and adopt the idea of a rehearing with the necessary precaution, for it is certain that arbitral procedure should admit the possibility of error, if the great number of judgments of arbitration are to develop in the future into one grand system of international justice."

marks of Asser.

M. Asser recalled the words of one of the preceding speakers, to wit: radical measures are the best. This, he said, might be in a parliament where the majority made the law, but in an assembly like this, which might be called an international parliament of man, it was necessary to endeavor to find a point of accommodation. This was the end and object of his proposition. He had taken account of the reasons which had been advanced on both sides. The friends of a rehearing would have the satisfaction of seeing an article which determined the procedure of a rehearing, and which recognized it as a practical method, and recommended it to all States. The opponents of rehearing would also be satisfied by the exclusion of the provision unless there is a special agreement in the arbitration agreement on the subject. If the latter contains nothing on the subject, then the arbitral judgment and award will be irrevocable.

option of proposi-n.

M. Asser's proposition was then adopted unanimously, both the United States and Russia acquiescing most cordially.

This debate has been inserted here not only on account of the light which it throws upon the Article, but also as a very fair sample of the kind of debate which took place throughout the entire Conference, in the Committee. Most unfortunately, and yet for obvious reasons, a full stenographic report was absolutely impossible. It must be admitted that the decision of the Conference in adopting the Article as it stands was the wisest possible solution of a question which, as the debate showed, was by no means free from difficulties.

An example of the debates.

Article 56. The award shall be obligatory only upon the parties who have concluded the arbitration agreement. When there is a question of the interpretation of an agreement entered into by other Powers besides the parties in litigation, the parties to the dispute shall notify the other Powers which have signed the agreement, of the special agreement which they have concluded. Each one of these Powers shall have the right to take part in the proceedings. If one or more among them avail themselves of this permission, the interpretation in the judgment becomes obligatory upon them also.

Joinder of other Powers in the litigation.

Article 57. Each party shall bear its own expenses and an equal part of the expenses of the tribunal.

Expenses.

The term "expenses of the tribunal" is here understood to include the pay of the arbitrators themselves. There are other expenses which can only be determined in each case by the tribunal itself. In others again the administrative council at

The Hague may adopt, if necessary, a tariff and all parties will be bound thereby.

Ratification.

ARTICLE 58. The present convention shall be ratified with as little delay as possible. The ratifications shall be deposited at The Hague. An official report of each ratification shall be made, a certified copy of which shall be sent through diplomatic channels to all the Powers re resented in the Peace Conference at The Hague.

Adherence by Powers represented at the Conference.

ARTICLE 59. The Powers which were represented at the International Peace Conference but which have not signed this convention may become parties to it. For this purpose they will make known to the Contracting Powers their adherence by means of a written notification addressed to all the other Contracting Powers.

Adherence by other Powers.

ARTICLE 60. The conditions under which Powers not represented in the International Peace Conference may become adherents to the present convention shall be determined hereafter by agreement between the Contracting Powers.

This Article gave rise to serious and at times spirited debate in the Committee on the Final Act, to which reference will be made hereafter.

As the Article stands, the unanimous assent of all the signatory Powers is necessary, either to the adhesion of any non-signatory Power or to the making of an agreement regarding all non-signatory Powers and their future adherence.

Withdrawal.

ARTICLE 61. If one of the High Contracting Parties shall give notice of a determination to withdraw

from the present convention, this notification shall have its effect only after it has been made in writing to the Government of The Netherlands and communicated by it immediately to all the other Contracting Powers. This notification shall have no effect except for the Power which has made it. Chapter V

This treaty was signed on July 29 by the representatives of sixteen Powers; namely, Belgium, Denmark, Spain, the United States of America, the United States of Mexico, France, Greece, Montenegro, the Netherlands, Persia, Portugal, Roumania, Russia, Siam, Sweden and Norway, and Bulgaria. It has since been signed and ratified by all the Powers represented at the Peace Conference. The United States Senate, on February 5, 1900, ratified it unanimously. Signatures and ratifications.

On September 4, 1900, the solemn deposit of the ratifications took place in the Netherlands Ministry of Foreign Affairs at The Hague, and the first steps toward the organization of the Court were taken. Deposit of ratifications.

At that time the Russian members of the International Court of Arbitration had been announced, comprising M. de Martens, Count Mouravieff, Minister of Justice and brother of the late Minister of Foreign Affairs who signed the call for the Conference, M. Fritsch, President of the Senate, and M. Pobyedonoszeff, Procureur-General of the Holy Synod. First appointments to the Court.

It was also announced that President McKinley had appointed Ex-Presidents Benjamin Harrison and Grover Cleveland as two of the American members of the Court; the latter however declined, while the former accepted the appointment.

CHAPTER VI

THE IMMUNITY OF PRIVATE PROPERTY ON THE HIGH SEAS

The policy of the United States.

THE Government of the United States of America has for many years advocated the exemption of all private property, not contraband of war, from capture on the high seas. Considering that the chief reason for the calling of the Peace Conference was the burden and cruel waste of war, which nowhere affects innocent private persons more severely or unjustly than in the damage done to peaceable trade and commerce, especially at sea, the American Government considered that the question of exempting private property from destruction or capture on the high seas was evidently a most proper one for consideration.[1] Accordingly, the American representatives were 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 into the permanent law of civilized nations.

[1] A compilation of expressions of opinion on the subject on the part of public men and the press in the United States, edited by Charles Henry Butler, Esq., was printed by the Department of State in pamphlet form, and a copy was sent to each member of the Conference.

Difficulties in the way.

An informal inquiry, made in the early days of the Conference, soon convinced the American Commissioners that it would be impossible to secure unanimity upon this question. It was even contended that the subject itself was not germane to the discussions, as it had not been expressly mentioned in the circular of Count Mouravieff of December 30, 1898. This contention was vigorously combated by the American representatives in private discussions with other delegates, and finally the following communication was addressed to the President of the Conference: —

Memorial of the American Commission.

"JUNE 20, 1899.

"TO HIS EXCELLENCY, M. DE STAAL, *Ambassador, etc., etc., President of the Peace Conference.*

"*Excellency*,—In accordance with instructions from their Government, the Delegation of the United States desire to present to the Peace Conference, through Your Excellency as its President, a proposal regarding the immunity from seizure on the high seas, in time of war, of all private property except contraband.

"It is proper to remind Your Excellency, as well as the Conference, that in presenting this subject we are acting not only in obedience to instructions from the present Government of the United States but also in conformity with a policy urged by our country upon the various Powers at all suitable times for more than a century.

"In the Treaty made between the United States and Prussia in 1785 occurs the following clause: —

"'Tous les vaisseaux marchands et commerçants, employées à l'échange des productions de différents endroits, et, par conséquent, destinés à faciliter et à répandre les nécessités, les commodités et les douceurs de la vie, passeront librement et sans être molestés. . . . Et les deux Puissances contractantes s'engagent à n'accorder aucunes commissions à des vaisseaux assurés en course, qui les autorisent à prendre ou à détruire ces sortes de vaisseaux marchands ou à interrompre le commerce.' (Art. 23.)

"In 1823 Mr. Monroe, President of the United States, after discussing the rights and duties of neutrals, submitted the following proposition:—

"'Aucune des parties contractantes n'autorisera des vaisseaux de guerre à capturer ou à détruire les dits navires (de commerce et de transport), ni n'accordera ou ne publiera aucune commission à aucun vaisseau de particuliers armé en course pour lui donner le droit de saisir ou détruire les navires de transport ou d'interrompre leur commerce.'

"In 1854 Mr. Pierce, then President, in a message to the Congress of the United States, again made a similar proposal.

"In 1856, at the Conference of Paris, in response to the proposal by the greater European Powers to abolish privateering, the Government of the United States answered, expressing its willingness to do so, provided that all property of private individuals not contraband of war, on sea as already on land, should be exempted from seizure.

"In 1858, under the administration of Mr. Bu-

chanan, then President, a Treaty made between the United States and Bolivia contemplated a later agreement to relinquish the right of capturing private property upon the high seas. Chapter VI

"In 1871, in her Treaty with Italy, the United States again showed adhesion to the same policy. Article 12 runs as follows: —

"'The High Contracting Parties agree that, in the unfortunate event of a war between them, the private property of their respective citizens and subjects, 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 either party; it being understood that this exemption shall not extend to vessels and their cargoes which may attempt to enter a port blockaded by the naval forces of either party.'

"It may be here mentioned that various Powers represented at this Conference have at times indicated to the United States a willingness, under certain conditions, to enter into arrangements for the exemption of private property from seizure on the high seas.

"It ought also to be here mentioned that the doctrine of the Treaty of 1871 between Italy and the United States had previously been asserted in the Code of the Italian Merchant Navy as follows: —

"'La capture et la prise des navires marchands d'un État ennemi par les navires de guerre seront abolies par voie de réciprocité à l'égard des États qui adoptent la même mesure envers la marine marchande

italienne. La réciprocité devra résulter de lois locales, de conventions diplomatiques, ou de déclarations faites par l'ennemi avant le commencement de la guerre.' (Art. 211.)

"And in the correspondence with Mr. Middleton, the Representative of the United States at the Russian Court, Count Nesselrode, so eminent in the service of Russia, said that the Emperor sympathized with the opinions and wishes of the United States, and that, 'as soon as the Powers whose consent he considers as indispensable shall have shown the same disposition, he will not be wanting in authorizing his ministers to discuss the different articles of an act which will be a crown of glory to modern diplomacy.'

"In this rapid survey of the course which the United States have pursued during more than a century, Your Excellency will note abundant illustration of the fact above stated — namely, that the instructions under which we now act do not result from the adoption of any new policy by our Government, or from any sudden impulse of our people, but that they are given us in continuance of a policy adopted by the United States in the first days of its existence and earnestly urged ever since.

"Your Excellency will also remember that this policy has been looked upon as worthy of discussion in connection with better provisions for international peace, not only by eminent statesmen and diplomatists in the active service of various great nations, but that it has also the approval of such eminent

recent authorities in international law as Bluntschli, Pierantoni, De Martens, Bernard, Massé, De Laveleye, Nys, Calvo, Maine, Hall, Woolsey, Field, Amos, and many others. Chapter VI

"We may also recall to your attention that the Institute of International Law has twice pronounced in its favor.

"The proposition which we are instructed to present may be formulated 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. Text of the proposed article.

"'La propriété privée de tous les citoyens ou sujets des Puissances signataires, à l'exception de la contrabande de guerre, sera exempte en pleine mer ou autre part de capture ou de saisie par les navires armés ou par les forces militaires des dites Puissances. Toutefois cette disposition n'implique aucunement l'inviolabilité des navires qui tenteraient d'entrer dans un port bloqué par les forces navales des susdites Puissances, ni des cargaisons des dits navires.'

"As regards the submission of this question to the Conference at this time, we most respectfully present the following additional observations.

"At the second session of the Conference held on

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Text of the proposed article.

the 20th of May, it was decided in connection with the establishment of the three Commissions to which were referred the various articles of the Russian circular of December 30, 1898/January 11, 1899, as follows: —

"'Il est entendu qu'en dehors des points mentionnés ci-dessus, la Conférence ne se considère comme compétente pour l'examen d'aucune autre question. En cas de doute la Conférence aurait à décider si telle ou telle proposition émise dans les commissions rentrerait ou non dans le cadre tracé par ces points.'

"The fact that we have received the instructions herein referred to, from the President of the United States, shows that the scope of the Conference was believed by our Government to be wide enough to include this question.

"The invitation from the Government of the Netherlands in response to which we are here invites us as follows, 'afin de discuter les questions exposées dans la seconde circulaire russe du 30 decembre 1898/11 janvier 1899, *ainsi* que toutes autres questions se rattachant aux idées émises dans la circulaire du 12/24 août 1898; avec exclusion, toutefois, des délibérations de tout ce qui touche aux rapports politiques des États ou à l'ordre de choses établi par les traités.'

"We respectfully submit that a rule of war relating to the amelioration of its hardships as practised upon the sea attaches as fairly to the ideas put forth in the Russian circular of August 12/24, 1898, as the stipulations of the Geneva Convention or the

Rules of War relating to operations on land of the Brussels Conference of 1874. If the Russian circular of December 30, 1898/January 11, 1899, did not specifically mention this question, the Government of the United States has assumed that it was because the Russian Government wished the Conference to decide for itself whether the question should be discussed.

"It would certainly appear from the foregoing statements that there is here at least a case of doubt calling for submission to the Conference as is contemplated in the resolution adopted by the Conference on the 29th of May, and in view of this fact the Delegation of the United States of America respectfully request that the matter be submitted by Your Excellency to the proper Commission or to the Conference itself, that it may be decided whether our proposal is among those which should now be considered.

"In submitting this request allow us to present to Your Excellency the assurance of our most distinguished consideration.

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

This letter was referred by the President to the Second Committee, and at the meeting of the full

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Speech of M. de Martens.

Conference on July 5, M. de Martens of Russia, in a speech in which he paid a hearty tribute to the historic adherence of the United States to the great principle concerned, reported from this Committee that the Committee did not consider itself competent to discuss the subject, and that it was therefore not ready to consider the question upon its intrinsic merits, but that it had instructed him to report in favor of a resolution, to be adopted by the Conference, expressing the hope that the whole subject would be included in the programme of a future Conference.

Ambassador White, the President of the American Commission, thereupon made the following speech : —

Speech of Ambassador White.

"Mr. President : — The Memorial which I have had the honor of presenting to the Conference shows that for more than a century the Government of the United States has steadily and earnestly endeavored to secure the adoption of the principle therein advocated, namely : the principle of immunity from seizure in time of war of all private property, except contraband.

"In heartily responding to the appeal of His Majesty, the Emperor of Russia, and to the invitation of the Government of the Netherlands to take part in this Conference, my Government desired not only to give its support to the main purposes announced in the Imperial Circular, but to place this principle once more before the world, in the hope that it might be definitely incorporated into International Law.

"The Commission have found several of the delegations ready to accept this proposal, and sundry

others whose opinions evidently incline toward its adoption, but we have not succeeded in securing a support sufficiently unanimous to justify us in pressing the matter further during the present Conference.

"The doubt generally entertained as to the competence of the Conference in relation to this question, — a doubt based upon the terms of the invitation which has brought us together, — the fact that the delegates of various great Powers have not been furnished with special instructions bearing upon this subject, and, above all, the necessity which the Conference evidently feels of giving all possible time to those great questions which, at present, more directly interest the nations, — all these circumstances make it evident that we cannot expect of this body at its present session a positive and final action regarding this subject.

"But, though we are obliged, with sincere regret, to recognize this fact, our instructions impose upon us the duty to do all that lies in our power to the end that this great question may not be forgotten, but remain impressed upon the nations here represented.

"We have not given up the hope of seeing it reach a happy solution. Nothing is more evident than the fact that eminent thinkers in the domain of International Law are more and more inclining to the doctrine which our Memorial advocates. More and more, also, it is becoming clear to the world at large, that the adoption of this principle is in the interest of all nations, and it is also more and more distinctly

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Speech of Ambassador White.

seen that every obligation to abstain from privateering is vain, save under the broad principle that all private property upon the high seas, with the exception of contraband of war, should be exempt from seizure; that the two methods of injuring an enemy in time of war are logically connected — that to secure the abolition of one it is necessary to concede the other. Your eminent predecessor in the representation of the Russian Empire at a conference of great Powers, Count Nesselrode, expressed not only the profound conviction of a statesman and diplomatist but a great truth which is steadily gaining upon the world when he said, 'The adoption of the declaration in favor of this immunity which the United States has proposed, and which it steadily supports, would be a crown of glory to modern diplomacy.'

"I am aware that an opposing argument has been used which, at first view, would seem to have considerable force, namely: that even if immunity be granted to private property, in so far as it is not contraband of war, a new question more intricate would immediately arise, namely: that of defining what is to be understood to-day as contraband of war. And we are reminded that, in a recent war between two great Powers, coal, breadstuffs, rice, and even merchant ships were regarded as contraband. But I certainly do not need to tell such an intelligent body as this, made up of men accustomed to great and difficult negotiations, that the difficulties in the way of a second step in a matter of this kind do not

constitute an argument which should prevent our taking the first step. The wiser view would seem to be to take the first step, and having taken that, to determine how we can take the second.

"Nor can I deny that efforts in behalf of the cause which we maintain have been weakened by some injudicious arguments. It must be acknowledged that more harm than good has been done by some of the arguments which liken private property on the sea, in all respects, to private property on land, in time of war. But this proves nothing against the overwhelming mass of arguments which, if this were the proper time and place for their presentation, could be cited in favor of our proposal. If the merits of the question itself were under discussion at this moment, if there were not other subjects upon which the attention of the world is concentrated and which absorb our activity, I would call your attention to the immense losses to which all nations are exposed under the present system, and to the utter uselessness of these as regards their influence on the final decision of great international questions. A mere glance over the history of the Confederate cruisers during the American Civil War shows how serious would be the losses to the Powers directly interested, and how ineffective the result under the present system. Only three of the Confederate cruisers did any effective work; their prizes amounted to 169 ships; the premium of Insurance between the United States and Great Britain increased from 30 shillings per ton to 120 shillings; American mer-

The lesson of the American Civil War.

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Speech of Ambassador White.

chant ships, aggregating nearly a million of tons, were driven under the British flag; and the final result was the almost total disappearance of the merchant navy of the United States. If such a result was obtained by the operations of three little vessels, far from being of the first class, and poorly equipped, what would happen with the means which are to-day at the disposal of great nations? Yet all the world knows that this employment of privateers, and all the enormous loss thereby occasioned, had not the slightest effect upon the termination or even toward the shortening of the Civil War. If the loss had been ten times as great they would still have contributed nothing toward ending the contest. All that was immediately effected was simply the destruction of a great mass of property belonging to the most industrious and meritorious portion of our population, resulting in the ruin of our sailors who had invested in their vessels all their hard-earned savings. The more remote general effect was to leave throughout our country a general resentment, sure to be the cause of new wars between the United States and Great Britain, had not a wise treaty of arbitration removed it. The only effective measure for terminating war by the action of a navy is the maintenance of a blockade.

"In these days transportation of merchandise by land has so developed that the interruption of such transport by sea cannot, in general, contribute toward hastening the end of the war, but the effect may be so great in the destruction of wealth accumu-

lated by human industry, as to require generations to repair the loss, and thus the whole world is made to suffer.

No separate interests on the part of the United States.

"Mr. President and Gentlemen of the Conference: the American Delegation is not, in this matter, advocating the particular interests of our own country. We know well that under existing circumstances if war should break out between two or more European Powers, there would immediately be an enormous transfer of freight and vessels to neutral countries, and that from this the United States, as in all probability one of these neutral countries, would doubtless reap enormous pecuniary advantages. But my Government lays no plans for gaining advantages of this sort. Might I not be permitted here to say that a characteristic trait of my fellow citizens has been imperfectly understood in Europe. Europeans suppose generally, that the people of the United States are an eminently practical people. That is true, but it is only half the truth. The people of the United States are not only devoted to practical aims, but they are even more devoted to ideals. There can be no greater error in considering the United States, or in dealing with them, than to suppose that American citizens are guided solely by material interests. Our own Civil War shows that, from first to last, material considerations were entirely subordinate to ideal, and that nearly a million of lives, and almost ten thousand millions of dollars, were freely sacrificed to maintain the ideal of our union as a Nation, and not as a mere confederation of petty states.

"I do not say this boastfully, but I say it that you may know what I mean when I say that the people of the United States are not only a practical people, but idealists as regards this question of the immunity of private property on the high seas. It is not a question of merely material interest for us; it is a question of right, of justice, of progress toward a better future for the entire world, and so my fellow countrymen feel it to be.

"In the name, then, of the Delegation of the United States, I support the motion to refer the whole question to a future conference. And in doing so permit me, in the name of the nation which I represent, to commend the consideration of this whole subject to all those present in this Conference, and especially to the eminent lawyers, to the masters in the science of International Law, to the statesmen and diplomatists of the various countries here represented, in the hope that this question may not only be contained in the programme of the next Conference which shall be assembled, but that it shall receive thorough discussion based upon full examination of the many questions involved, and from all points of view. The solution of this great question will be an honor to all those who have participated or who shall participate in it, and a lasting benefit to all the nations of the earth."

Upon motion of M. Rahusen of Holland the speech of Mr. White was spread *in extenso* upon the minutes.

Speech of Count Nigra.

Count Nigra of Italy cordially supported the proposition of the Second Committee, as reported by M. de Martens. He called attention to the fact that the Italian Government did not only proclaim its respect for private property on the high seas diplomatically, but had sanctioned the principle in its laws. He referred particularly to an article in the Treaty of Commerce between Italy and the United States, which provides, under the reserve of reciprocity, a recognition of the inviolability of such property. He desired that official notice should be taken of this declaration. The President directed the declaration to be entered upon the minutes, and announced that the question now was upon the adoption of the report of the Committee.

Abstention of Great Britain and France.

Lord Pauncefote of England announced that in the absence of instructions from their Government, the British delegates were obliged to abstain from voting. M. Bourgeois of France made a similar declaration on behalf of himself and his colleagues. Thereupon the report of the Committee was adopted unanimously, and, in the language of the American Commission, in their report, "the way is paved for a future careful consideration of the subject, in all its bearings, and under more propitious circumstances."

CHAPTER VII

THE CONFERENCE FROM DAY TO DAY; ADDRESSES, COMMUNICATIONS; DELEGATIONS FROM OUTSIDE SOURCES. THE QUESTION OF ADHERENCE. THE CLOSING SESSION.

A HISTORY of a diplomatic gathering like the Peace Conference would be incomplete without some reference, however brief, to its daily and social life and surroundings.

No ostentation or display.

Beyond the decorations of the opening day, and the continued flying of flags of the various delegations at their hotels, there was little to attract the notice of the average resident or stranger at The Hague, or to inform him that anything unusual was going on. The Conference was eminently a businesslike body, without ostentation or display of any kind. On two occasions only, namely, at the reception by the Queen at the Palace in The Hague and at the Royal dinner at the palace in Amsterdam, did the members appear in full uniform. At all other times the spectacle of about one hundred strangers walking or driving about in the streets and parks, and at Scheveningen, was not of a kind to impress the imagination or to attract particular attention. The meetings, which were usually held from ten o'clock in the morning until noon, and

from two until five or six o'clock in the afternoon, were so arranged, that in general no single member of the Conference should be required to attend more than four or five meetings during the week, but this rule was by no means absolute, and especially the expert members of the First and Second Committees were kept extremely busy from day to day during the term of their deliberations. Chapter VII

The Netherlands Government extended a hospitality which could not have been more complete, more thoughtful, or more generous. One of its pleasantest features was certainly the daily luncheon at the House in the Wood, sumptuously served, and affording an opportunity of daily intimate and unrestrained personal intercourse and acquaintance, the value of which can hardly be overestimated. The grouping of the various delegates at the luncheon tables changed from day to day, with the result that rarely if ever has a gathering of this size and character been attended with such complete personal acquaintance among all the members, even those whose duties and tastes were most diverse. The hospitality of the Netherlands Government

On the evening of May 24, Their Majesties the Queen of the Netherlands and the Queen Mother gave a grand *soirée* in honor of the Conference at the Royal Palace at The Hague. Besides the members of the Conference, the Diplomatic Corps and the entire court society of The Hague had been invited, and the scene was one of great brilliancy. Before the general reception the members of the Conference were individually presented to Their Majes- Royal reception and dinner.

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ties, who spoke to each of them most gracious words of welcome. On July 6, Their Majesties gave a state dinner in honor of the Conference at the Royal Palace in Amsterdam, the guests being conveyed to and from Amsterdam by special train. At this occasion the members were again presented to Their Majesties, who congratulated them upon the progress of their work, and after the dinner Queen Wilhelmina proposed the toast to the health of all the Sovereigns and heads of state represented at the Conference. In response Baron de Staal proposed the health of Their Majesties, which toast it is needless to say was received with great enthusiasm.

Festivities.

On May 27 the Burgomaster and Municipal Council of The Hague gave a grand concert to the Conference, in the Hall of Arts and Sciences, and on June 17 the Netherlands Government gave a musical and artistic festival, the climax of which was an historical dance illustrating the costumes of the various Dutch provinces. A great floral and equestrian fête and contest at Haarlem on June 4 was also given in honor of the Conference, and will remain a most beautiful recollection for all who were privileged to take part. The same is true of the grand concert and ball at Scheveningen, given by the *Societé des Bains de Mer de Scheveningue* on June 12.

Private hospitality.

Besides these entertainments it is needless to add that official society at The Hague was profuse in its social attentions, and the same is true of the Diplomatic Corps, whose members vied with each other in

making the stay of their visiting colleagues agreeable. A full description of the celebration of the anniversary of American Independence on July 4, at Delft, will be found in the Appendix, together with the addresses delivered on that occasion. The present writer ventures to hope that the remembrance of this festival will not be the least pleasant among the recollections of the members from other countries. Chapter VII

The Conference took a recess from July 7 to 17, for the purpose of giving the various delegations an opportunity of consulting their Governments, especially with reference to the Arbitration Treaty. On the part of the Japanese Delegation, this involved cabling the entire text of the Treaty to Tokio, the cost of the cablegram, according to information received, being 35,000 francs. This incident is here referred to as an illustration of the care with which the work was done, and the seriousness with which it was regarded. It may also serve to illustrate the completeness with which the great and enterprising Empire of the far East entered into judicial relations with the rest of the civilized world. In view of later events in China, it should also be remarked that the distinguished Chinese delegate and his associates followed the discussions most carefully, as was stated to the Conference on July 27 by Lou Tseng Tsiang. China did not, however, ratify the Treaty on the Laws and Customs of War. Recess. The interest shown by Japan. The Chinese attitude.

The distinguished first Chinese delegate, Yang Yu, was the author of two *mots*, which deserve to be

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Two *mots* by Yang Yu.

included in this record. After a session of the Arbitration Committee devoted to apparently fruitless debate, Yang Yu, in descending the steps of the House in the Wood with one of the American delegates, pointed back to the meeting room, and sadly but smilingly shaking his head remarked, "Too much talkee-talkee, too little doee-doee." It may confidently be assumed that the report of this bit of Oriental philosophy, as applied to the progress of the Conference up to that date, had considerable effect in thereafter accelerating the progress of the debates, and in bringing about an agreement. When the articles concerning Mediation were translated and explained to Yang Yu, he thoughtfully but solemnly nodded his assent, but remarked that the articles seemed incomplete, in that they ought to provide that the mediating Power should not "charge too high a price for its services in the cause of humanity." When it is remembered that the Chinese diplomat was speaking to a continental delegate, a mischievous twinkle of his eye may be imagined, as he made this allusion to the various compensations in the way of harbors and territory, which the celestial empire was obliged to pay for the mediation of the Western Powers at the end of the Japanese-Chinese war.[1]

Addresses and communications.

At an early session of the Conference, a committee, consisting of Jonkheer van Karnebeek, M. Mérey de Kapos-Mére of Austria-Hungary, M. Eyschen of Luxemburg, M. de Basily of Russia, and M. Roth of Swit-

[1] Another record in lighter vein may be permitted, being a copy of the menu of the farewell dinner of the *Comité d'Examen*. The origi-

zerland, was appointed to examine and report upon the communications which had been received, addressed to the Conference from outside sources. It may well be imagined that the number of these communications was very great. They consisted of addresses, letters, and cablegrams, most of them containing an expression of the wishes of the senders for the success of the Conference. Furthermore, a great number of societies favoring disarmament, arbitration, or peace in general sent pamphlets or

nal was illustrated with a characteristic drawing by the chairman, M. Bourgeois, and read as follows: —

July 25, 1899

HOTEL D'ORANGE

PROCÈS-VERBAL (TRÉS CONFIDENTIEL)

Conflit de Hors d'œuvres
Potage médiation
Consommé Protocol final
Filet de bœuf aux bons offices
Tourne dos á la guerre
Arbitrage de volailles
Cailles rôties sur enquéte
Salade au Compromis
Liste d'artichauds, sauce facultative
Revision de pêches sans appel
Bombes glacées
Litige de pâtisseries
Fruits de circonstances
Fromages asphyxiants
Dessert amical

Vin obligatoire

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books, many of them containing plans for an international court of arbitration, or for an agreement for disarmament or a limitation of armaments.

Pamphlets and projects.

Most of these pamphlets were also addressed to the individual members of the Conference, and while many of them were wholly impracticable and absurd in their notions,[1] an acknowledgment is certainly due to the senders of some of the others, for the real assistance which their work afforded to the members of the Conference. This is more especially true of the book entitled "International Tribunals, a Collection of the various schemes which have been propounded and of instances, since 1815," by W. Evans Darby, LL. D., Secretary of the Peace Society, and published by the Peace Society of London. This book was found to be of great practical use by the members of the *Comité d'Examen*, and it will continue to be extremely valuable to students of International Law, who may hereafter compare the schemes therein set forth with the treaty adopted by the Conference. The plan for an International Tribunal, carefully elaborated by a committee of the New York State Bar Association, which consisted of Messrs. W. Martin Jones, William D. Veeder, and Edward G. Whitaker, was almost identical with the plan proposed on behalf of the American Government, and was distributed, together with a memorial

[1] A plan for a governmental Insurance Company to underwrite losses sustained in any war declared to be "just" by the directors of the Company; and a proposition to elect Prince Eitel Friedrich, the second son of the German Emperor, king of France, in the interests of peace, may be cited as representative examples.

and various other papers, to all members of the Conference. Chapter VII

Communications to the American Commission.

It may be added that the American Commission received a very large number of telegrams and letters expressing sympathy and good wishes, and emanating from the most diverse sources. Every one of these messages was gratefully acknowledged, and their reception not only upheld the hands of the American Commission, but also made a more or less profound impression upon the members of the Conference from other countries, who regarded the interest of the great New World Power of the West in the cause of peace and arbitration, as a most significant and important sign of the times. Besides all of these communications, appertaining to the proper work of the Conference, the latter was, naturally, perhaps, flooded with appeals and propositions not in the least germane to its object. In many cases written or printed appeals were followed up by the appearance of representatives or delegations from nearly every oppressed nationality of the world. The Poles, Finns, Armenians, Macedonians, and Young Turks — to mention no others — sent representatives asking for action on the part of the Conference in behalf of their fellow citizens, and basing their arguments upon very simple logic. Peace, they one and all declared, was not permanently possible without justice; and justice, they protested, would not be completely established until their own particular aspirations had been satisfied. Several of them endeavored to emphasize their requests by the

Appeals of oppressed nationalities.

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positive threat that unless they were given what they considered a fair hearing, they would seize the occasion of the Peace Conference as a most fitting time for a revolutionary outbreak, which they hoped would embarrass the Conference and turn it into a laughing-stock. This is not the occasion to inquire into the merits of any of the cases so eloquently pleaded before the separate delegations, especially before the American Commission, nor was it possible at The Hague to enter into any discussion with the sincere and earnest advocates of these various causes upon the subject of the alleged bad faith or general wickedness of this or that Power represented at the Conference.

Pathological observations.

In the study of political pathology it is both interesting and sad to observe how the feeling of oppression and injustice blinds the vision of its victims, so that they refuse to see not only any possible good on the part of their oppressors, but also the impossibility of any attainable progress which does not relieve their own immediate necessities. Every meritorious cause, in the whole world, racial, political, or otherwise, is benefited, or most assuredly not injured, by the results of the Peace Conference. But to the minds of many of the sincere and honest men who could not see that they were demanding impossibilities, the Conference itself, by turning the cold shoulder upon their appeals, appeared to be giving a stone where bread was legitimately asked and confidently expected.

Disappointment at the results of the Conference

was also expressed, and was probably sincerely felt, on the part of many so-called "friends of peace," who held that too many concessions were made to what they were pleased to call the "evil spirit of war." The Conference did not denounce war in general terms, nor did it declare it or believe it to be evil under all circumstances. It is not recorded that the directors of a new railway, at the time of the first introduction of this mode of transportation, found it necessary to denounce stage-coaches, or that they regarded horses as worthy of being condemned forever and under all circumstances. They contented themselves, it may be assumed, with furnishing a better alternative, and thus allowed full play to the force of events.

Disappointment of some "friends of peace."

It was a conference of practical men of affairs, not of dreamers and enthusiasts, which sat at The Hague, and its work is to be judged accordingly.

Up to the very last day there was danger that unanimity in the adoption, especially of the Arbitration Treaty, would after all be broken by a negative vote on the part of one of the great Powers, which would inevitably have been followed by similar votes on the part of several of the minor Governments represented. When on July 25, the Arbitration Treaty, under the reserve of the declaration of the United States, was finally adopted unanimously, a sigh of relief was heaved by all of the delegates who were most concerned in the preparation of the Treaty and the settlement of the various disputed questions which threatened up to the last to wreck their entire

Last dangers of disagreement.

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labor. The substance of the work, representing all that was attainable, had been finally secured, and there remained but one more question, relating, indeed, entirely to form, but still of far-reaching importance. This was the agreement as to terms upon which Powers not represented at the Peace Conference should be permitted to adhere to the Treaty.

The Question of Adherence

Powers not invited.

Of the independent Governments of the world, the Central and South American Republics, the Sultanates of Morocco and Muscat, the Orange Free State, the Principality of Monaco, the Republic of San Marino, and the Kingdom of Abyssinia, were the only ones not represented in the Peace Conference. There could be no possible objection to the adherence of any one or all of them to the declarations of the Conference, and to the treaties regarding the laws and usages of war, and to the extension of the Geneva Rules to naval warfare. A very different question, however, was presented with reference to the Arbitration Treaty, for the latter not only imposes obligations upon the Signatory Powers, but also confers certain rights — notably the right to appoint members in good and regular standing of the Permanent Court of Arbitration — thus implying for each appointing State an absolute recognition of its independence and international status.

Attempt to open the door to Powers claiming sovereignty.

In the Committee on the Preparation of the Final Act, to which was also referred the preparation of the formal part of the various treaties and declarations, an attempt was made to insert a provision into

the Arbitration Treaty which would have enabled any Government claiming independence and an international status to further its own ends, even against the consent and without the approval of other Signatory Powers, by simply declaring its adherence to the Treaty, and demanding recognition for its appointees upon the list of judges. It was at this point alone that the Conference was directly confronted with a political question which might easily have become of great and immediate danger. It is needless to say that the interests chiefly affected were those of the Pope, whose claims to temporal power, independence, and an international status, are recognized either explicitly or impliedly by a number of the Signatory Powers, while others cannot consider him in any other light, so far as international law is concerned, than as a private individual, enjoying certain immunities under the municipal law of Italy. Instantly similar pretensions on the part of the Transvaal, and possibly also of an alleged Filipino Republic, might have been involved, and for the future the door would have been left open for most embarrassing questions, arising from revolutions in any country, enjoying various degrees of success.

Attitude of the United States.

The point of view maintained by the United States of America was that of strict legal propriety, and of an absolute recognition of the great principle of complete sovereignty of all independent States.[1] This

[1] The British Government held the same view, as is evidenced by the following despatch from Lord Salisbury to Lord Pauncefote, dated July 27 (Blue Book, p. 221): —

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Attitude of the United States.

involves the almost self-evident truth that no obligation, however slight or insignificant, can ever be put upon a Sovereign State against its own consent, except by an impairment of its sovereignty. The right to recognize other Powers, or to withhold such recognition at will, is one of the fundamental attributes of sovereignty, and it is not impaired but only exercised when a State deliberately enters into a limited federation or union with other States for a particular purpose; for such adhesion implies a mutual recognition on the part of all members of such federation or union. It follows beyond question that this membership cannot be conferred upon any outsider without the consent of all previous members. The veto of one must be as effective as that of a majority, without regard to size or power, otherwise there would have been an abdication of an essential part of sovereignty.

This view finally prevailed unanimously.

As a partial consolation for what must have been

"I authorize you and Sir Henry Howard to sign the Final Act, but if any words are contained in the instrument implying the consent of Great Britain to the subsequent adhesion of other Governments without any general consent, a reservation to the following effect should be made by you.

"It is impossible for Her Majesty's Government to admit that Great Britain, except with her own consent, formally conveyed in the usual manner by the signature of Her Majesty's Plenipotentiary, can come under conventional obligations to another Government. Unless the consent of Great Britain has been previously obtained, any intimation of adhesion to this Convention by any Government or person but the Plenipotentiaries now signing it will be regarded as *non avenue* so far as Great Britain is concerned."

a bitter and keen disappointment, the Dutch Government insisted upon connecting the name of the Pope with the records of the Peace Conference by formally requesting the President, at the last session, to read the correspondence between the Queen of the Netherlands and the Pope, at the time of the opening of the Conference. Chapter VII Disappointment of the Pope.

These letters are given below, in full. Coming from the hosts of the Conference, such a request could not, in courtesy, be refused, and the correspondence was therefore spread upon the minutes, although it is difficult to see what other object was attained by this remarkable proceeding, except that of emphasizing, by contrast, the thoroughly secular and eminently practical character of the entire work which was accomplished.

The End of the Conference

Ten o'clock in the morning of Saturday, July 29, had been fixed as the time for the signing of the Final Act and the various Declarations and Treaties. On this, a beautiful summer day, the members for the last time assembled in the House in the Wood. The last meetings.

The various documents, which had been beautifully engrossed, and to which the seals of the signing Plenipotentiaries had been affixed by the secretaries of the Conference, were spread out upon the large tables of the dining room of the Palace, and the Plenipotentiaries from each country were called from the meeting room of the Conference for the

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purpose of signature, in alphabetical order. This work consumed the morning; and after the final luncheon, — at which innumerable friendly toasts, hopes, and wishes for a speedy *au revoir* were exchanged, — the closing meeting of the Conference was called to order at three o'clock in the afternoon. To this meeting a limited number of representatives of the press and invited guests had been asked; and the little gallery in the cupola was accordingly crowded. The staff of each delegation was also present, and the meeting room itself presented a more animated appearance than ever before. The Prime Minister of the Netherlands, M. Pierson, attended as the special representative of the Queen, together with other officers of the royal household.

Report on signatures.

Jonkheer van Karnebeek reported upon the signatures as follows: —

1. The Final Act of the Conference was signed by all the Powers there represented.

2. Treaties: —

(A) *The Convention for the Peaceful Adjustment of International Differences* was signed by sixteen Powers, to wit: Belgium, Denmark, Spain, United States of America, United States of Mexico, France, Greece, Montenegro, Netherlands, Persia, Portugal, Roumania, Russia, Siam, Sweden and Norway, Bulgaria.

(B) *The Convention on the Laws and Customs of War on Land* was signed by fifteen Powers, to wit: Belgium, Denmark, Spain, United States of America,

France, Greece, Montenegro, Netherlands, Persia, Portugal, Roumania, Russia, Siam, Sweden and Norway, Bulgaria.

(C) *The Convention for the Extension of the Principles of the Geneva Convention to Naval Warfare* was signed by fifteen Powers, to wit: Belgium, Denmark, Spain, United States of Mexico, France, Greece, Montenegro, Netherlands, Persia, Portugal, Roumania, Russia, Siam, Sweden and Norway, Bulgaria.

3. Declarations: —

(A) *Concerning the Prohibition of the Throwing of Projectiles from Balloons.* This was signed by seventeen Powers, to wit: Belgium, Denmark, Spain, United States of America, United States of Mexico, France, Greece, Montenegro, Netherlands, Persia, Portugal, Roumania, Russia, Siam, Sweden and Norway, Turkey, Bulgaria.

(B) *Concerning the Prohibition of the Use of Projectiles containing Asphyxiating Gas.* This was signed by sixteen Powers, to wit: Belgium, Denmark, Spain, United States of Mexico, France, Greece, Montenegro, Netherlands, Persia, Portugal, Roumania, Russia, Siam, Sweden and Norway, Turkey, Bulgaria.

(C) *Concerning the Prohibition of Bullets which Expand, etc.* This was signed by fifteen Powers, to wit: Belgium, Denmark, Spain, United States of Mexico, France, Greece, Montenegro, Netherlands, Roumania, Russia, Siam, Sweden and Norway, Turkey, Bulgaria.

The President of the Conference announced that

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Correspondence between the Queen of the Netherlands and the Pope.

he had been asked by the Government of the Netherlands to read to the Conference a letter addressed by Her Majesty the Queen of the Netherlands to his Holiness, the Pope, informing him of the meeting of the Peace Conference at The Hague, as well as the response of his Holiness to this communication, as follows: —

Letter of Queen Wilhelmina.

"MOST AUGUST PONTIFF: Your Holiness, whose eloquent voice has always been raised with such authority in favor of peace, having quite recently, in your allocution of the 11th of April last, expressed those generous sentiments, — more especially in regard to the relations among peoples, — I considered it my duty to inform you that, at the request and upon the initiative of His Majesty, the Emperor of All the Russias, I have called together, for the eighteenth of this month, a Conference at The Hague, which shall be charged with seeking the proper means of diminishing the present crushing military charges and to prevent war, if possible, or at least to mitigate its effects.

"I am sure that your Holiness will look with sympathy upon the meeting of this Conference, and I shall be very happy if, in expressing to me the assurance of that distinguished sympathy, you would kindly give your valuable moral support to the great work which shall be wrought out at my Capital, according to the noble plans of the magnanimous Emperor of All the Russias.

"I seize with alacrity upon the present occasion,

Most August Pontiff, to renew to your Holiness the assurance of my high esteem and of my personal devotion. Chapter VII

(Signed) "WILHELMINA.

"HAUSBADEN, 7th of May, 1899."

"YOUR MAJESTY: We cannot but find agreeable the letter by which Your Majesty, in announcing to us the meeting of the Conference for Peace in your Capital, did us the courtesy to request our moral support for that assembly. We hasten to express our keen sympathy for the august initiator of the Conference, and for Your Majesty, who extended to it such spontaneous and noble hospitality, and for the eminently moral and beneficent object toward which the labors already begun are tending. Reply of the Pope.

"We consider that it comes especially within our province not only to lend our moral support to such enterprises, but to coöperate actively in them, for the object in question is supremely noble in its nature and intimately bound up with our August Ministry, which, through the divine founder of the Church, and in virtue of traditions of many secular instances, has been invested with the highest possible mission, that of being a mediator of peace. In fact, the authority of the Supreme Pontiff goes beyond the boundaries of nations; it embraces all peoples, to the end of federating them in the true peace of the gospel. His action to promote the general good of humanity rises above the special interests which the chiefs of the various States have in view, and,

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Reply of the Pope.

better than any one else, his authority knows how to incline toward concord peoples of diverse nature and character. History itself bears witness to all that has been done, by the influence of our predecessors, to soften the inexorable laws of war, to arrest bloody conflicts when controversies have arisen between princes, to terminate peacefully even the most acute differences between nations, to vindicate courageously the rights of the weak against the pretensions of the strong. Even unto us, notwithstanding the abnormal condition to which we are at present reduced, it has been given to put an end to grave differences between great nations such as Germany and Spain, and this very day we hope to be able soon to establish concord between two nations of South America which have submitted their controversy to our arbitration.

"In spite of obstacles which may arise, we shall continue, since it rests with us to fulfil that traditional mission, without seeking any other object than the public weal, without envying any glory but that of serving the sacred cause of Christian civilization.

"We beg Your Majesty to accept the expression of our great esteem and our best wishes for your prosperity and that of your kingdom.

"From the Vatican, the 29th of May, 1899.

(Signed) "Leo P. P. XIII."

The President stated that the text of these two letters would be inserted in the report of the meeting, and then made the following speech: —

Speech of President de Staal.

"GENTLEMEN: We have come to the end of our labors. Before we separate and shake hands for the last time, in this beautiful Palace of the Woods, I come to ask you to join me in renewing the tribute of our gratitude to the gracious sovereign of the Netherlands, whose hospitality has been so lavishly extended to us. The wishes which Her Majesty expressed recently, in a voice so charming and so firm, have been a good omen for the progress of our deliberations. May God shower his favors upon the kingdom of Her Majesty the Queen, for the good of the noble country placed under her rule. We beg M. de Beaufort — the honorary President of the Conference — kindly to lay at the feet of Her Majesty this expression of our feeling. We request also of His Excellency, and of the Dutch Government, the acceptance of our sincere gratitude for the kindly help which they have always lent to us, and which has made our task so easy. It is with sincere pleasure that I constitute myself the medium of your warmest thanks to the eminent statesmen and jurists who have presided over the labors of our committees and our sub-committees. They have shown in this work the most exceptional qualities, and we are glad to be able to congratulate them here.

"Our reporters (*rapporteurs*) are also entitled to our thanks. They have laid down in their reports, which are really masterpieces, the authorized commentaries on the accepted text. With persevering zeal our Secretariat has performed an arduous task.

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Speech of President de Staal.

To this fact the complete and faithful reports of our long and frequent meetings bear testimony.

"I must myself, lastly, thank you, gentlemen, for all the indulgent kindness which you have shown to your President. It is certainly one of the greatest honors of my life — already long — which has been given entirely up to the service of my Sovereign and of my country — to have been called by you to the Presidency of our High Assembly. In the course of years, during which I have been an attentive observer and sometimes a modest worker in relation to events which will form the history of our century, I have seen the gradual growth and influence of moral ideas in political relations. This influence has to-day attained a memorable stage. His Majesty the Emperor of Russia, inspired by the traditions of his family — as M. Beernaert happily reminded us — and stimulated by constant solicitude for the good of nations, has in a measure brought within our reach the realization of this ideal.

"Those of you, gentlemen, who are younger than your President will no doubt make further advances in the course which we are now pursuing. After so long and laborious a session, when you have before your eyes the results of your work, I shall certainly not impose upon you an historical recital of what you have accomplished at the price of so much effort. I shall confine myself to a few general considerations.

"In response to the call of the Emperor, my August Sovereign, the Conference accepted the programme outlined in the circulars of Count Mouravieff, and

made it the subject of a long and careful examination. If the First Commission, which had taken in charge military questions and the limitation of armaments and of budgets, has not reached many material results, it is because it encountered technical difficulties, and a series of considerations connected with them, which it did not regard itself competent to consider, but the Conference itself has asked the various Governments to take up anew the consideration of these themes. It unanimously agreed to the resolution proposed by the first delegate of France, to wit: That the limitation of military charges which actually weigh on the world is greatly to be desired for the increase of the moral and material welfare of humanity. The Conference also accepted all the humanitarian proposals referred to the examination of the Second Commission. Under this head it was able to satisfy the desire long expressed of extending to maritime warfare the application of principles analogous to those which form the object of the Convention of Geneva. Taking up again a work inaugurated at Brussels twenty-five years ago, under the auspices of the Emperor Alexander II., the Conference succeeded in giving a more definite form to the laws and customs of war on land. These are, gentlemen, positive results achieved after conscientious labor. But the work which opens a new era, so to speak, in the domain of International Law is the Convention for the Peaceful Adjustment of International Differences, whose first heading is 'The General Maintenance of Peace.'

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Speech of President de Staal.

"Some years ago, in bringing to a close the arbitration on the Behring Sea matter, an eminent French diplomat expressed himself as follows: 'We have tried to maintain intact the fundamental principles of that august International Law which stretches like the dome of heaven above all nations, and which borrows the laws of nature herself to protect the peoples of the earth one from another, in teaching them the necessities of mutual good will.'

"The Peace Conference, with the authority which attaches to an Assembly of civilized nations, has tried also to safeguard, in questions of prime interest, the fundamental principles of International Law. It took for its task their definition, their development, and their more complete application. It has created, on several points, new laws answering to new necessities, to the progress of international life and the exigencies of public conscience, and to the best aspirations of humanity. Veritably it has accomplished a work which the future will call, no doubt, 'The First International Code of Peace,' and to which we have given the more modest name of 'Convention for the Peaceful Adjustment of International Differences.'

"In opening the meetings of the Conference, I pointed out as one of the particular elements of our endeavor, — as the very essence of our task, — the realizing of that progress, so impatiently expected, in regard to mediation and arbitration, and I was not mistaken in thinking that our labors in that line would assume an exceptional importance. The work

is accomplished to-day. It bears witness to the high solicitude of Governments for all that concerns pacific peaceful development of international relations, and the welfare of nations. That work, no doubt, is imperfect, but it is sincerely practical and wise. It tries to consolidate, while safeguarding both, the two principles which are the foundation of International Law, — the principle of sovereignty of individual States, and the principle of a just international comity. It gives precedence to that which unites over all which divides. It affirms that in the new era upon which we are entering the dominant factor should be good works, arising from the necessity of concord, and made fruitful by the coöperation of States seeking the realization of their legitimate interests in solid peace, regulated by justice. Chapter VII

"The task accomplished by the Conference of The Hague in this matter is truly beautiful and meritorious. It is in accord with the magnanimous statements of its august initiator, and it will have the support of public opinion, and will gain, I hope, the approval of history.

"I shall not enter, gentlemen, into the details of the Act which many of you have just signed. They are brought out and analyzed in the admirable report which is in your hands. At the present time, it is perhaps premature to judge as a whole the work which has hardly been brought to a close. We are, as yet, too near its origin; we lack the bird's-eye view. What is certain is, that this work, undertaken on the initiative of the Emperor, my August Master,

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and under the auspices of Her Majesty the Queen of the Netherlands, will develop in the future; and, as the President of our Third Commission said, on a memorable occasion: 'The further we advance on the road of time, the more clearly will its importance appear.' Gentlemen, the first step is taken. Let us unite our efforts, and profit from experience. The good seed is sown; let us await the harvest. As for me, having come to the end of my career, and to the decline of my life, I consider it a supreme consolation to see the opening of new perspectives for the good of humanity, and to be able to look forward into the bright vistas of the future."

Prince Münster thereupon spoke as follows: —

Speech of Prince Münster.

"GENTLEMEN: You will allow me, as the senior member of this assembly, to answer the eloquent words which we have just heard, and you will join me in expressing our thanks to M. de Staal and M. van Karnebeek — the President and Vice-President of the Conference. M. de Staal has greatly contributed to the success of our work, for, by his great courtesy to all of us, he was able to maintain good relations among all the delegates. It is very rare that an assembly which has lasted two months and a half can show such perfect harmony as that which has always reigned in this room.

"M. van Karnebeek has been the active principle of the Conference. He has worked more than any of us, and we owe him much. We have to thank him also for the great hospitality which we have found here, from the Throne down to the most

humble citizen. M. van Karnebeek has found inspiration in the example of his August Sovereign, who has honored us with a welcome which we shall never forget. If the Conference has not realized all of its wishes — and its desires and illusions ran high — it will at least have a great influence upon the future, and the seeds which it has sown are sure to germinate. Its particular result will then be the influence which the meeting of so many eminent men cannot fail to have upon the mutual understanding of all nations.

"This Conference will be one of our most beautiful memories, and in this recollection two names will always shine — those of M. de Staal and M. van Karnebeek. I beg you to rise in their honor."

Reply of President de Staal.

The President answered that he was deeply touched by the eloquent words which had just been spoken, and that he thanked Prince Münster from the bottom of his heart, as well as all those whose sentiments he had expressed. In the many memories which he would take away from the Conference, that of the good relations which he had sustained with all his colleagues would never leave his recollection.

Reply of Jonkheer van Karnebeek.

Jonkheer van Karnebeek said that he was equally touched by the words of Prince Münster. He hesitated nevertheless to apply these words to himself personally. If it was thought that he was able to do anything for the success of the common labors, and if he had been in any way the personification of the spirit and the work of the Conference, M. van

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Karnebeek declared that he had but reflected the spirit which filled all the delegates, and of what they themselves had accomplished.

Baron d'Estournelles de Constant expressed himself as follows: —

Speech of Baron d'Estournelles de Constant.

"With the permission of our honored President I would like to submit to the Conference a personal wish before we separate. Our work may be discussed and judged too modestly, but, as Prince Münster has just said, it will never be doubted that we have worked conscientiously for two months and a half. We came to The Hague from all parts of the globe, without knowing one another, with more of prejudice and of uncertainty than of hope. To-day many prejudices have disappeared, and confidence and sympathy have arisen among us. It is owing to this concord, born of the devotion of all of us to the common work we have done, that we have been enabled to reach the first stage of progress. Little by little it will be universally recognized that the results obtained cannot be neglected, but that they constitute a fruitful germ. This germ, however, in order that it may develop, must be the object of constant solicitude, and this is the reason why we should all wish and hope that our conference is not separating forever. It should be the beginning. It ought not to be the end. Let us unite in the hope, gentlemen, that our countries, in calling other conferences such as this, may continue to assist in advancing the cause of civilization and of peace."

Hopes for another Conference.

M. de Beaufort made the following address: —

"Before the meeting of to-day adjourns, I wish to address you in a few words: The Government has been happy to see you here. It has followed your deliberations with very great interest, and it rejoices with you that your labors have borne fruit. If the Peace Conference has not been able to realize the dreams of Utopians, we should not lose sight of the fact that in this respect it does not differ from all meetings of serious and intelligent men, having a practical end in view. If, on the other hand, it has put to shame the gloomy predictions of pessimists who see in it nothing but a generous effort, certain to exhaust itself in the recital of great wishes, it has demonstrated the justice of the view of the August Monarch who has chosen this present moment for his initiative. I do not wish at this moment to speak of the great mass of results which have been accomplished.

"It is true that a unanimous agreement on the question of disarmament could not possibly be expressed in a practicable formula, applicable to the domestic requirements of the different countries, or in harmony with their diverse needs. Let us remember on this subject the words of the great historian — the Duke of Broglie — who, a few weeks ago said, regarding the Peace Conference, 'We live in a time where it is necessary to take account more and more of the moral effect of a great measure, rather than of its material or important results.' Without doubt the moral effect of your deliberations, already evident, will make itself felt more and more, and will not fail to

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Speech of M. de Beaufort.

show itself in a striking manner, in public opinion. It will powerfully second the efforts of Governments to solve the question of the limitation of armaments. It will remain a serious and legitimate concern of the statesmen of all countries.

"Permit me, before the close, to express the hope that His Majesty, the Emperor of Russia, may find a renewal of efforts for the continuation of the great work which he has undertaken, the most effective consolation in the great and cruel sorrow which has just overtaken him.[1] For us, the recollection of your sojourn will remain forever a bright spot in the annals of our country, because we are firmly convinced that it has opened a new era in the history of international relations between civilized peoples."

The President thereupon declared that the sessions of the Peace Conference were closed, and that the meeting was adjourned without day.

[1] The death of the Heir Apparent, Grand Duke George, of Russia, on July 10.

CHAPTER VIII

THE BEARINGS OF THE CONFERENCE UPON INTERNATIONAL LAW AND POLICY

The Conference a natural consummation.

In considering the bearings of the Peace Conference and its results upon the science of International Law and upon the future policy of civilized Powers, the first fact which must be borne in mind is that the Conference itself should be regarded, historically, not as the outcome of a sudden impulse on the part of the Emperor of Russia, but as the natural and almost inevitable consummation of a movement and tendency in European diplomacy whose beginnings date back to the Peace of Westphalia.

Former schemes for Eternal Peace.

When the Conference was first called, its connection with the intellectual, scientific, and philosophic aspirations for universal and eternal peace was emphasized by innumerable articles and dissertations containing a great display of erudition and research. It seemed difficult even for the daily papers to discuss the rescript of the Emperor of Russia without allusions to the "Great Plan" of Henry IV. and Sully, the Essay of William Penn, the great work of the Abbé St. Pierre, and the famous pamphlet of Kant on "Eternal Peace." It cannot be denied that this view had a certain justification, but it wholly failed

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Diplomatic nature of the Peace Conference.

to grasp an essential characteristic of the Peace Conference, to wit: its diplomatic nature. The gathering at The Hague was the lineal descendant, so to speak, not of the innumerable Peace Congresses held in various quarters of the globe, but of the diplomatic assemblies called for the purpose of solving a present problem, and of furnishing guarantees, more or less permanent, for peace between the Powers represented, — beginning with the Conferences of Münster and Osnabrück in 1648, including those of Utrecht in 1713, of Paris in 1763, and, above all, the Congress of Vienna in 1815, and that of Berlin in 1878.

Differences between it and the Congresses of Vienna, Paris, and Berlin.

The vital distinction between these gatherings and the Peace Conference at The Hague is, that all of the former were held at the end of a period of warfare, and their first important object was to restore peace between actual belligerents; whereas the Peace Conference was the first diplomatic gathering called to discuss guarantees of peace, without reference to any particular war, — past, present, or prospective. All of the other gatherings above mentioned also had the object of affording guarantees for as permanent a peace as seemed possible at the time, and this is notably true of the Congress of Vienna, held at the close of the Napoleonic convulsion. That Congress, it should be remembered, fixed the general outlines of the boundaries between European nationalities in a manner which has scarcely been disturbed, the one important exception being the annexation of Alsace-Lorraine to the German Empire. The problem fol-

lowing the fixing of these general lines was that of national consolidation under the freest possible institutions, and the struggle for this object fills the history of the sixty years immediately following that historic gathering. When national unity and liberty had been gained by Germany and Italy, the most of Europe was able to contemplate what certainly seems to be a stable equilibrium of international relations; and this equilibrium is only slightly affected by the shifting of the Franco-German frontier on the Vosges and the Rhine. The more immediate and historic causes of friction having thus been removed, no insuperable obstacle remained to a federation of the civilized Powers, definitely organized for purposes of international justice. The time had come to make the expression "International Law" a reality, instead of the cover for a miscellaneous collection of moral precepts and rules of intercourse.

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A stable equilibrium attained.

The chief obstacle to the attainment of this object was for many years the fear that it implied an impairment of national power, especially for defence. This conviction was based upon a curious confusion between cause and effect. It was the absence of anything worthy to be called International Law which made universal military service and the highest possible efficiency in warlike preparations necessary, — not militarism and all that it implies which prevented the establishment of International Law. During the lifetime of Prince Bismarck the system of universal military service which, under his guidance, had achieved such brilliant successes,

No impairment of National Defence.

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seemed impregnable even so far as scientific discussion was concerned. To doubt its efficiency in Germany almost involved an accusation of treason, and other Continental countries followed the lead of the German Empire both in practice and in theory. In the introduction to this volume reference has been made to the extreme timeliness of the rescript of the Russian Emperor — coming after the death of Prince Bismarck and after the end of the Spanish-American war, and at a time when the shadow of a most tremendous problem in the Far East was darkening the horizon of all commercial nations.

The Magna Charta of International Law.

The application of historic terms or definitions to different ideas is generally hazardous, but it is difficult to find any valid objection to the use of the term Magna Charta of International Law for the treaty of The Hague for the Pacific Adjustment of International Differences. The significance of the Magna Charta of England lies not so much in what it contained, as in what it signified. It was the basis of all future development of English civil liberty, which up to that time had been without any satisfactory legal foundation. In the words of its greatest historian "the whole of English Constitutional History is little more than a commentary on Magna Charta." [1] It is not necessary, for the purpose of exalting the Peace Conference and its work, to depreciate the value of the science of International Law as previously understood; but every student has long been well aware of the fact that in the absence of any

[1] Stubbs, *Constitutional History of England*, 532.

ultimate legal or judicial method for the adjustment of international differences, the science itself was bound to remain fragmentary and ineffective. It was almost as though municipal law had contained only rules of action and principles of justice, but had provided no method by which these principles could be vindicated or the rules carried into effect. The keystone to the arch must ever be the provision for a peaceable method of procedure, however incomplete or unsatisfactory, for the establishment of rights and the imposition of duties.

A peaceable method of procedure.

Here is the true bearing of the work of the Peace Conference upon International Law. The provisions of the latter regarding the sovereignty of States, the inviolability of their chief executives and representatives, the rights and duties of aliens and citizens, the provisions regarding national territory and the high seas, and those regarding treaties and contracts, — in other words, the entire body of International Law in peace and war, — are all bound together by the new treaty, under which a violation of rights no longer need necessarily lead to war, but can be litigated and settled, no less efficiently because peaceably. Whatever fault may be found with the particular provisions of the treaty, the latter itself must remain the nucleus around which, by discussion and adjudication, a more perfect body of law is sure to be framed. A text-book of International Law without a careful discussion of The Hague Treaty for the Peaceful Adjustment of International Differences is hereafter quite as unthinkable as a history of Eng-

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lish Constitutional Law containing no reference to Magna Charta or the Bill of Rights.

The voluntary feature of the treaty.

Objection may be made to this analogy on the ground that inasmuch as all the proposed substitutes for war in the treaty are left entirely to the voluntary choice of the belligerents, no real advance has been made. It may be argued, and it will perhaps be said with a sneer, that there never was any obstacle in the way of governments wishing to arbitrate rather than to fight, and that the mere qualifying phrases "as far as possible," "as far as circumstances allow," etc., practically nullify the value of the articles in which they are contained. Objections such as these are equivalent to a denial of the possibility of any advance in International Law. Brief reflection will convince even the severest critic that the only other alternative to a voluntary system of arbitration must necessarily include a sanction, in the shape of an executive power or authority with sufficient force to compel adherence to an agreement for arbitration. A few advocates of the idea have even gone so far as to suggest the establishment of an international army, to act as an executive force of the proposed international court, compelling obedience to its mandates. This would, of course, mean a vital impairment of the sovereignty of all States agreeing to such a plan, and it would lead directly to a cosmopolitanism, than which nothing could have been farther from the ideas of the framers of The Hague Treaty. They were careful to leave the sovereignty of each State absolutely unimpaired, and

trusted exclusively to the force of public opinion and the public conscience for a sanction to enforce the mandates of the newly established Court. Chapter VIII

The force of public opinion.

The irresistible force of enlightened public opinion is probably felt more acutely in the United States and England than on the Continent, and that this public opinion would ever sanction a defiance of a righteous decree of the international court of arbitration is almost unthinkable. Moreover, the force of public opinion in the civilized world will be felt in each separate State, and responsible statesmen will be compelled to explain hereafter in every instance why they do not arbitrate or have recourse to peaceable methods of settlement of a controversy. To use the happy phrase of Baron d'Estournelles, "War has now been solemnly characterized as a conflagration, and every responsible statesman has been appointed a fireman, with the first duty of putting it out or preventing its spread." That, notwithstanding all these precautions, public passion may hereafter prove to be as potent an influence for war as the intrigues of monarchs and diplomats in the past, may be admitted, but it is only another mode of saying that human passions and human nature cannot be changed by any provision of law or treaty, however elaborate or however solemn. While, therefore, expectations should be moderate and prediction not too optimistic, there is absolutely no ground for despondency or even discouragement. To continue once more the simile of English Constitutional development, the signing of Magna Charta

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was by no means a finality, and tyranny and oppression were often rampant in England afterward as before. It was, however, followed in due time by the Petition of Right, the Habeas Corpus Act, and the Bill of Rights, and the great edifice of Anglo-Saxon civil liberty all over the world indicates at least the possibilities of what may hereafter arise upon the foundations laid at The Hague.

Ultimate effects independent of temporary or local conditions.

The ultimate effects of the Conference upon International Law are quite independent of temporary or local conditions. History teaches nothing more clearly than that great ideas are generally nearest their fulfilment when superficial observers, even those of great philosophical acumen, consider this very end to be hopelessly remote. Moreover, desperate attempts to justify the continued existence of an abuse, such as the indefinite increase of military burdens, usually denote the beginning of the end. Even granting that this view may be too sanguine, it cannot be doubted that the favorable impression left by the Peace Conference upon the Governments concerned will tend to induce the calling of future Conferences on particular subjects. It will hardly be denied that every international attempt to regulate or solve social or political problems is a step in advance, however modest, in the building up of International Law, — often, indeed, in direct opposition to the purposes of the particular originators. This follows, quite apart from the results attained, from the mutual recognition implied and manifested in free and open discussion.

Future Conferences.

A code of neutrality.

One of the most immediate and practicable developments in the making of International Law which may reasonably be anticipated, is a thorough scientific definition and elaboration of the rights and duties of Neutral Powers, in accordance with the "wish" adopted by the Conference on motion of the first delegate from Luxemburg.[1] No branch of International Law is in greater need of precise formulation. The very idea of neutrality is of comparatively modern origin, — it was not mentioned by Grotius and is first referred to by Bynkershoek. In the nineteenth century it assumed, for the first time, a practical and immediate importance, and at the time of the Peace Conference the possibility of an alliance between the minor, and so-called Neutral Powers of Europe, for the protection of their joint and separate interests, above all of peace, was seriously mooted. Such an alliance might easily have a determining influence in a great European crisis, and its realization would encounter obstacles which, while they are undoubtedly great, could hardly be called insurmountable. This will be rendered superfluous if the wish of the Peace Conference is fulfilled, and, beyond doubt, the most promising field for international jurists to-day is in this direction. The elaboration of a "Code of Neutrality," as it was called at Delft by President Asser of the Institute of International Law, should be the first addition to the Magna Charta of The Hague.

It will be noted that the Conference has not

[1] See ante, p. 138.

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The theory of peace and war.

attempted to change the theory of International Law in any respect, nor did it seek to modify theoretical or abstract views of peace or war. Reference has already been made to the omission to denounce or even to emphasize the horrors of warfare. The attitude of the Conference toward war in the abstract was eminently practical, and it should be most emphatically stated that it did not, even by implication, indorse the view that war is always and necessarily an evil or a wrong. It may be doubted whether a single member of the Conference would hesitate to indorse the eloquent words of James Martineau, that "the reverence for human life is carried to an immoral idolatry, when it is held more sacred than justice and right, and when the spectacle of blood becomes more horrible than the sight of desolating tyrannies and triumphant hypocrisies. . . . We have therefore no more doubt that a war may be right than that a policeman may be a security for justice, and we object to a fortress as little as to a handcuff."[1] Similarly the work of the Conference implies a definition of the word "peace," meaning infinitely more than the negation of all violence. This idea, — which may be regarded as the purely sentimental and non-resistance definition of peace, — if adopted seriously by a federation of nations, would simply mean the indefinite preservation of the *status quo*, or at least the impossibility of any change except by unanimous consent. It would be, of all possible policies, the most preposterous and

[1] *Studies of Christianity*, p. 352.

immoral, for it would abandon civilization itself to the mercy of the worst existing government. Chapter VIII

That Peace which was the ultimate goal of the Conference must be defined differently: it is the result of the reign of law and justice in international relations — the realization of that righteousness which exalteth a nation; and only ignorance or wilful blindness can deny the fact that this has often been approximated, if not achieved, as the result of horrible, bloody, and most lamentable warfare. The true definition of "Peace."

Under this definition peace, so far from being merely the pet comfort of dreamers and weaklings, becomes at once the true ideal of the bravest soldier and of the most far-seeing statesman. It no longer suggests national weakness or unreadiness, but on the contrary it encourages the highest efficiency, and everything which goes to make true national strength. The principles of international punitive justice cannot be codified or even formulated with precision, but their existence and momentous significance is not denied or ignored, even by implication, by any act of the Peace Conference. In view of the participation of Turkey and China, this fact is of special and essential importance, and it also bears directly upon the vast problem of the ultimate control and government of the tropics. International punitive justice.

At the beginning of the new century there is an unmistakable and almost instinctive groping for increased external power on the part of all the great nations of the world. To examine the philosophical The struggle for external power.

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and psychological causes of this tendency, which seems to have taken the intellectual leaders of the world completely unawares, would be a fascinating task, for which this is neither the occasion nor the place.[1] It is, however, absurd and fatuous to deny either its existence or its force. With weak or unscrupulous leadership, this movement, which undoubtedly has a commercial and material, as well as an intellectual background, may easily become the cover for sordid cruelty and selfish outrage. Believing it to be nothing more, superficial critics and moralists, especially the survivors of the commercial or "Manchester" school of thought of the last generation, have denounced it with a vehemence which is as truculent as it is unavailing.

The moral questions involved.

The moral questions involved in the relations of peoples, especially between those of materially different grades of civilization, constitute what is perhaps the most difficult theme of ethics.[2] In no sphere of thought is clearness and precision more indispensable, and the moral as well as the political problems which it contains constitute the highest tasks of the statesmen of the future. The Peace Conference certainly did not condemn the struggles which must necessarily precede the triumph of a higher civilization over that of a lower type, and

[1] A most interesting and suggestive essay on this subject by Dr. Hilty, entitled "Fin de Siècle," will be found in his *Jahrbuch*, 1899. See also Eucken, *Die Lebensanschauungen der grossen Denker*, 483.

[2] It is treated with classical brevity and clearness by the late Chancellor Rümelin of the University of Tübingen, in his address *Ueber das Verhältniss der Politik zur Moral.*, 1 *Reden und Aufsätze*, 144.

which advancing standards of conduct may soften, but can never wholly prevent. Modern civilization cannot regard the existence of uncivilized or half-civilized forces with the indifference of a St. Simon Stylites, nor will it any longer consider them from a purely commercial or missionary point of view. Moreover, it would be recreant to its trust if it did not forestall real and threatening dangers by judicious and energetic aggression.[1] This duty is not affected by the imputation of base motives, or by sneers about the necessary assumption of superiority, having, perhaps, no theoretical justification. Had the Peace Conference supported a contrary view, even by implication, its work would have been antiquated before it had ever taken effect.[2]

Aggression justified.

On the other hand, the work of the Conference is, of course, in direct and uncompromising opposition

[1] See Schlief, *Der Friede in Europa*, 21.

Professor H. von Holst, in his *Constitutional History of the United States*, in discussing the Mexican War of 1846, — a classical example of aggression, justifiable on the highest grounds, yet presenting many of the difficult problems referred to in the text, — uses this language: —

"Might does not in itself make right, but in the relations of nations and states to each other, it has, in innumerable instances, been justifiable to make right bow before might. In whatever way the ethics of ordinary life must judge such cases, history must try them in the light of their results, and in so doing must allow a certain validity to the tabooed principle that the end sanctifies the means. Its highest law is the general interest of civilization, and in the efforts and struggles of nations for the preservation and advancement of general civilization, force, not only in the defensive form but also in the offensive is a legitimate factor." (Vol. III., Lalor's translation, p. 271 ff.)

And see Hilty on the Spanish-American War, *Jahrbuch*, 1899, 126 ff., as well as Brooks Adams' *America's Economic Supremacy*.

[2] See Captain Mahan's articles on "The Peace Conference and the

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Negation of idea of war as a "positive good."

to the ideas of the "barrack-trained" pseudophilosophers, especially in Germany, who have attempted to regard war as a "positive good," a "necessary element in the Divine Government of the world," — in a sense different from pestilence, famine, or evil in general.[1] Argument seems wasted upon adherents of this view. It may, however, be said that he who draws a theoretical distinction in favor of the horrors of war as compared with other inevitable evils afflicting mankind, scarcely occupies a higher point of view than those cannibals who measure the extent of the blessings expected from their idol by the number of victims offered at its shrine.

The federation of the world, — for justice and for every universal civilized interest, — that is the idea which found its best, if not its first, illustration in the Peace Conference. The latter exemplified something akin to federal coöperation, on the part of the Powers having a disparity of size and strength measured by the difference in this respect between Russia and Luxemburg, or the United States and Servia, and having interests as diverse as those of Switzerland and Siam. They could all act together efficiently and amicably on the one secure basis of equality in International Law. It was the direct negation and

The federation of the world for justice.

Moral Aspect of War," in his *Lessons of the War with Spain, and other Essays*, 207, and especially a remarkable letter from General William T. Sherman to General Meigs, quoted on p. 237.

See also the admirable book of Professor Charles Waldstein, *The Expansion of Western Ideals and the World's Peace*, 1899.

[1] Upon this subject see Schlief's chapters *Der Krieg als Element der göttlichen Weltordnung*, and *Der Krieg als positives Gut.*

opposite extreme of the idea of a World-Empire, as attempted by Cæsar and Napoleon. Chapter VIII

Placing sound and self-reliant national patriotism far above the vague cosmopolitanism of sentimental dreamers, it still subordinates the interests of any one people to the higher concern of humanity at large. Recognizing to its fullest extent the trusteeship of civilized peoples for those beyond the pale, — the "white man's burden" and "manifest destiny," in the true sense of those much-abused terms, the spirit of the Peace Conference cannot be invoked to justify a sordid policy of rapacity or greed.

Development of the ideas of the Holy Alliance.

In a sense which surely corresponds to the intentions of its Imperial Initiator, the Conference takes up the ideas of the Holy Alliance of 1815. Notwithstanding the infamies perpetrated under the cover of its name in the bitter and hopeless struggle of tyranny against liberty, that treaty still deserves honorable mention in the history of the world's progress toward peace and justice. It represented, at the time, the best expression which had yet been given to the fundamental truth that a solidarity of interest unites all civilized Powers, and that this fact, as well as the higher law of Righteousness demands the establishment of a system of justice to take the place of anarchy and force in their ordinary relations. The Magna Charta of The Hague carries out his thought within safe and practicable limits, — omitting the mysticism and bigotry which have prejudiced the opinion of the world, even against those aims of the Holy Alliance which were both noble and reasonable.

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Stability.

It is easy and rather gratuitous to prophesy against the stability of such a system. When it is remembered that the Feudal System lasted for centuries after its work seemed to be fulfilled, and that the same is true, to a modified extent, of the succeeding period of "enlightened despotism," it seems rash to indulge in pessimistic forecasts regarding the future of modern constitutional government, which is hardly one century old. The greatest perils of the modern state are acknowledged to be internal:—reaction, clericalism, materialism, and the power of unrest, superficially characterized by such mutually exclusive terms as socialism and anarchism. It is a significant fact that all of these interests, so far as they are aggressive and revolutionary, should have united in the bitterest and most truculent hostility to the Peace Conference and all that it implies. More far-sighted than many of their opponents, whose support of the Conference was scarcely lukewarm, these forces recognized in the success of the former the destruction of the basis of their existence and the death-knell of their hopes.

Effect on the perils confronting Modern States.

This would be the case even without the tremendous material blessings which would be made possible by a diversion of the huge sums now swallowed up for military uses, to the fructification of civil life, and the encouragement of general culture. The substitution of law for force in international relations will, according to the measure of its accomplishment, affect the thoughts and minds of individuals as profoundly as the ideas of religious tolerance or civil

liberty. The glamour of the supposed superior strength of reactionary government, or of the comforts of superstition will be gone, Faith will revive, the "struggle for the soul" will be won, and general discontent, the basis of all unrest, must correspondingly diminish. To those who believe that the perfecting of man is "the goal toward which Nature's work has been tending from the first, . . . the chief object of Divine care, the consummate fruition of that creative energy which is manifested throughout the knowable universe,"[1] — this will all appear as following logically from the undeniable fact that the Peace Conference represents one step — however modest — in the upward progress of the world. Chapter VIII

The practical objection has been raised against the endeavors of the Conference, that if successful, they would make Diplomacy superfluous, or substitute a race of international pettifoggers for the eminent experts in an art which it has taken centuries to perfect. It may be questioned whether the misconception which is the basis of this objection relates more to the nature of The Hague treaty or to that of Diplomacy. The future of diplomacy.

Taking the fine definition of Rodbertus of the art of politics, "the royal art of ascertaining and accomplishing the will of God" — "making reason and the will of God prevail," as Bishop Wilson and Matthew Arnold would express it, Diplomacy must be regarded as one of its noblest branches. Its highest manifestation, tact, is the flower of all human culture, physical,

[1] John Fiske, *The Destiny of Man*, 107.

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intellectual, and moral, and to be an ideal diplomat is rightly the ambition of many of the world's true aristocrats. The popular definition, however, "a diplomat is a man sent abroad to lie for his country," shows the seamy side of the picture, and should reassure those who profess to fear a deterioration of the profession from its present standards. The truth is evident, that, even without the Peace Conference, a radical change was impending.

The era of mystery and exclusiveness in diplomacy is even now at an end, and the finality of the change was recognized forever when the most autocratic of Empires, and the one most successful in the diplomacy of the old school, made an alliance with a Republic whose foreign minister's tenure of office depends upon a parliamentary majority.

Higher development on traditional lines.

Under these circumstances it seems most fortunate that at the very time when the old order is changing, the foundation should be laid of a system which will encourage an even higher development along traditional diplomatic lines. To say that the new system will make diplomacy unnecessary is simply absurd. With the adoption of Magna Charta and the development of English Constitutional law, the rude clerics who, before King John's time, had assisted the ruder litigants, were superseded by the glorious company of English jurists, whose services to the cause of liberty can hardly be overestimated. The change in Diplomacy will be similar.

For all the shrewdness, the tact, patience, social grace, and "repose in energy," which have hitherto

been the chief characteristics of a successful diplomat, there will be a greater demand than ever.[1] Besides this there will now be sought the learning, and above all the power of expression, which can vindicate a country's cause, if necessary, before the judgment seat of a tribunal representing to an infinitely higher degree than was hitherto possible the idea of international justice. Nothing could be more disastrous than pettifogging, for, in view of their possible submission to the International Court, important diplomatic notes must hereafter be of a nature to bear the refining fire of examination and discussion by a body of experts in all civilized countries, who will have a personal and scientific interest in the *Corpus Juris Gentium* to be promulgated at The Hague. Of such a body it may well be said: —

Securus judicat orbis terrarum.

What remains to be done.

To the question, what remains to be done to insure the success of the work of the Peace Conference, the reply is quite obvious. Public opinion remains the final source of power and success in public affairs — for an institution as well as for an individual. To the creation of favorable public opinion every intelligent and patriotic man or woman in the civilized world is called to contribute his or her share, be it great or small. The response of the English-speaking public to this call has never been doubtful. But

[1] See Rolin-Jacquemins, *Revue de droit international et de législation comparée*, V. p. 463; and Pradier-Fodéré, *Cours de droit diplomatique*, Vol. I. p. 17 ff., and Vol. II. p. 303 ff.

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even in those Continental countries where dense ignorance, insipid wit, and the silliest sarcasm seemed to take the place of intelligent and decent discussion of the Conference and its work, there are signs of dawn and enlightenment.

The Governments in advance of public opinion.

It is most encouraging and of the highest importance that upon the whole Continent the Governments are apparently in advance of public opinion upon the entire subject of the Peace Conference. The reason is not far to seek. No man who is fit for the position can to-day hold a place involving the direction of his country's international policy, without feeling an almost intolerable pressure of responsibility. To him every remote chance of a lightening of his burden comes as a promise of blessed relief. It is an historical fact, that none of the obstacles to success which the Peace Conference had to overcome, originated in the mind of any sovereign or high minister of state. In every case they were raised by underlings without responsibility, and anxious to show superior wisdom by finding fault. So long as this favorable governmental attitude continues there is every reason for encouragement. Continental public opinion, especially in questions of foreign policy, certainly seems more pliable than ever before, and is as clay in the hands of a potter, so far as alliances and sympathies are concerned, when following a popular monarch or foreign minister.

The Institute of International Law.

The Institute of International Law and similar organizations may be of great service in popularizing the subject, and in perfecting the details of practice

before the International Court. Much will, moreover, depend upon the attitude of the professors of International Law at the various universities. The coöperation of some of the highest academical authorities upon the subject at The Hague, may tend to save the entire work from attacks or indifference based upon personal prejudices or professional jealousies, which might have arisen if the treaty had been elaborated only by diplomats. Chapter VIII

In conclusion the author can only remind those whose pessimism is proof against all the signs of promise contained in the story told in this volume, of the best and most reasonable ground for encouragement as to the future, namely: the record of what has even now been accomplished. Any one who would have predicted, even as late as July, 1898, that a Conference would meet and accomplish even a fraction of the results attained at The Hague, — that the subject of a federation of the civilized world for justice would even be discussed, not by enthusiasts and private individuals, but by leading diplomats of all civilized nations, called together for that purpose by the most powerful autocrat in the world, — would have been regarded as a dreamer, if not as demented. At the beginning of the Conference the members themselves were affected by the prevalent scepticism, suspicion, and discouragement. It was, however, most interesting to observe how, from week to week, and almost from day to day, this feeling gave way to a spirit of hope, of mutual confidence, and of pride at participating in what was at once a Reasons for encouragement.

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grand consummation and an auspicious beginning. It is not too much to hope that this spirit foreshadowed the ultimate judgment of history.

Conclusion.

No one can be more conscious of the incompleteness and imperfections of the work of the Peace Conference than the members of that body, who can at least claim that they have labored faithfully to approach a high ideal. No temporary disappointment, misunderstanding, or discouragement can obscure the fundamental truth which the Peace Conference and its results, as indeed all human history, tends to illustrate, a truth upon which all human institutions and endeavors and the nations themselves must forever rest: —

JUSTITIA ELEVAT GENTEM.

APPENDIX I

FULL TEXT OF THE FINAL ACT, TREATIES, AND DECLARATIONS ADOPTED BY THE PEACE CONFERENCE

ACTE FINAL DE LA CONFÉRENCE INTERNATIONALE DE LA PAIX

La Conférence Internationale de la Paix, convoquée dans un haut sentiment d'humanité par Sa Majesté l'Empereur de Toutes les Russies, s'est réunie, sur l'invitation du Gouvernement de Sa Majesté la Reine des Pays-Bas, à la Maison Royale du Bois à La Haye, le 18 Mai, 1899.

Les Puissances, dont l'énumération suit, ont pris part à la Conférence, pour laquelle elles avaient désigné les Délégués nommés ci-après : —

(Noms.)

Dans une série de réunions, tenues du 18 Mai au 29 Juillet, 1899, où les Délégués précités ont été constamment animés du désir de réaliser, dans la plus large mesure possible, les vues généreuses de l'auguste Initiateur de la Conférence et les intentions de leurs Gouvernements, la Conférence a arrêté, pour être soumis à la signature des Plénipotentiaires, le texte des Conventions et Déclarations énumérées ci-après et annexées au présent Acte : —

I. Convention pour le règlement pacifique des conflits internationaux.

II. Convention concernant les lois et coutumes de la guerre sur terre.

III. Convention pour l'adaptation à la guerre maritime des principes de la Convention de Genève du 22 Août, 1864.

FINAL ACT OF THE INTERNATIONAL PEACE CONFERENCE

The International Peace Conference, convoked in the best interests of humanity by His Majesty the Emperor of All the Russias, assembled on the invitation of the Government of Her Majesty the Queen of the Netherlands in the Royal House in the Wood at The Hague, on the 18th May, 1899.

The Powers enumerated in the following list took part in the Conference, to which they appointed the Delegates named below: —

(Names.)

In a series of meetings, between the 18th May and the 29th July, 1899, in which the constant desire of the Delegates above mentioned has been to realize, in the fullest manner possible, the generous views of the august Initiator of the Conference and the intentions of their Governments, the Conference has agreed, for submission for signature by the Plenipotentiaries, on the text of the Conventions and Declarations enumerated below and annexed to the present Act: —

I. Convention for the peaceful adjustment of international differences.

II. Convention regarding the laws and customs of war by land.

III. Convention for the adaptation to maritime warfare of the principles of the Geneva Convention of the 22d August, 1864.

IV. Trois Déclarations concernant : —

1. L'interdiction de lancer des projectiles et des explosifs du haut de ballons ou par d'autres modes analogues nouveaux.

2. L'interdiction de l'emploi des projectiles qui ont pour but unique de répandre des gaz asphyxiants ou délétères.

3. L'interdiction de l'emploi de balles qui s'épanouissent ou s'aplatissent facilement dans le corps humain, telles que les balles à enveloppe dure dont l'enveloppe ne couvrirait pas entièrement le noyau ou serait pourvue d'incisions.

Ces Conventions et Déclarations formeront autant d'Actes séparés. Ces Actes porteront la date de ce jour et pourront être signés jusqu'au 31 Décembre, 1899, par les Plénipotentiaires des Puissances représentées à la Conférence Internationale de la Paix à La Haye.

Obéissant aux mêmes inspirations, la Conférence a adopté à l'unanimité la Résolution suivante : —

"La Conférence estime que la limitation des charges militaires qui pèsent actuellement sur le monde est grandement désirable pour l'accroissement du bien-être matériel et moral de l'humanité."

Elle a, en outre, émis les vœux suivants : —

1. La Conférence, prenant en considération les démarches préliminaires faites par le Gouvernement Fédéral Suisse pour la revision de la Convention de Genève, émet le vœu qu'il soit procédé à bref délai à la réunion d'une Conférence spéciale ayant pour objet la révision de cette Convention.

Ce vœu a été voté à l'unanimité.

2. La Conférence émet le vœu que la question des droits et des devoirs des neutres soit inscrite au programme d'une prochaine Conférence.

3. La Conférence émet le vœu que les questions relatives aux fusils et aux canons de marine, telles qu'elles

IV. Three Declarations: —

1. To prohibit the launching of projectiles and explosives from balloons or by other similar new methods.

2. To prohibit the use of projectiles, the only object of which is the diffusion of asphyxiating or deleterious gases.

3. To prohibit the use of bullets which expand or flatten easily in the human body, such as bullets with a hard envelope, of which the envelope does not entirely cover the core, or is pierced with incisions.

These Conventions and Declarations shall form so many separate Acts. These Acts shall be dated this day, and may be signed up to the 31st December, 1899, by the Plenipotentiaries of the Powers represented at the International Peace Conference at The Hague.

Guided by the same sentiments, the Conference has 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."

It has, besides, formulated the following wishes: —

1. The Conference, taking into consideration the preliminary steps taken by the Swiss Federal Government for the revision of the Geneva Convention, expresses the wish that steps may be shortly taken for the assembly of a Special Conference having for its object the revision of that Convention.

This wish was voted unanimously.

2. The Conference expresses the wish that the questions of the rights and duties of neutrals may be inserted in the programme of a Conference in the near future.

3. The Conference expresses the wish that the questions with regard to rifles and naval guns, as considered

ont été examinées par elle, soient mises à l'étude par les Gouvernements, en vue d'arriver à une entente concernant la mise en usage de nouveaux types et calibres.

4. La Conférence émet le vœu que les Gouvernements, tenant compte des propositions faites dans la Conférence, mettent à l'étude la possibilité d'une entente concernant la limitation des forces armées de terre et de mer et des budgets de guerre.

5. La Conférence émet le vœu que la proposition tendant à déclarer l'inviolabilité de la propriété privée dans la guerre sur mer soit renvoyée à l'examen d'une Conférence ultérieure.

6. La Conférence émet le vœu que la proposition de régler la question du bombardement des ports, villes, et villages par une force navale soit renvoyée à l'examen d'une Conférence ultérieure.

Les cinq derniers vœux ont été votés à l'unanimité, sauf quelques abstentions.

En foi de quoi, les Plénipotentiaires ont signé le présent Acte, et y ont apposé leurs cachets.

Fait à La Haye, le 29 Juillet, 1899, en un seul exemplaire, qui sera déposé au Ministère des Affaires Étrangères, et dont des copies, certifiées conformes, seront délivrées à toutes les Puissances représentées à la Conférence.

(Signatures.)

CONVENTION POUR LE RÈGLEMENT PACIFIQUE DES CONFLITS INTERNATIONAUX

Sa Majesté l'Empereur d'Allemagne, Roi de Prusse ; Sa Majesté l'Empereur d'Autriche, Roi de Bohême, etc., et Roi Apostolique de Hongrie; Sa Majesté le Roi des Belges; Sa Majesté l'Empereur de Chine ; Sa Majesté le Roi de Danemark ; Sa Majesté le Roi d'Espagne, et en son nom

by it, may be studied by the Governments with the object of coming to an agreement respecting the employment of new types and calibres.

4. 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.

5. The Conference expresses 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.

6. The Conference expresses the wish that the proposal to settle the question of the bombardment of ports, towns, and villages by a naval force may be referred to a subsequent Conference for consideration.

The last five wishes were voted unanimously, saving some abstentions.

In faith of which, the Plenipotentiaries have signed the present Act, and have affixed their seals thereto.

Done at The Hague, 29th July, 1899, in one copy only, which shall be deposited in the Ministry for Foreign Affairs, and of which copies, duly certified, shall be delivered to all the Powers represented at the Conference.

(Signatures.)

CONVENTION FOR THE PEACEFUL ADJUSTMENT OF INTERNATIONAL DIFFERENCES

His Majesty the German Emperor, King of Prussia; His Majesty the Emperor of Austria, King of Bohemia, etc., and Apostolic King of Hungary; His Majesty the King of the Belgians; His Majesty the Emperor of China; His Majesty the King of Denmark; His Majesty

Sa Majesté la Reine-Régente du Royaume ; le Président des États-Unis d'Amérique ; le Président des États-Unis Mexicains ; le Président de la République Française ; Sa Majesté la Reine du Royaume-Unis de la Grand Bretagne et d'Irlande, Imperatrice des Indes; Sa Majesté le Roi des Hellènes ; Sa Majesté le Roi d'Italie ; Sa Majesté l'Empereur du Japon ; Son Altesse Royale le Grand Duc de Luxembourg, Duc de Nassau; Son Altesse le Prince de Monténégro ; Sa Majesté la Reine des Pays-Bas ; Sa Majesté Impériale le Sehah de Perse ; Sa Majesté le Roi de Portugal et des Algarves ; Sa Majesté le Roi de Roumanie ; Sa Majesté l'Empereur de Toutes les Russies ; Sa Majesté le Roi de Serbie ; Sa Majesté le Roi de Siam ; Sa Majesté le Roi de Suède et de Norvège ; le Conseil Féderal Suisse ; Sa Majesté l'Empereur des Ottomans, et Son Altesse Royale le Prince de Bulgarie,

Animés de la ferme volonté de concourir au maintien de la paix générale;

Résolus à favoriser de tous leurs efforts le règlement amiable des conflits internationaux ;

Reconnaissant la solidarité qui unit les membres de la société des nations civilisées ;

Voulant étendre l'empire du droit, et fortifier le sentiment de la justice internationale ;

Convaincus que l'institution permanente d'une juridiction arbitrale, accessible à tous, au sein des Puissances indépendantes peut contribuer efficacement à ce résultat ;

Considérant les avantages d'une organisation générale et régulière de la procédure arbitrale ;

Estimant avec l'auguste Initiateur de la Conférence Internationale de la Paix qu'il importe de consacrer dans un accord international les principes d'équité et de droit

the King of Spain, and in his name Her Majesty the Queen-Regent of the Kingdom; the President of the United States of America; the President of the United States of Mexico; the President of the French Republic; Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India; His Majesty the King of the Hellenes; His Majesty the King of Italy; His Majesty the Emperor of Japan; His Royal Highness the Grand Duke of Luxemburg, Duke of Nassau; His Highness the Prince of Montenegro; Her Majesty the Queen of the Netherlands; His Imperial Majesty the Shah of Persia; His Majesty the King of Portugal and the Algarves; His Majesty the King of Roumania; His Majesty the Emperor of All the Russias; His Majesty the King of Servia; His Majesty the King of Siam; His Majesty the King of Sweden and Norway; The Swiss Federal Council; His Majesty the Emperor of the Ottomans, and His Royal Highness the Prince of Bulgaria,

Animated by a strong desire to concert for the maintenance of the general peace;

Resolved to second by their best efforts the friendly settlement of international disputes;

Recognizing the solidarity which unites the members of the society of civilized nations;

Desirous of extending the empire of law, and of strengthening the appreciation of international justice;

Convinced that the permanent institution of a Court of Arbitration, accessible to all, in the midst of the independent Powers, will contribute effectively to this result;

Having regard to the advantages attending the general and regular organization of arbitral procedure;

Sharing the opinion of the august Initiator of the International Peace Conference that it is expedient to solemnly establish, by an international Agreement, the principles of

sur lesquels reposent la sécurité des États et le bien-être des peuples ;

Desirant conclure une Convention à cet effet, ont nommé pour leurs Plénipotentiaires, savoir : —

(Noms.)

Lesquels, après, s'être communiqué leurs plein pouvoirs, trouvés en bonne et due forme, sont convenus des dispositions suivantes : —

Titre I. — *Du Maintien de la Paix Générale*

ARTICLE I

En vue de prévenir autant que possible le recours à la force dans les rapports entre les États, les Puissances Signataires conviennent d'employer tous leurs efforts pour assurer le règlement pacifique des différends internationaux.

Titre II. — *Des Bons Offices et de la Médiation*

ARTICLE II

En cas de dissentiment grave ou de conflit, avant d'en appeler aux armes, les Puissances Signataires conviennent d'avoir recours, en tant que les circonstances le permettront, aux bons offices ou à la médiation d'une ou de plusieurs Puissances amies.

ARTICLE III

Indépendamment de ce recours, les Puissances Signataires jugent utile qu'une ou plusieurs Puissances, étrangères au conflit, offrent de leur propre initiative, en tant que les circonstances s'y prêtent, leurs bons offices ou leur médiation aux États en conflit.

equity and right on which repose the security of States and the welfare of peoples;

Being desirous of concluding a Convention to this effect, have appointed as their Plenipotentiaries, to wit: —

(Names.)

Who, after communication of their full powers, found in good and due form, have agreed on the following provisions: —

TITLE I. — *On the Maintenance of General Peace*

ARTICLE I

With a view to obviating, as far as possible, recourse to force in the relations between States, the Signatory Powers agree to use their best efforts to insure the pacific settlement of international differences.

TITLE II. — *On Good Offices and Mediation*

ARTICLE II

In case of serious disagreement or conflict, before an appeal to arms, the Signatory Powers agree to have recourse, as far as circumstances allow, to the good offices or mediation of one or more friendly Powers.

ARTICLE III

Independently of this recourse, the Signatory Powers consider it useful that one or more Powers, strangers to the dispute, should, on their own initiative, and as far as circumstances will allow, offer their good offices or mediation to the States at variance.

Le droit d'offrir les bons offices ou la médiation appartient aux Puissances étrangères au conflit, même pendant le cours des hostilités.

L'exercice de ce droit ne peut jamais être considéré par l'une ou l'autre des parties en litige comme un acte peu amical.

ARTICLE IV

Le rôle du médiateur consiste à concilier les prétentions opposées et à apaiser les ressentiments qui peuvent s'être produits entre les États en conflit.

ARTICLE V

Les fonctions du médiateur cessent du moment où il est constaté, soit par l'une des parties en litige, soit par le médiateur lui-même, que les moyens de conciliation proposés par lui ne sont pas acceptés.

ARTICLE VI

Les bons offices et la médiation, soit sur le recours des parties en conflit, soit sur l'initiative des Puissances étrangères au conflit, ont exclusivement le caractère de conseil, et n'ont jamais force obligatoire.

ARTICLE VII

L'acceptation de la médiation ne peut avoir pour effet, sauf convention contraire, d'interrompre, de retarder, ou d'entraver la mobilisation et autres mesures préparatoires à la guerre.

Si elle intervient après l'ouverture des hostilités, elle n'interrompt pas, sauf convention contraire, les opérations militaires en cours.

The right to offer good offices or mediation belongs to Powers who are strangers to the dispute, even during the course of hostilities.

The exercise of this right shall never be regarded by one or the other of the parties to the contest as an unfriendly act.

ARTICLE IV

The part of the mediator consists in reconciling the opposing claims and in appeasing the feelings of resentment which may have arisen between the States at variance.

ARTICLE V

The functions of the mediator are at an end when once it is declared, either by one of the parties to the dispute, or by the mediating Power itself, that the methods of conciliation proposed by it are not accepted.

ARTICLE VI

Good offices and mediation, whether at the request of the parties at variance, or upon the initiative of Powers who are strangers to the dispute, have exclusively the character of advice, and never have binding force.

ARTICLE VII

The acceptance of mediation cannot, unless there be an agreement to the contrary, have the effect of interrupting, delaying, or hindering mobilization or other measures of preparation for war.

If mediation occurs after the commencement of hostilities, it causes no interruption to the military operations in progress, unless there be an agreement to the contrary.

ARTICLE VIII

Les Puissances Signataires sont d'accord pour recommander l'application, dans les circonstances qui le permettent, d'une médiation spéciale sous la forme suivante : —

En cas de différend grave compromettant la paix, les États en conflit choisissent respectivement une Puissance à laquelle ils confient la mission d'entrer en rapport direct avec la Puissance choisie d'autre part, à l'effet de prévenir la rupture des relations pacifiques.

Pendant la durée de ce mandat dont le terme, sauf stipulation contraire, ne peut excéder trente jours, les États en litige cessent tout rapport direct au sujet du conflit, lequel est considéré comme déféré exclusivement aux Puissances Médiatrices. Celles-ci doivent appliquer tous leurs efforts à régler le différend.

En cas de rupture effective des relations pacifiques, ces Puissances demeurent chargées de la mission commune de profiter de toute occasion pour rétablir la paix.

TITRE III. — *Des Commissions Internationales d'Enquête*

ARTICLE IX

Dans les litiges d'ordre international n'engageant ni l'honneur ni des intérêts essentiels, et provenant d'une divergence d'appréciation sur des points de fait, les Puissances Signataires jugent utile que les parties qui n'auraient pu se mettre d'accord par les voies diplomatiques instituent, en tant que les circonstances le permettront, une Commission Internationale d'Enquête chargée de faciliter la solution de ces litiges en éclaircissant, par un examen impartial et consciencieux, les questions de fait.

ARTICLE VIII

The Signatory Powers are agreed in recommending the application, when circumstances allow, of special mediation in the following form: —

In case of a serious difference endangering the peace, the States at variance shall each choose a Power, to whom they intrust the mission of entering into direct communication with the Power chosen on the other side, with the object of preventing the rupture of pacific relations.

During the period of this mandate, the term of which, unless otherwise stipulated, cannot exceed thirty days, the States in conflict shall cease from all direct communication on the subject of the dispute, which is regarded as having been referred exclusively to the mediating Powers, who shall use their best efforts to settle the controversy.

In case of a definite rupture of pacific relations, these Powers remain charged with the joint duty of taking advantage of every opportunity to restore peace.

TITLE III. — *On International Commissions of Inquiry*

ARTICLE IX

In differences of an international nature involving neither honor nor vital interests, and arising from a difference of opinion on matter of fact, the Signatory Powers recommend that parties who have not been able to come to an agreement by diplomatic methods should, as far as circumstances allow, institute an International Commission of Inquiry, to facilitate a solution of the differences by elucidating the facts, by means of an impartial and conscientious investigation.

ARTICLE X

Les Commissions Internationales d'Enquête sont constituées par convention spéciale entre les parties en litige.

La Convention d'Enquête précise les faits à examiner et l'étendue des pouvoirs des Commissaires.

Elle règle la procédure.

L'enquête a lieu contradictoirement.

La forme et les délais à observer, en tant qu'ils ne sont pas fixés par la Convention d'Enquête, sont déterminés par la Commission elle-même.

ARTICLE XI

Les Commissions Internationales d'Enquête sont formées, sauf stipulation contraire, de la manière déterminée par l'Article XXXII de la présente Convention.

ARTICLE XII

Les Puissances en litige s'engagent à fournir à la Commission Internationale d'Enquête, dans la plus large mesure qu'elles jugeront possible, tous les moyens et toutes les facilités nécessaires pour la connaissance complète et l'appréciation exacte des faits en question.

ARTICLE XIII

La Commission Internationale d'Enquête présente aux Puissances en litige son Rapport signé par tous les membres de la Commission.

ARTICLE XIV

Le Rapport de la Commission Internationale d'Enquête, limité à la constatation des faits, n'a nullement le caractère d'une sentence arbitrale. Il laisse aux Puissances en litige

ARTICLE X

International Commissions of Inquiry shall be constituted by a special agreement between the parties to the controversy. The agreement for the inquiry shall specify the facts to be examined and the extent of the powers of the commissioners. It shall fix the procedure. Upon the inquiry both sides shall be heard. The procedure to be observed, if not provided for in the Convention of Inquiry, shall be fixed by the Commission.

ARTICLE XI

The International Commissions of Inquiry shall be formed, unless otherwise stipulated, in the manner fixed by Article XXXII of the present Convention.

ARTICLE XII

The Powers in dispute agree to supply the International Commission of Inquiry, as fully as they may consider it possible, with all means and facilities necessary to enable it to arrive at a complete acquaintance and correct understanding of the facts in question.

ARTICLE XIII

The International Commission of Inquiry shall present to the parties in dispute its report signed by all the members of the Commission.

ARTICLE XIV

The report of the International Commission of Inquiry shall be limited to a statement of the facts, and shall in no way have the character of an arbitral award. It leaves

une entière liberté pour la suite à donner à cette constatation.

Titre IV. — *De l'Arbitrage International*

Chapitre I. — *De la Justice Arbitrale*

ARTICLE XV

L'arbitrage international a pour objet le règlement de litiges entre les États par des juges de leur choix et sur la base du respect du droit.

ARTICLE XVI

Dans les questions d'ordre juridique, et en premier lieu dans les questions d'interprétation ou d'application des Conventions Internationales, l'arbitrage est reconnu par les Puissances Signataires comme le moyen le plus efficace et en même temps le plus équitable de régler les litiges qui n'ont pas été résolus par les voies diplomatiques.

ARTICLE XVII

La convention d'arbitrage est conclue pour des contestations déjà nées ou pour des contestations éventuelles.

Elle peut concerner tout litige ou seulement les litiges d'une catégorie déterminée.

ARTICLE XVIII

La convention d'arbitrage implique l'engagement de se soumettre de bonne foi à la sentence arbitrale.

ARTICLE XIX

Indépendamment des Traités généraux ou particuliers qui stipulent actuellement l'obligation du recours à l'arbi-

the Powers in controversy freedom as to the effect to be given to such statement.

TITLE IV. — *On International Arbitration*

CHAPTER I. — *On Arbitral Justice*

ARTICLE XV

International arbitration has for its object the determination of controversies between States by judges of their own choice, upon the basis of respect for law.

ARTICLE XVI

In questions of a judicial character, and especially in questions regarding the interpretation or application of international treaties or conventions, arbitration is recognized by the Signatory Powers as the most efficacious and at the same time the most equitable method of deciding controversies which have not been settled by diplomatic methods.

ARTICLE XVII

An agreement of arbitration may be made with reference to disputes already existing or those which may hereafter arise. It may relate to every kind of controversy or solely to controversies of a particular character.

ARTICLE XVIII

The agreement of arbitration implies the obligation to submit in good faith to the decision of the arbitral tribunal.

ARTICLE XIX

Independently of existing general or special treaties imposing the obligation to have recourse to arbitration on

trage pour les Puissances Signataires, ces Puissances se réservent de conclure, soit avant la ratification du présent Acte, soit postérieurement, des accords nouveaux, généraux, ou particuliers, en vue d'étendre l'arbitrage obligatoire à tous les cas qu'elles jugeront possible de lui soumettre.

CHAPITRE II. — *De la Cour Permanente d'Arbitrage*

ARTICLE XX

Dans le but de faciliter le recours immédiat à l'arbitrage pour les différends internationaux qui n'ont pu être réglés par la voie diplomatique, les Puissances Signataires s'engagent à organiser une Cour permanente d'arbitrage, accessible en tout temps et fonctionnant, sauf stipulation contraire des parties, conformément aux Règles de Procédure insérées dans la présente Convention.

ARTICLE XXI

La Cour Permanente sera compétente pour tous les cas d'arbitrage, à moins qu'il n'y ait entente entre les parties pour l'établissement d'une juridiction spéciale.

ARTICLE XXII

Un Bureau International établi à La Haye sert de greffe à la Cour.

Ce bureau est l'intermédiaire des communications relatives aux réunions de celle-ci.

Il a la garde des archives et la gestion de toutes les affaires administratives.

Les Puissances Signataires s'engagent à communiquer au Bureau International de La Haye une copie certifiée conforme de toute stipulation d'arbitrage intervenue entre

the part of any of the Signatory Powers, these Powers reserve to themselves the right to conclude, either before the ratification of the present Convention, or subsequent to that date, new agreements, general or special, with a view of extending the obligation to submit controversies to arbitration, to all cases which they consider suitable for such submission.

CHAPTER II. — *On the Permanent Court of Arbitration*

ARTICLE XX

With the object of facilitating an immediate recourse to arbitration for international differences which could not be settled by diplomatic methods, the Signatory Powers undertake to organize a permanent Court of Arbitration accessible at all times, and acting, unless otherwise stipulated by the parties, in accordance with the rules of procedure included in the present Convention.

ARTICLE XXI

The permanent Court shall have jurisdiction of all cases of arbitration, unless there shall be an agreement between the parties for the establishment of a special tribunal.

ARTICLE XXII

An International Bureau shall be established at The Hague, and shall serve as the record office for the Court. This Bureau shall be the medium of all communications relating to the Court. It shall have the custody of the archives, and shall conduct all the administrative business. The Signatory Powers agree to furnish the Bureau at The Hague with a certified copy of every agreement of arbitration arrived at between them, and of any award therein rendered by a special tribunal. They also undertake to

elles et de toute sentence arbitrale les concernant et rendue par des juridictions spéciales.

Elles s'engagent à communiquer de même au bureau les Lois, Règlements, et documents constatant éventuellement l'exécution des sentences rendues par la Cour.

ARTICLE XXIII

Chaque Puissance Signataire désignera, dans les trois mois qui suivront la ratification par elle du présent Acte, quatre personnes au plus, d'une compétence reconnue dans les questions de droit international, jouissant de la plus haute considération morale et disposées à accepter les fonctions d'arbitres.

Les personnes ainsi désignées seront inscrites, au titre de membre de la Cour, sur une liste qui sera notifiée à toutes les Puissances Signataires par les soins du bureau.

Toute modification à la liste des arbitres est portée, par les soins du bureau, à la connaissance des Puissances Signataires.

Deux ou plusieurs Puissances peuvent s'entendre pour la désignation en commun d'un ou de plusieurs membres.

La même personne peut être désignée par des Puissances différentes.

Les membres de la Cour sont nommés pour un terme de six ans. Leur mandat peut être renouvelé.

En cas de décès ou de retraite d'un membre de la Cour, il est pourvu à son remplacement selon le mode fixé pour sa nomination.

ARTICLE XXIV

Lorsque les Puissances Signataires veulent s'adresser à la Cour Permanente pour le règlement d'un différend survenu entre elles, le choix des arbitres appelés à former le tribunal compétent pour statuer sur ce différend, doit être fait dans la liste générale des membres de la Cour.

furnish the Bureau with the laws, rules, and documents, eventually declaring the execution of the judgments rendered by the Court.

ARTICLE XXIII

Within three months following the ratification of the present act, each Signatory Power shall select not more than four persons, of recognized competence in questions of international law, enjoying the highest moral reputation, and disposed to accept the duties of arbitrators. The persons thus selected shall be enrolled as members of the Court, upon a list which shall be communicated by the Bureau to all the Signatory Powers. Any alteration in the list of arbitrators shall be brought to the knowledge of the Signatory Powers by the Bureau. Two or more Powers may unite in the selection of one or more members of the Court. The same person may be selected by different Powers. The members of the Court shall be appointed for a term of six years, and their appointment may be renewed. In case of the death or resignation of a member of the Court, his place shall be filled in accordance with the method of his appointment.

ARTICLE XXIV

Whenever the Signatory Powers wish to have recourse to the permanent Court for the settlement of a difference that has arisen between them, the arbitrators selected to constitute the Tribunal which shall have jurisdiction to determine such difference, shall be chosen from the

A défaut de constitution du tribunal arbitral par l'accord immédiat des parties, il est procédé de la manière suivante : —

Chaque partie nomme deux arbitres et ceux-ci choisissent ensemble un surarbitre.

En cas de partage des voix, le choix du surarbitre est confié à une Puissance tierce, désignée de commun accord par les parties.

Si l'accord ne s'établit pas à ce sujet, chaque partie désigne une Puissance différente, et le choix du surarbitre est fait de concert par les Puissances ainsi désignées.

Le tribunal étant ainsi composé, les parties notifient au bureau leur décision de s'adresser à la Cour et les noms des arbitres.

Le tribunal arbitral se réunit à la date fixée par les parties.

Les membres de la Cour, dans l'exercice de leurs fonctions, et en dehors de leur pays, jouissent des privilèges et immunités diplomatiques.

ARTICLE XXV

Le tribunal arbitral siège d'ordinaire à La Haye.

Le siège ne peut, sauf le cas de force majeure, être changé par le tribunal que de l'assentiment des parties.

ARTICLE XXVI

Le Bureau International de La Haye est autorisé à mettre ses locaux et son organisation à la disposition des Puissances Signataires pour le fonctionnement de toute juridiction spéciale d'arbitrage.

La juridiction de la Cour Permanente peut être étendue, dans les conditions prescrites par les Règlements, aux litiges existant entre des Puissances non-Signataires ou

general list of members of the Court. If such arbitral Tribunal be not constituted by the special agreement of the parties, it shall be formed in the following manner: Each party shall name two arbitrators, and these together shall choose an umpire. If the votes shall be equal, the choice of the umpire shall be intrusted to a third Power selected by the parties by common accord. If an agreement is not arrived at on this subject, each party shall select a different Power, and the choice of the umpire shall be made by the united action of the Powers thus selected. The Tribunal being thus constituted, the parties shall communicate to the Bureau their decision to have recourse to the Court, and the names of the arbitrators. The Tribunal of arbitration shall meet at the time fixed by the parties. The members of the Court, in the discharge of their duties, and outside of their own country, shall enjoy diplomatic privileges and immunities.

ARTICLE XXV

The Court of Arbitration shall ordinarily sit at The Hague. Except in cases of necessity, the place of session shall be changed by the Court only with the assent of the parties.

ARTICLE XXVI

The International Bureau at The Hague is authorized to put its offices and its staff at the disposal of the Signatory Powers, for the performance of the duties of any special tribunal of arbitration. The jurisdiction of the permanent Court may be extended under conditions prescribed by its rules, to controversies existing between Non-signatory Powers, or between Signatory Powers and

entre des Puissances Signataires et des Puissances non-Signataires, si les parties sont convenues de recourir à cette juridiction.

ARTICLE XXVII

Les Puissances Signataires considèrent comme un devoir, dans le cas où un conflit aigu menacerait d'éclater entre deux ou plusieurs d'entre elles, de rappeler à celles-ci que la Cour Permanente leur est ouverte.

En conséquence, elles déclarent que le fait de rappeler aux parties en conflit les dispositions de la présente Convention, et le conseil donné, dans l'intérêt supérieur de la paix, de s'adresser à la Cour Permanente, ne peuvent être considérés que comme actes de bons offices.

ARTICLE XXVIII

Un Conseil Administratif Permanent composé des Représentants Diplomatiques des Puissances Signataires accrédités à La Haye et du Ministre des Affaires Étrangères des Pays-Bas qui remplira les fonctions de Président, sera constitué dans cette ville le plus tôt possible après la ratification du présent Acte par neuf Puissances au moins.

Ce Conseil sera chargé d'établir et d'organiser le Bureau International, lequel demeurera sous sa direction et sous son contrôle.

Il notifiera aux Puissances la constitution de la Cour et pourvoira à l'installation de celle-ci.

Il arrêtera son règlement d'ordre ainsi que tous autres règlements nécessaires.

Il décidera toutes les questions administratives qui pourraient surgir touchant le fonctionnement de la Cour.

Il aura tout pouvoir quant à la nomination, la suspension, ou la révocation des fonctionnaires et employés du bureau.

Il fixera les traitements et salaires et contrôlera la dépense générale.

Non-signatory Powers, if the parties agree to submit to its jurisdiction.

ARTICLE XXVII

The Signatory Powers consider it their duty in case a serious dispute threatens to break out between two or more of them, to remind these latter that the permanent Court of arbitration is open to them. Consequently, they declare that the fact of reminding the parties in controversy of the provisions of the present Convention, and the advice given to them, in the higher interests of peace, to have recourse to the permanent Court, can only be considered as an exercise of good offices.

ARTICLE XXVIII

A permanent administrative Council composed of the diplomatic representatives of the Signatory Powers accredited to The Hague, and of the Netherlands Minister of Foreign Affairs, who shall act as President, shall be constituted in that city as soon as possible after the ratification of the present Act by at least nine Powers. This Council shall be charged with the establishment and organization of the International Bureau, which shall remain under its direction and control. It shall notify the Powers of the constitution of the Court and provide for its installation. It shall make its own by-laws and all other necessary regulations. It shall decide all questions of administration which may arise with regard to the operations of the Court. It shall have entire control over the appointment, suspension, or dismissal of officials and employees of the Bureau. It shall determine their allowances and salaries, and control the general expenditure. At meetings duly summoned five members shall constitute a quorum. All decisions shall be made by a majority of

La présence de cinq membres dans les réunions dûment convoquées suffit pour permettre au Conseil de délibérer valablement. Les décisions sont prises à la majorité des voix.

Le Conseil communique sans délai aux Puissances Signataires les règlements adoptés par lui. Il leur adresse chaque année un Rapport sur les travaux de la Cour, sur le fonctionnement des services administratifs et sur les dépenses.

ARTICLE XXIX

Les frais du bureau seront supportés par les Puissances Signataires dans la proportion établie pour le Bureau International de l'Union Postale Universelle.

Chapitre III. — *De la Procédure Arbitrale*

ARTICLE XXX

En vue de favoriser le développement de l'arbitrage, les Puissances Signataires ont arrêté les règles suivantes qui seront applicables à la procédure arbitrale, en tant que les parties ne sont pas convenues d'autres règles.

ARTICLE XXXI

Les Puissances qui recourent à l'arbitrage signent un acte spécial (Compromis) dans lequel sont nettement déterminés l'objet du litige ainsi que l'étendue des pouvoirs des arbitres. Cet acte implique l'engagement des parties de se soumettre de bonne foi à la sentence arbitrale.

ARTICLE XXXII

Les fonctions arbitrales peuvent être conférées à un arbitre unique ou à plusieurs arbitres désignés par les

votes. The Council shall communicate to each Signatory Power without delay the by-laws and regulations adopted by it. It shall furnish them with a signed report of the proceedings of the Court, the working of the administration, and the expenses.

ARTICLE XXIX

The expense of the Bureau shall be borne by the Signatory Powers in the proportion established for the International Bureau of the International Postal Union.

CHAPTER III. — *On Arbitral Procedure*

ARTICLE XXX

With a view to encouraging the development of arbitration, the Signatory Powers have agreed on the following rules which shall be applicable to the arbitral procedure, unless the parties have agreed upon different regulations.

ARTICLE XXXI

The Powers which resort to arbitration shall sign a special act (*compromis*), in which the subject of the difference shall be precisely defined, as well as the extent of the powers of the arbitrators. This Act implies an agreement by each party to submit in good faith to the award.

ARTICLE XXXII

The duties of arbitrator may be conferred upon one arbitrator alone or upon several arbitrators selected by

parties à leur gré, ou choisis par elles parmi les membres de la Cour permanente d'arbitrage établie par le présent Acte.

A défaut de constitution du tribunal par l'accord immédiat des parties, il est procédé de la manière suivante : —

Chaque partie nomme deux arbitres et ceux-ci choisissent ensemble un surarbitre.

En cas de partage des voix, le choix du surarbitre est confié à une Puissance tierce, désignée de commun accord par les parties.

Si l'accord ne s'établit pas à ce sujet, chaque partie désigne une Puissance différente et le choix du surarbitre est fait de concert par les Puissances ainsi désignées.

ARTICLE XXXIII

Lorsqu'un Souverain ou un Chef d'État est choisi pour arbitre, la procédure arbitrale est réglée par lui.

ARTICLE XXXIV

Le surarbitre est de droit Président du tribunal.

Lorsque le tribunal ne comprend pas de surarbitre, il nomme lui-même son président.

ARTICLE XXXV

En cas de décès, de démission, ou d'empêchement, pour quelque cause que ce soit, de l'un des arbitres, il est pourvu à son remplacement selon le mode fixé pour sa nomination.

ARTICLE XXXVI

Le siège du tribunal est désigné par les parties. A défaut de cette désignation le tribunal siège à La Haye.

Le siège ainsi fixé ne peut, sauf le cas de force majeure,

the parties, as they please, or chosen by them from the members of the permanent Court of Arbitration established by the present act. Failing the constitution of the Tribunal by direct agreement between the parties, it shall be formed in the following manner: —

Each party shall appoint two arbitrators and these shall together choose an umpire. In case of an equal division of votes the choice of the umpire shall be intrusted to a third Power to be selected by the parties by common accord. If no agreement is arrived at on this point, each party shall select a different Power, and the choice of the umpire shall be made by agreement between the Powers thus selected.

ARTICLE XXXIII

When a Sovereign or Chief of State shall be chosen for an arbitrator, the arbitral procedure shall be determined by him.

ARTICLE XXXIV

The umpire shall preside over the Tribunal. When the Tribunal does not include an umpire, it shall appoint its own presiding officer.

ARTICLE XXXV

In case of the death, resignation, or absence, for any cause, of one of the arbitrators, the place shall be filled in the manner provided for his appointment.

ARTICLE XXXVI

The parties shall designate the place where the Tribunal is to sit. Failing such a designation, the Tribunal shall sit at The Hague. The place of session thus determined

être changé par le tribunal que de l'assentiment des parties.

ARTICLE XXXVII

Les parties ont le droit de nommer auprès du tribunal des délégués ou agents spéciaux, avec la mission de servir d'intermédiaires entre elles et le tribunal.

Elles sont en outre autorisées à charger de la défense de leurs droits et intérêts devant le tribunal, des Conseils ou avocats nommés par elles à cet effet.

ARTICLE XXXVIII

Le tribunal décide du choix des langues dont il fera usage et dont l'emploi sera autorisé devant lui.

ARTICLE XXXIX

La procédure arbitrale comprend en règle générale deux phases distinctes : l'instruction et les débats.

L'instruction consiste dans la communication faite par les agents respectifs, aux membres du tribunal et à la partie adverse, de tous actes imprimés ou écrits et de tous documents contenant les moyens invoqués dans la cause. Cette communication aura lieu dans la forme et dans les délais déterminés par le tribunal en vertu de l'Article XLIX.

Les débats consistent dans le développement oral des moyens des parties devant le tribunal.

ARTICLE XL

Toute pièce produite par l'une des parties doit être communiquée à l'autre partie.

shall not, except in the case of overwhelming necessity, be changed by the Tribunal without the consent of the parties.

ARTICLE XXXVII

The parties shall have the right to appoint agents or attorneys to represent them before the Tribunal, and to serve as intermediaries between them and it.

They are also authorized to employ for the defence of their rights and interests before the Tribunal counsellors or solicitors named by them for that purpose.

ARTICLE XXXVIII

The Tribunal shall decide upon the choice of languages used by itself, or to be authorized for use before it.

ARTICLE XXXIX

As a general rule the arbitral procedure shall comprise two distinct phases — preliminary examination and discussion. Preliminary examination shall consist in the communication by the respective agents to the members of the Tribunal and to the opposite party, of all printed or written acts, and of all documents containing the arguments to be invoked in the case. This communication shall be made in the form and within the period fixed by the Tribunal, in accordance with Article XLIX.

The discussion shall consist in the oral development before the Tribunal of the argument of the parties.

ARTICLE XL

Every document produced by one party must be communicated to the other party.

ARTICLE XLI

Les débats sont dirigés par le Président.

Ils ne sont publics qu'en vertu d'une décision du tribunal, prise avec l'assentiment des parties.

Ils sont consignés dans des procès-verbaux rédigés par des Secrétaires que nomme le Président. Ces procès-verbaux ont seuls caractère authentique.

ARTICLE XLII

L'instruction étant close, le tribunal a le droit d'écarter du débat tous actes ou documents nouveaux qu'une des parties voudrait lui soumettre sans le consentement de l'autre.

ARTICLE XLIII

Le tribunal demeure libre de prendre en considération les actes ou documents nouveaux sur lesquels les agents ou Conseils des parties appelleraient son attention.

En ce cas, le tribunal a le droit de requérir la production de ces actes ou documents, sauf l'obligation d'en donner connaissance à la partie adverse.

ARTICLE XLIV

Le tribunal peut, en outre, requérir des agents des parties la production de tous actes et demander toutes explications nécessaires. En cas de refus le tribunal en prend acte.

ARTICLE XLV

Les agents et les Conseils des parties sont autorisés à présenter oralement au tribunal tous les moyens qu'ils jugent utiles à la défense de leur cause.

ARTICLE XLI

The discussions shall be under the direction of the President. They shall be public only in case it shall be so decided by the Tribunal, with the assent of the parties. They shall be recorded in the official minutes drawn up by the Secretaries appointed by the President. These official minutes alone shall have an authentic character.

ARTICLE XLII

When the preliminary examination is concluded, the Tribunal may refuse admission of all new acts or documents, which one party may desire to submit to it, without the consent of the other party.

ARTICLE XLIII

The Tribunal may take into consideration such new acts or documents to which its attention may be drawn by the agents or counsel of the parties. In this case, the Tribunal shall have the right to require the production of these acts or documents, but it is obliged to make them known to the opposite party.

ARTICLE XLIV

The Tribunal may also require from the agents of the party the production of all papers, and may demand all necessary explanations. In case of refusal, the Tribunal shall take note of the fact.

ARTICLE XLV

The agents and counsel of the parties are authorized to present orally to the Tribunal all the arguments which they may think expedient in support of their cause.

ARTICLE XLVI

Ils ont le droit de soulever des exceptions et incidents. Les décisions du tribunal sur ces points sont définitives et ne peuvent donner lieu à aucune discussion ultérieure.

ARTICLE XLVII

Les membres du tribunal ont le droit de poser des questions aux agents et aux Conseils des parties et de leur demander des éclaircissements sur les points douteux.

Ni les questions posées, ni les observations faites par les membres du tribunal pendant le cours des débats ne peuvent être regardées comme l'expression des opinions du tribunal en général ou de ses membres en particulier.

ARTICLE XLVIII

Le tribunal est autorisé à déterminer sa compétence en interprétant le Compromis ainsi que les autres Traités qui peuvent être invoqués dans la matière, et en appliquant les principes du droit international.

ARTICLE XLIX

Le tribunal a le droit de rendre des ordonnances de procédure pour la direction du procès, de déterminer les formes et délais dans lesquels chaque partie devra prendre ses conclusions et de procéder à toutes les formalités que comporte l'administration des preuves.

ARTICLE L

Les agents et les Conseils des parties ayant présenté tous les éclaircissements et preuves à l'appui de leur cause, le Président prononce la clôture des débats.

ARTICLE XLVI

They shall have the right to raise objections and to make incidental motions. The decisions of the Tribunal on these points shall be final, and shall not form the subject of any subsequent discussion.

ARTICLE XLVII

The members of the Tribunal shall have the right to put questions to the agents or counsel of the parties, and to demand explanations from them on doubtful points. Neither the questions put nor the remarks made by members of the Tribunal during the discussion or argument shall be regarded as an expression of opinion by the Tribunal in general, or by its members in particular.

ARTICLE XLVIII

The Tribunal is authorized to determine its own jurisdiction, by interpreting the agreement of arbitration or other treaties which may be quoted in point, and by the application of the principles of international law.

ARTICLE XLIX

The Tribunal shall have the right to make rules of procedure for the direction of the trial to determine the form and the periods in which parties must conclude the argument, and to prescribe all the formalities regulating the admission of evidence.

ARTICLE L

The agents and the counsel of the parties having presented all the arguments and evidence in support of their case, the President shall declare the hearing closed.

ARTICLE LI

Les délibérations du tribunal ont lieu à huis clos.

Toute décision est prise à la majorité des membres du tribunal.

Le refus d'un membre de prendre part au vote doit être constaté dans le procès-verbal.

ARTICLE LII

La sentence arbitrale, votée à la majorité des voix, est motivée. Elle est rédigée par écrit et signée par chacun des membres du tribunal.

Ceux des membres qui sont restés en minorité peuvent constater, en signant, leur dissentiment.

ARTICLE LIII

La sentence arbitrale est lue en séance publique du tribunal, les agents et les Conseils des parties présents ou dûment appelés.

ARTICLE LIV

La sentence arbitrale, dûment prononcée et notifiée aux agents des parties en litige décide définitivement et sans appel la contestation.

ARTICLE LV

Les parties peuvent se réserver dans le Compromis de demander la révision de la sentence arbitrale.

Dans ce cas et sauf convention contraire, la demande doit être adressée au tribunal qui a rendu la sentence. Elle ne peut être motivée que par la découverte d'un fait nouveau qui eût été de nature à exercer une influence

ARTICLE LI

The deliberations of the Tribunal shall take place with closed doors. Every decision shall be made by a majority of the members of the Tribunal. The refusal of any member to vote shall be noted in the official minutes.

ARTICLE LII

The award shall be made by a majority of votes, and shall be accompanied by a statement of the reasons upon which it is based. It must be drawn up in writing and signed by each of the members of the Tribunal. Those members who are in the minority may, in signing, state their dissent.

ARTICLE LIII

The award shall be read in a public sitting of the Tribunal, the agents and counsel of the litigants being present or having been duly summoned.

ARTICLE LIV

The award duly pronounced and notified to the agents of the parties in litigation shall decide the dispute finally and without appeal.

ARTICLE LV

The parties may reserve in the agreement of arbitration the right to demand a rehearing of the case. In this case, and in the absence of any stipulation to the contrary, the demand shall be addressed to the Tribunal which has pronounced the judgment; but it shall be based only on the discovery of new facts, of such a character as to exer-

décisive sur la sentence et qui, lors de la clôture des débats, était inconnu du tribunal lui-même et de la partie qui a demandé la révision.

La procédure de révision ne peut être ouverte que par une décision du tribunal constatant expressément l'existence du fait nouveau, lui reconnaissant les caractères prévus par le paragraphe précédent et déclarant à ce titre la demande recevable.

Le Compromis détermine le délai dans lequel la demande de révision doit être formée.

ARTICLE LVI

La sentence arbitrale n'est obligatoire que pour les parties qui ont conclu le Compromis.

Lorsqu'il s'agit de l'interprétation d'une Convention à laquelle ont participé d'autres Puissances que les parties en litige, celles-ci notifient aux premières le compromis qu'elles ont conclu. Chacune de ces Puissances a le droit d'intervenir au procès. Si une ou plusieurs d'entre elles ont profité de cette faculté, l'interprétation contenue dans la sentence est également obligatoire à leur égard.

ARTICLE LVII

Chaque partie supporte ses propres frais et une part égale des frais du tribunal.

DISPOSITIONS GÉNÉRALES

ARTICLE LVIII

La présente Convention sera ratifée dans le plus bref délai possible.

cise a decisive influence upon the judgment, and which at the time of the judgment were unknown to the Tribunal itself and to the parties demanding the rehearing. The proceedings for a rehearing can only be begun by a decision of the Tribunal stating expressly the existence of the new fact and recognizing that it possesses the character described in the preceding paragraph, and declaring that the demand is admissible on that ground. The agreement of arbitration shall determine the time within which the demand for a rehearing shall be made.

ARTICLE LVI

The award shall be obligatory only upon the parties who have concluded the arbitration agreement. When there is a question of the interpretation of an agreement entered into by other Powers besides the parties in litigation, the parties to the dispute shall notify the other Powers which have signed the agreement, of the special agreement which they have concluded. Each one of these Powers shall have the right to take part in the proceedings. If one or more among them avail themselves of this permission, the interpretation in the judgment becomes obligatory upon them also.

ARTICLE LVII

Each party shall bear its own expenses and an equal part of the expenses of the Tribunal.

GENERAL PROVISIONS

ARTICLE LVIII

The present Convention shall be ratified with as little delay as possible. The ratifications shall be deposited at

Les ratifications seront déposées à La Haye.

Il sera dressé du dépôt de chaque ratification un procès-verbal, dont une copie, certifiée conforme, sera remise par la voie diplomatique à toutes les Puissances qui ont été représentées à la Conférence Internationale de la Paix de La Haye.

ARTICLE LIX

Les Puissances non-Signataires qui ont été représentées à la Conférence Internationale de la Paix pourront adhérer à la présente Convention. Elles auront à cet effet à faire connaître leur adhésion aux Puissances Contractantes, au moyen d'une notification écrite, adressée au Gouvernement des Pays-Bas et communiquée par celui-ci à toutes les autres Puissances Contractantes.

ARTICLE LX

Les conditions auxquelles les Puissances qui n'ont pas été représentées à la Conférence Internationale de la Paix, pourront adhérer à la présente Convention, formeront l'objet d'une entente ultérieure entre les Puissances Contractantes.

ARTICLE LXI

S'il arrivait qu'une des Hautes Parties Contractantes dénonçât la présente Convention, cette dénonciation ne produirait ses effets qu'un an après la notification faite par écrit au Gouvernement des Pays-Bas et communiquée immédiatement par celui-ci à toutes les autres Puissances Contractantes.

Cette dénonciation ne produira ses effets qu'à l'égard de la Puissance qui l'aura notifiée.

En foi de quoi, les Plénipotentiaires ont signé la présente Convention et l'ont revêtue de leurs sceaux.

The Hague. An official report of each ratification shall be made, a certified copy of which shall be sent through diplomatic channels to all the Powers represented in the Peace Conference at The Hague.

ARTICLE LIX

The Powers which were represented at the International Peace Conference but which have not signed this Convention may become parties to it. For this purpose they will make known to the Contracting Powers their adherence by means of a written notification addressed to all the other Contracting Powers.

ARTICLE LX

The conditions under which Powers not represented in the International Peace Conference may become adherents to the present Convention shall be determined hereafter by agreement between the Contracting Powers.

ARTICLE LXI

If one of the High Contracting Parties shall give notice of a determination to withdraw from the present Convention, this notification shall have its effect only after it has been made in writing to the Government of The Netherlands and communicated by it immediately to all the other Contracting Powers. This notification shall have no effect except for the Power which has made it.

In faith of which the Plenipotentiaries have signed the present Convention and affixed their seals to it.

Done at the Hague, the 29th July, 1899, in a single copy,

Fait à La Haye, le 29 Juillet, 1899, en un seul exemplaire, qui restera déposé dans les archives du Gouvernement des Pays-Bas et dont des copies, certifiées conformes, seront remises par la voie diplomatique aux Puissances Contractantes.

(Signatures.)

CONVENTION CONCERNANT LES LOIS ET COUTUMES DE LA GUERRE SUR TERRE

(Pour l'entête voir la Convention pour le règlement pacifique des Conflits internationaux)

Considérant que, tout en recherchant les moyens de sauvegarder la paix et de prévenir les conflits armés entre les nations, il importe de se préoccuper également du cas où l'appel aux armes serait amené par des événements que leur sollicitude n'aurait pu détourner ;

Animés du désir de servir encore, dans cette hypothèse extrême, les intérêts de l'humanité et les exigences toujours progressives de la civilisation ;

Estimant qu'il importe, à cette fin, de reviser les lois et coutumes générales de la guerre, soit dans le but de les définir avec plus de précision, soit afin d'y tracer certaines limites destinées à en restreindre autant que possible les rigueurs;

S'inspirant de ces vues recommandées aujourd'hui, comme il y à vingt-cinq ans, lors de la Conférence de Bruxelles de 1874, par une sage et généreuse prévoyance ;

Ont, dans cet esprit, adopté un grand nombre de dispositions qui ont pour objet de définir et de régler les usages de la guerre sur terre.

Selon les vues des Hautes Parties Contractantes, ces dispositions, dont la rédaction a été inspirée par le désir de

which shall remain in the archives of the Netherland Government, and copies of it, duly certified, be sent through the diplomatic channel to the Contracting Powers.

(Signatures.)

CONVENTION WITH RESPECT TO THE LAWS AND CUSTOMS OF WAR ON LAND

(For the heading see the Convention for the Peaceful Adjustment of International differences.)

Considering that, while seeking means to preserve peace and prevent armed conflicts among nations, it is likewise necessary to have regard to cases where an appeal to arms may be caused by events which their solicitude could not avert;

Animated by the desire to serve, even in this extreme case, the interests of humanity and the ever increasing requirements of civilization;

Considering it important, with this object, to revise the laws and general customs of war, either with the view of defining them more precisely, or of laying down certain limits for the purpose of modifying their severity as far as possible;

Inspired by these views which are enjoined at the present day, as they were twenty-five years ago at the time of the Brussels Conference in 1874, by a wise and generous foresight;

Have, in this spirit, adopted a great number of provisions, the object of which is to define and govern the usages of war on land.

In the view of the High Contracting Parties, these provisions, the wording of which has been inspired by

diminuer les maux de la guerre, autant que les nécessités militaires le permettent, sont destinées à servir de règle générale de conduite aux belligérants, dans leurs rapports entre eux et avec les populations.

Il n'a pas été possible toutefois de concerter dès maintenant des stipulations s'étendant à toutes les circonstances qui se présentent dans la pratique.

D'autre part, il ne pouvait entrer dans les intentions des Hautes Parties Contractantes que les cas non prévus fussent, faute de stipulation écrite, laissées à l'appréciation arbitraire de ceux qui dirigent les armées.

En attendant qu'un code plus complet des lois de la guerre puisse être édicté, les Hautes Parties Contractantes jugent opportun de constater que, dans les cas non compris dans les dispositions réglementaires adoptées par elles, les populations et les belligérants restent sous la sauvegarde et sous l'empire des principes du droit des gens, tels qu'ils résultent des usages établis entre nations civilisées, des lois de l'humanité, et des exigences de la conscience publique ;

Elles déclarent que c'est dans ce sens que doivent s'entendre notamment les Articles I et II du Règlement adopté ;

Les Hautes Parties Contractantes désirant conclure une Convention à cet effet ont nommé pour leurs Plénipotentiaires, savoir : —

(Noms.)

Lesquels, après s'être communiqué leurs pleins pouvoirs, trouvés en bonne et due forme, sont convenus de ce qui suit : —

ARTICLE I

Les Hautes Parties Contractantes donneront à leurs forces armées de terre des instructions qui seront conformes au " Règlement concernant les Lois et Coutumes de la Guerre sur Terre," annexé à la présente Convention.

the desire to diminish the evils of war so far as military necessities permit, are destined to serve as general rules of conduct for belligerents in their relations with each other and with populations.

It has not, however, been possible to agree forthwith on provisions embracing all the circumstances which occur in practice.

On the other hand, it could not be intended by the High Contracting Parties that the cases not provided for should, for want of a written provision, be left to the arbitrary judgment of the military Commanders.

Until a more complete code of the laws of war is issued, the High Contracting Parties think it right to declare that in cases not included in the Regulations adopted by them, populations and belligerents remain under the protection and empire of the principles of international law, as they result from the usages established between civilized nations, from the laws of humanity, and the requirements of the public conscience;

They declare that it is in this sense especially that Articles I and II of the Regulations adopted must be understood;

The High Contracting Parties, desiring to conclude a Convention to this effect, have appointed as their Plenipotentiaries, to wit: —

(Names.)

Who, after communication of their full powers, found in good and due form, have agreed on the following: —

ARTICLE I

The High Contracting Parties shall issue instructions to their armed land forces, which shall be in conformity with the "Regulations respecting the Laws and Customs of War on Land" annexed to the present Convention.

ARTICLE II

Les dispositions contenues dans le Règlement visé à l'Article Ier ne sont obligatoires que pour les Puissances Contractantes, en cas de guerre entre deux ou plusieurs d'entre elles.

Ces dispositions cesseront d'être obligatoires du moment où, dans une guerre entre des Puissances Contractantes, une Puissance non-Contractante se joindrait à l'un des belligérants.

ARTICLE III

La présente Convention sera ratifiée dans le plus bref délai possible.

Les ratifications seront déposées à La Haye.

Il sera dressé du dépôt de chaque ratification un procès-verbal, dont une copie, certifiée conforme, sera remise par la voie diplomatique à toutes les Puissances Contractantes.

ARTICLE IV

Les Puissances non-Signataires sont admises à adhérer à la présente Convention.

Elles auront, à cet effet, à faire connaître leur adhésion aux Puissances Contractantes au moyen d'une notification écrite, adressée au Gouvernement des Pays-Bas, et communiquée par celui-ci à toutes les autres Puissances Contractantes.

ARTICLE V

S'il arrivait qu'une des Hautes Parties Contractantes dénonçât la présente Convention, cette dénonciation ne produirait ses effets qu'un an après la notification faite par écrit au Gouvernement des Pays-Bas et communiquée immédiatement par celui-ci à toutes les autres Puissances Contractantes.

ARTICLE II

The provisions contained in the Regulations mentioned in Article I are binding only on the Contracting Powers, in case of war between two or more of them.

These provisions shall cease to be binding from the time when, in a war between Contracting Powers, a Non-Contracting Power joins one of the belligerents.

ARTICLE III

The present Convention shall be ratified as speedily as possible.

The ratifications shall be deposited at The Hague.

A *procès-verbal* shall be drawn up recording the receipt of each ratification, and a copy, duly certified, shall be sent through the diplomatic channel to all the Contracting Powers.

ARTICLE IV

Non-Signatory Powers are allowed to adhere to the present Convention.

For this purpose they must make their adhesion known to the Contracting Powers by means of a written notification addressed to the Netherland Government, and by it communicated to all the other Contracting Powers.

ARTICLE V

In the event of one of the High Contracting Parties denouncing the present Convention, such denunciation would not take effect until a year after the written notification made to the Netherland Government, and by it at once communicated to all the other Contracting Powers.

Cette dénonciation ne produira ses effets qu'à l'égard de la Puissance qui l'aura notifiée.

En foi de quoi, les Plénipotentiaires ont signé la présente Convention et l'ont revêtue de leurs cachets.

Fait à La Haye, le 29 Juillet, 1899, en un seul exemplaire, qui restera déposé dans les archives du Gouvernement des Pays-Bas et dont des copies, certifiées conformes, seront remises par la voie diplomatique aux Puissances Contractantes.

(Signatures.)

ANNEXE À LA CONVENTION

Règlement concernant les Lois et Coutumes de la Guerre sur Terre

Section I. — Des Belligérants

Chapitre I. — *De la Qualité de Belligérants*

ARTICLE I

Les lois, les droits, et les devoirs de la guerre ne s'appliquent pas seulement à l'armée, mais encore aux milices et aux corps de volontaires, réunissant les conditions suivantes : —

1. D'avoir à leur tête une personne responsable pour ses subordonnés ;

2. D'avoir un signe distinctif fixe et reconnaissable à distance ;

3. De porter les armes ouvertement ; et

4. De se conformer dans leurs opérations aux lois et coutumes de la guerre.

Dans les pays où les milices ou des corps de volontaires

This denunciation shall affect only the notifying Power.

In faith of which the Plenipotentiaries have signed the present Convention and affixed their seals thereto.

Done at The Hague, the 29th July, 1899, in a single copy, which shall be kept in the archives of the Netherland Government, and copies of which, duly certified, shall be delivered to the Contracting Powers through the diplomatic channel.

(Signatures.)

ANNEX TO THE CONVENTION

Regulations respecting the Laws and Customs of War on Land

Section I. — On Belligerents

Chapter I. — *On the Qualification of Belligerents*

ARTICLE I

The laws, rights, and duties of war apply not only to armies, but also to militia and volunteer corps, fulfilling the following conditions : —

1. To be commanded by a person responsible for his subordinates ;
2. To have a fixed distinctive emblem recognizable at a distance ;
3. To carry arms openly ; and
4. To conduct their operations in accordance with the laws and customs of war.

In countries where militia or volunteer corps constitute

constituent l'armée ou en font partie, ils sont compris sous la dénomination "d'armée."

ARTICLE II

La population d'un territoire non occupé qui, à l'approche de l'ennemi, prend spontanément les armes pour combattre les troupes d'invasion sans avoir eu le temps de s'organiser conformément à l'Article I[er], sera considérée comme belligérante si elle respecte les lois et coutumes de la guerre.

ARTICLE III

Les forces armées des parties belligérantes peuvent se composer de combattants et de non-combattants. En cas de capture par l'ennemi, les uns et les autres ont droit au traitement des prisonniers de guerre.

CHAPITRE II. — *Des Prisonniers de Guerre*

ARTICLE IV

Les prisonniers de guerre sont au pouvoir du Gouvernement ennemi, mais non des individus ou des corps qui les ont capturés.

Ils doivent être traités avec humanité.

Tout ce qui leur appartient personnellement, excepté les armes, les chevaux, et les papiers militaires, reste leur propriété.

ARTICLE V

Les prisonniers de guerre peuvent être assujettis à l'internement dans une ville, forteresse, camp, ou localité quelconque, avec obligation de ne pas s'en éloigner au delà de certaines limites déterminées ; mais ils ne peuvent être enfermés que par mesure de sûreté indispensable.

the army, or form part of it, they are included under the denomination "army."

ARTICLE II

The population of a territory which has not been occupied, who, on the enemy's approach, spontaneously take up arms to resist the invading troops without having time to organize themselves in accordance with Article I, shall be regarded as belligerent, if they respect the laws and customs of war.

ARTICLE III

The armed forces of the belligerent parties may consist of combatants and non-combatants. In case of capture by the enemy both have a right to be treated as prisoners of war.

CHAPTER II. — *On Prisoners of War*

ARTICLE IV

Prisoners of war are in the power of the hostile Government, but not in that of the individuals or corps who captured them.

They must be humanely treated.

All their personal belongings, except arms, horses, and military papers remain their property.

ARTICLE V

Prisoners of war may be detained in a town, fortress, camp, or any other locality, and bound not to go beyond certain fixed limits; but they can only be confined as an indispensable measure of safety.

ARTICLE VI

L'État peut employer, comme travailleurs, les prisonniers de guerre, selon leur grade et leurs aptitudes. Ces travaux ne seront pas excessifs et n'auront aucun rapport avec les opérations de la guerre.

Les prisonniers peuvent être autorisés à travailler pour le compte d'Administrations Publiques ou de particuliers, ou pour leur propre compte.

Les travaux fait pour l'État sont payés d'après les tarifs en vigueur pour les militaires de l'armée nationale exécutant les mêmes travaux.

Lorsque les travaux ont lieu pour le compte d'autres Administrations Publiques ou pour des particuliers, les conditions en sont réglées d'accord avec l'autorité militaire.

Le salaire des prisonniers contribuera à adoucir leur position, et le surplus leur sera compté au moment de leur libération, sauf défalcation des frais d'entretien.

ARTICLE VII

Le Gouvernement au pouvoir duquel se trouvent les prisonniers de guerre est chargé de leur entretien.

A défaut d'une entente spéciale entre les belligérants, les prisonniers de guerre seront traités, pour la nourriture, le couchage, et l'habillement, sur le même pied que les troupes du Gouvernement qui les aura capturés.

ARTICLE VIII

Les prisonniers de guerre seront soumis aux lois, règlements, et ordres en vigueur dans l'armée de l'État au pouvoir duquel ils se trouvent.

Tout acte d'insubordination autorise, à leur égard, les mesures de rigueur nécessaires.

ARTICLE VI

The State may utilize the labor of prisoners of war according to their rank and aptitude. Their tasks shall not be excessive, and shall have nothing to do with the military operations.

Prisoners may be authorized to work for the Public Service, for private persons, or on their own account.

Work done for the State shall be paid for according to the tariffs in force for soldiers of the national army employed on similar tasks.

When the work is for other branches of the Public Service or for private persons, the conditions shall be settled in agreement with the military authorities.

The wages of the prisoners shall go toward improving their position, and the balance shall be paid them at the time of their release, after deducting the cost of their maintenance.

ARTICLE VII

The Government into whose hands prisoners of war have fallen is bound to maintain them.

Failing a special agreement between the belligerents, prisoners of war shall be treated as regards food, quarters, and clothing, on the same footing as the troops of the Government which has captured them.

ARTICLE VIII

Prisoners of war shall be subject to the laws, regulations, and orders in force in the army of the State into whose hands they have fallen.

Any act of insubordination warrants the adoption, as regards them, of such measures of severity as may be necessary.

Les prisonniers évadés, qui seraient repris avant d'avoir pu rejoindre leur armée ou avant de quitter le territoire occupé par l'armée qui les aura capturés, sont passibles de peines disciplinaires.

Les prisonniers qui, après avoir réussi à s'évader, sont de nouveau faits prisonniers, ne sont passibles d'aucune peine pour la fuite antérieure.

ARTICLE IX

Chaque prisonnier de guerre est tenu de déclarer, s'il est interrogé à ce sujet, ses véritables noms et grade et, dans le cas où il enfreindrait cette règle, il s'exposerait à une restriction des avantages accordés aux prisonniers de guerre de sa catégorie.

ARTICLE X

Les prisonniers de guerre peuvent être mis en liberté sur parole, si les lois de leur pays les y autorisent, et, en pareil cas, ils sont obligés, sous la garantie de leur honneur personnel, de remplir scrupuleusement, tant vis-à-vis de leur propre Gouvernement que vis-à-vis de celui qui les a faits prisonniers, les engagements qu'ils auraient contractés.

Dans le même cas, leur propre Gouvernement est tenu de n'exiger ni accepter d'eux aucun service contraire à la parole donnée.

ARTICLE XI

Un prisonnier de guerre ne peut être contraint d'accepter sa liberté sur parole; de même le Gouvernement ennemi n'est pas obligé d'accéder à la demande du prisonnier réclamant sa mise en liberté sur parole.

Escaped prisoners, recaptured before they have succeeded in rejoining their army, or before quitting the territory occupied by the army that captured them, are liable to disciplinary punishment.

Prisoners who, after succeeding in escaping are again taken prisoners, are not liable to any punishment for the previous flight.

ARTICLE IX

Every prisoner of war, if questioned, is bound to declare his true name and rank, and if he disregards this rule, he is liable to a curtailment of the advantages accorded to the prisoners of war of his class.

ARTICLE X

Prisoners of war may be set at liberty on parole if the laws of their country authorize it, and, in such a case, they are bound, on their personal honor, scrupulously to fulfil, both as regards their own Government and the Government by whom they were made prisoners, the engagements they have contracted.

In such cases, their own Government shall not require of nor accept from them any service incompatible with the parole given.

ARTICLE XI

A prisoner of war cannot be forced to accept his liberty on parole; similarly the hostile Government is not obliged to assent to the prisoner's request to be set at liberty on parole.

ARTICLE XII

Tout prisonnier de guerre, libéré sur parole et repris portant les armes contre le Gouvernement envers lequel il s'était engagé d'honneur, ou contre les alliés de celui-ci, perd le droit au traitement des prisonniers de guerre et peut être traduit devant les Tribunaux.

ARTICLE XIII

Les individus qui suivent une armée sans en faire directement partie, tels que les correspondants et les reporters de journaux, les vivandiers, les fournisseurs, qui tombent au pouvoir de l'ennemi et que celui-ci juge utile de détenir, ont droit au traitement des prisonniers de guerre, à condition qu'ils soient munis d'une légitimation de l'autorité militaire de l'armée qu'ils accompagnaient.

ARTICLE XIV

Il est constitué, dès le début des hostilites, dans chacun des États belligérants et, le cas échéant, dans les pays neutres qui auront recueilli des belligérants sur leur territoire, un Bureau de Renseignements sur les prisonniers de guerre. Ce bureau, chargé de répondre à toutes les demandes qui les concernent, reçoit des divers services compétents toutes les indications nécessaires pour lui permettre d'établir une fiche individuelle pour chaque prisonnier de guerre. Il est tenu au courant des internements et des mutations, ainsi que des entrées dans les hôpitaux et des décès.

Le Bureau de Renseignements est également chargé de recueillir et de centraliser tous les objets d'un usage personnel, valeurs, lettres, &c., qui seront trouvés sur les champs de bataille ou délaissés par des prisonniers décédés dans les hôpitaux et ambulances, et de les transmettre aux intéressés.

ARTICLE XII

Any prisoner of war, who is liberated on parole and recaptured, bearing arms against the Government to whom he had pledged his honor, or against the allies of that Government, forfeits his right to be treated as a prisoner of war, and can be brought before the Courts.

ARTICLE XIII

Individuals who follow an army without directly belonging to it, such as newspaper correspondents and reporters, sutlers, contractors, who fall into the enemy's hands, and whom the latter think fit to detain, have a right to be treated as prisoners of war, provided they can produce a certificate from the military authorities of the army they were accompanying.

ARTICLE XIV

A Bureau of Information relative to prisoners of war shall be instituted, on the commencement of hostilities, in each of the belligerent States and, when necessary, in the neutral countries on whose territory belligerents have been received. This Bureau is intended to answer all inquiries about prisoners of war, and shall be furnished by the various services concerned with all the necessary information to enable it to keep an individual return for each prisoner of war. It is kept informed of internments and changes, as well as of admissions into hospital and deaths.

It is also the duty of the Bureau of Information to receive and collect all objects of personal use, valuables, letters, etc., found on the battlefields or left by prisoners who have died in hospital or ambulance, and to transmit them to those interested.

ARTICLE XV

Les Sociétés de Secours pour les prisonniers de guerre, régulièrement constituées selon la loi de leur pays et ayant pour objet d'être les intermédiaires de l'action charitable, recevront, de la part des belligérants, pour elles et pour leurs agents dûment accrédités, toute facilité, dans les limites tracées par les nécessités militaires et les règles administratives, pour accomplir efficacement leur tâche d'humanité. Les Délégués de ces Sociétés pourront être admis à distribuer des secours dans les dépôts d'internement, ainsi qu'aux lieux d'étape des prisonniers rapatriés, moyennant une permission personnelle délivrée par l'autorité militaire, et en prenant l'engagement par écrit de se soumettre à toutes les mesures d'ordre et de police que celle-ci prescrirait.

ARTICLE XVI

Les Bureaux de Renseignements jouissent de la franchise de port. Les lettres, mandats, et articles d'argent, ainsi que les colis postaux destinés aux prisonniers de guerre ou expédiés par eux, seront affranchis de toutes taxes postales, aussi bien dans les pays d'origine et de destination que dans les pays intermédiaires.

Les dons et secours en nature destinés aux prisonniers de guerre seront admis en franchise de tous droits d'entrée et autres, ainsi que des taxes de transport sur les chemins de fer exploités par l'État.

ARTICLE XVII

Les officiers prisonniers pourront recevoir le complément, s'il y a lieu, de la solde qui leur est attribuée dans cette situation par les Règlements de leur pays, à charge de remboursement par leur Gouvernement.

ARTICLE XV

Relief Societies for prisoners of war, which are regularly constituted in accordance with the law of the country with the object of serving as the intermediary for charity, shall receive from the belligerents for themselves and their duly accredited agents every facility, within the bounds of military requirements and Administrative Regulations, for the effective accomplishment of their humane task. Delegates of these Societies may be admitted to the places of internment for the distribution of relief, as also to the halting places of repatriated prisoners, if furnished with a personal permit by the military authorities, and on giving an engagement in writing to comply with all their Regulations for order and police.

ARTICLE XVI

The Bureau of Information shall have the privilege of free postage. Letters, money orders, and valuables, as well as postal parcels destined for the prisoners of war or despatched by them, shall be free of all postal duties, both in the countries of origin and destination, as well as in those they pass through.

Gifts and relief in kind for prisoners of war shall be admitted free of all duties of entry and others, as well as of payments for carriage by the Government railways.

ARTICLE XVII

Officers taken prisoners may receive, if necessary, the full pay allowed them in this position by their country's regulations, the amount to be repaid by their Government.

ARTICLE XVIII

Toute latitude est laissée aux prisonniers de guerre pour l'exercice de leur religion, y compris l'assistance aux offices de leur culte, à la seule condition de se conformer aux mesures d'ordre et de police prescrites par l'autorité militaire.

ARTICLE XIX

Les testaments des prisonniers de guerre sont reçus ou dressés dans les mêmes conditions que pour les militaires de l'armée nationale.

On suivra également les mêmes règles en ce qui concerne les pièces relatives à la constatation des décès, ainsi que pour l'inhumation des prisonniers de guerre, en tenant compte de leur grade et de leur rang.

ARTICLE XX

Après la conclusion de la paix, le repatriement des prisonniers de guerre s'effectuera dans le plus bref délai possible.

CHAPITRE III. — *Des Malades et des Blessés*

ARTICLE XXI

Les obligations des belligérants concernant le service des malades et des blessés sont régies par la Convention de Genève du 22 Août, 1864, sauf les modifications dont celle-ci pourra être l'objet.

ARTICLE XVIII

Prisoners of war shall enjoy every latitude in the exercise of their religion, including attendance at their own church service, provided only they comply with the regulations for order and police ordinances issued by the military authorities.

ARTICLE XIX

The wills of prisoners of war shall be received or drawn up on the same conditions as for soldiers of the national army.

The same rules shall be observed regarding death certificates, as well as for the burial of prisoners of war, due regard being paid to their grade and rank.

ARTICLE XX

After the conclusion of peace, the repatriation of prisoners of war shall take place as speedily as possible.

CHAPTER III. — *On the Sick and Wounded*

ARTICLE XXI

The obligations of belligerents with regard to the sick and wounded are governed by the Geneva Convention of the 22d August, 1864, subject to any modifications which may be introduced into it.

Section II. — Des Hostilités

Chapitre I. — *Des moyens de nuire à l'Ennemi, des Sièges et des Bombardements*

ARTICLE XXII

Les belligérants n'ont pas un droit illimité quant au choix des moyens de nuire à l'ennemi.

ARTICLE XXIII

Outre les prohibitions établies par des Conventions spéciales, il est notamment interdit:—

(*a.*) D'employer du poison ou des armes empoisonnées;

(*b.*) De tuer ou de blesser par trahison des individus appartenant à la nation ou à l'armée ennemie;

(*c.*) De tuer ou de blesser un ennemi qui, ayant mis bas les armes ou n'ayant plus les moyens de se défendre, s'est rendu à discrétion;

(*d.*) De déclarer qu'il ne sera pas fait de quartier;

(*e.*) D'employer des armes, des projectiles, ou des matières propres à causer des maux superflus;

(*f.*) D'user indûment du pavillon parlementaire, du pavillon national, ou des insignes militaires et de l'uniforme de l'ennemi, ainsi que des signes distinctifs de la Convention de Genève;

(*g.*) De détruire ou de saisir des propriétés ennemies, sauf les cas où ces destructions ou ces saisies seraient impérieusement commandées par les nécessités de la guerre.

ARTICLE XXIV

Les ruses de guerre et l'emploi des moyens nécessaires pour se procurer des renseignements sur l'ennemi et sur le terrain sont considérés comme licites.

Section II. — On Hostilities.

Chapter I. — *On means of injuring the Enemy, Sieges and Bombardments*

ARTICLE XXII

The right of belligerents to adopt means of injuring the enemy is not unlimited.

ARTICLE XXIII

Besides the prohibitions provided by special Conventions, it is especially prohibited : —

(*a.*) To employ poison or poisoned arms ;

(*b.*) To kill or wound treacherously individuals belonging to the hostile nation or army ;

(*c.*) To kill or wound an enemy who, having laid down arms, or having no longer means of defence, has surrendered at discretion ;

(*d.*) To declare that no quarter will be given ;

(*e.*) To employ arms, projectiles, or material of a nature to cause superfluous injury ;

(*f.*) To make improper use of a flag of truce, the national flag, or military ensigns and the enemy's uniform, as well as the distinctive badges of the Geneva Convention ;

(*g.*) To destroy or seize the enemy's property, unless such destruction or seizure be imperatively demanded by the necessities of war.

ARTICLE XXIV

Ruses of war and the employment of methods necessary to obtain information about the enemy and the country, are considered allowable.

ARTICLE XXV

Il est interdit d'attaquer ou de bombarder des villes, villages, habitations, ou bâtiments qui ne sont pas défendus.

ARTICLE XXVI

Le Commandant des troupes assaillantes, avant d'entre, prendre le bombardement, et sauf le cas d'attaque de vive force, devra faire tout ce qui dépend de lui pour en avertir les autorités.

ARTICLE XXVII

Dans les sièges et bombardements, toutes les mesures nécessaires doivent être prises pour épargner, autant que possible, les édifices consacrés aux cultes, aux arts, aux sciences, et à la bienfaisance, les hôpitaux et les lieux de rassemblement de malades et de blessés, à condition qu'ils ne soient pas employés en même temps à un but militaire.

Le devoir des assiégés est de désigner ces édifices ou lieux de rassemblement par des signes visibles spéciaux qui seront notifiés d'avance à l'assiégeant.

ARTICLE XXVIII

Il est interdit de livrer au pillage même une ville ou localité prise d'assaut.

Chapitre II. — *Des Espions*

ARTICLE XXIX

Ne peut être considéré comme espion que l'individu qui, agissant clandestinement ou sous de faux prétextes, recueille ou cherche à recueillir des informations dans la zone d'opérations d'un belligérant, avec l'intention de les communiquer à la partie adverse.

ARTICLE XXV

The attack or bombardment of towns, villages, habitations, or buildings which are not defended, is prohibited.

ARTICLE XXVI

The Commander of an attacking force, before commencing a bombardment, except in the case of an assault, should do all he can to warn the authorities.

ARTICLE XXVII

In sieges and bombardments all necessary steps should be taken to spare as far as possible edifices devoted to religion, art, science, and charity, hospitals, and places where the sick and wounded are collected, provided they are not used at the same time for military purposes.

The besieged should indicate these buildings or places by some particular and visible signs, which should previously be notified to the assailants.

ARTICLE XXVIII

The pillage of a town or place, even when taken by assault, is prohibited.

CHAPTER II.—*On Spies*

ARTICLE XXIX

An individual can only be considered a spy if, acting clandestinely, or on false pretences, he obtains, or seeks to obtain information in the zone of operations of a belligerent, with the intention of communicating it to the hostile party.

Ainsi les militaires non déguisés qui ont pénétré dans la zone d'opérations de l'armée ennemie, à l'effet de recueillir des informations, ne sont pas considérés comme espions. De même, ne sont pas considérés comme espions: les militaires et les non-militaires, accomplissant ouvertement leur mission, chargés de transmettre des dépêches destinées soit à leur propre armée, soit à l'armée ennemie. A cette catégorie appartiennent également les individus envoyés en ballon pour transmettre les dépêches, et en général, pour entretenir les communications entre les diverses parties d'une armée ou d'un territoire.

ARTICLE XXX

L'espion pris sur le fait ne pourra être puni sans jugement préalable.

ARTICLE XXI

L'espion qui, ayant rejoint l'armée à laquelle il appartient, est capturé plus tard par l'ennemi, est traité comme prisonnier de guerre et n'encourt aucune responsabilité pour ses actes d'espionnage antérieurs.

CHAPITRE III. — *Des Parlementaires*

ARTICLE XXXII

Est considéré comme parlementaire l'individu autorisé par l'un des belligérants à entrer en pourparlers avec l'autre et se présentant avec le drapeau blanc. Il a droit à l'inviolabilité ainsi que le trompette, clairon, ou tambour, le porte-drapeau et l'interprète qui l'accompagneraient.

ARTICLE XXXIII

Le Chef auquel un parlementaire est expédié n'est pas obligé de le recevoir en toutes circonstances.

Thus, soldiers not in disguise who have penetrated into the zone of operations of a hostile army to obtain information are not considered spies. Similarly, the following are not considered spies: soldiers or civilians, carrying out their mission openly, charged with the delivery of despatches destined either for their own army or for that of the enemy. To this class belong likewise individuals sent in balloons to deliver despatches, and generally to maintain communication between the various parts of an army or a territory.

ARTICLE XXX

A spy taken in the act cannot be punished without previous trial.

ARTICLE XXXI

A spy who, after rejoining the army to which he belongs, is subsequently captured by the enemy, is treated as a prisoner of war, and incurs no responsibility for his previous acts of espionage.

CHAPTER III.—*On Flags of Truce*

ARTICLE XXXII

An individual is considered as bearing a flag of truce who is authorized by one of the belligerents to enter into communication with the other, and who carries a white flag. He has a right to inviolability, as well as the trumpeter, bugler, or drummer, the flag-bearer, and the interpreter who may accompany him.

ARTICLE XXXIII

The Chief to whom a flag of truce is sent is not obliged to receive it under all circumstances.

Il peut prendre toutes les mesures nécessaires afin d'empêcher le parlementaire de profiter de sa mission pour se renseigner.

Il a le droit, en cas d'abus, de retenir temporairement le parlementaire.

ARTICLE XXXIV

Le parlementaire perd ses droits d'inviolabilité, s'il est prouvé, d'une manière positive et irrécusable, qu'il a profité de sa position privilégiée pour provoquer ou commettre un acte de trahison.

Chapitre IV. — *Des Capitulations*

ARTICLE XXXV

Les Capitulations arrêtées entre les Parties Contractantes doivent tenir compte des règles de l'honneur militaire.

Une fois fixées, elles doivent être scrupuleusement observées par les deux parties.

Chapitre V. — *De l'Armistice*

ARTICLE XXXVI

L'Armistice suspend les opérations de guerre par un accord mutuel des parties belligérantes. Si la durée n'en est pas déterminée, les parties belligérantes peuvent reprendre en tout temps les opérations, pourvu toutefois que l'ennemi soit averti en temps convenu, conformément aux conditions de l'armistice.

ARTICLE XXXVII

L'armistice peut être général ou local. Le premier suspend partout les opérations de guerre des États belli-

He can take all steps necessary to prevent the envoy taking advantage of his mission to obtain information.

In case of abuse, he has the right to detain the envoy temporarily.

ARTICLE XXXIV

The envoy loses his rights of inviolability if it is proved beyond doubt that he has taken advantage of his privileged position to provoke or commit an act of treachery.

CHAPTER IV.—*On Capitulations*

ARTICLE XXXV

Capitulations agreed on between the Contracting Parties must be in accordance with the rules of military honor.

When once settled, they must be scrupulously observed by both the parties.

CHAPTER V.—*On Armistices*

ARTICLE XXXVI

An armistice suspends military operations by mutual agreement between the belligerent parties. If its duration is not fixed, the belligerent parties can resume operations at any time, provided always the enemy is warned within the time agreed upon, in accordance with the terms of the armistice.

ARTICLE XXXVII

An armistice may be general or local. The first suspends all military operations of the belligerent States;

gérants ; le second, seulement entre certaines fractions des armées belligérantes et dans un rayon déterminé.

ARTICLE XXXVIII

L'armistice doit être notifié officiellement et en temps utile aux autorités compétentes et aux troupes. Les hostilités sont suspendues immédiatement après la notification ou au terme fixé.

ARTICLE XXXIX

Il dépend des Parties Contractantes de fixer, dans les clauses de l'armistice, les rapports qui pourraient avoir lieu, sur le théâtre de la guerre, avec les populations et entre elles.

ARTICLE XL

Toute violation grave de l'armistice, par l'une des parties, donne à l'autre le droit de le dénoncer et même, en cas d'urgence, de reprendre immédiatement les hostilités.

ARTICLE XLI

La violation des clauses de l'armistice par des particuliers agissant de leur propre initiative, donne droit seulement à réclamer la punition des coupables et, s'il y a lieu, une indemnité pour les pertes éprouvées.

Section III. — De l'Autorité Militaire sur le Territoire de l'État Ennemi

ARTICLE XLII

Un territoire est considéré comme occupé lorsqu'il se trouve placé de fait sous l'autorité de l'armée ennemie.

L'occupation ne s'étend qu'aux territoires où cette autorité est établie et en mesure de s'exercer.

the second, only those between certain fractions of the belligerent armies and in a fixed radius.

ARTICLE XXXVIII

An armistice must be notified officially, and in good time, to the competent authorities and the troops. Hostilities are suspended immediately after the notification, or at a fixed date.

ARTICLE XXXIX

It is for the Contracting Parties to settle, in the terms of the armistice, what communications may be held, on the theatre of war, with the population and with each other.

ARTICLE XL

Any serious violation of the armistice by one of the parties gives the other party the right to denounce it, and even, in case of urgency, to recommence hostilities at once.

ARTICLE XLI

A violation of the terms of the armistice by private individuals acting on their own initiative, only confers the right of demanding the punishment of the offenders, and, if necessary, indemnity for the losses sustained.

Section III.—On Military Authority over Hostile Territory

ARTICLE XLII

Territory is considered occupied when it is actually placed under the authority of the hostile army.

The occupation applies only to the territory where such authority is established, and in a position to assert itself.

ARTICLE XLIII

L'autorité du pouvoir légal ayant passé de fait entre les mains de l'occupant, celui-ci prendra toutes les mesures qui dépendent de lui en vue de rétablir et d'assurer, autant qu'il est possible, l'ordre et la vie publics en respectant, sauf empêchement absolu, les lois en vigueur dans le pays.

ARTICLE XLIV

Il est interdit de forcer la population d'un territoire occupé à prendre part aux opérations militaires contre son propre pays.

ARTICLE XLV

Il est interdit de contraindre la population d'un territoire occupé à prêter serment à la Puissance ennemie.

ARTICLE XLVI

L'honneur et les droits de la famille, la vie des individus et la propriété privée, ainsi que les convictions religieuses et l'exercice des cultes, doivent être respectés.

La propriété privée ne peut pas être confisquée.

ARTICLE XLVII

Le pillage est formellement interdit.

ARTICLE XLVIII

Si l'occupant prélève, dans le territoire occupé, les impôts, droits et péages établis au profit de l'État, il le fera, autant que possible, d'après les règles de l'assiette et de la répartition en vigueur, et il en résultera pour lui l'obligation de pourvoir aux frais de l'administration du territoire occupé dans la mesure où le Gouvernement légal y était tenu.

ARTICLE XLIII

The authority of the legitimate power having actually passed into the hands of the occupant, the latter shall take all steps in his power to reëstablish and insure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.

ARTICLE XLIV

Any compulsion of the population of occupied territory to take part in military operations against its own country is prohibited.

ARTICLE XLV

Any pressure on the population of occupied territory to take the oath of allegiance to the hostile Power is prohibited.

ARTICLE XLVI

Family honor and rights, individual lives and private property, as well as religious convictions and liberty, must be respected.

Private property cannot be confiscated.

ARTICLE XLVII

Pillage is absolutely prohibited.

ARTICLE XLVIII

If, in the territory occupied, the occupant collects the taxes, dues, and tolls imposed for the benefit of the State, he shall do it, as far as possible, in accordance with the rules in existence and the assessment in force, and will in consequence be bound to defray the expenses of the administration of the occupied territory on the same scale as that by which the legitimate Government was bound.

ARTICLE XLIX

Si, en dehors des impôts visés à l'Article précédent, l'occupant prélève d'autres contributions en argent dans le territoire occupé, ce ne pourra être que pour les besoins de l'armée ou de l'administration de ce territoire.

ARTICLE L

Aucune peine collective, pécuniaire ou autre, ne pourra être édictée contre les populations à raison de faits individuels dont elles ne pourraient être considérées comme solidairement responsables.

ARTICLE LI

Aucune contribution ne sera perçue qu'en vertu d'un ordre écrit et sous la responsabilité d'un Général-en-chef.

Il ne sera procédé, autant que possible, à cette perception que d'après les règles de l'assiette et de la répartition des impôts en vigueur.

Pour toute contribution un reçu sera délivré aux contribuables.

ARTICLE LII

Des réquisitions en nature et des services ne pourront être réclamés des communes ou des habitants, que pour les besoins de l'armée d'occupation. Ils seront en rapport avec les ressources du pays et de telle nature qu'ils n'impliquent pas pour les populations l'obligation de prendre part aux opérations de la guerre contre leur patrie.

Ces réquisitions et ces services ne seront réclamés qu'avec l'autorisation du Commandant dans la localité occupée.

Les prestations en nature seront, autant que possible, payées au comptant ; sinon elles seront constatées par des reçus.

ARTICLE XLIX

If, besides the taxes mentioned in the preceding Article, the occupant levies other money taxes in the occupied territory, this can only be for military necessities or the administration of such territory.

ARTICLE L

No general penalty, pecuniary or otherwise, can be inflicted on the population on account of the acts of individuals for which it cannot be regarded as collectively responsible.

ARTICLE LI

No tax shall be collected except under a written order and on the responsibility of a Commander-in-chief.

This collection shall only take place, as far as possible, in accordance with the rules in existence and the assessment of taxes in force.

For every payment a receipt shall be given to the taxpayer.

ARTICLE LII

Neither requisitions in kind nor services can be demanded from communes or inhabitants except for the necessities of the army of occupation. They must be in proportion to the resources of the country, and of such a nature as not to involve the population in the obligation of taking part in military operations against their country.

These requisitions and services shall only be demanded on the authority of the Commander in the locality occupied.

The contributions in kind shall, as far as possible, be paid for in ready money; if not, their receipt shall be acknowledged.

ARTICLE LIII

L'armée qui occupe un territoire ne pourra saisir que le numéraire, les fonds et les valeurs exigibles appartenant en propre à l'État, les dépôts d'armes, moyens de transport, magasins et approvisionnements et, en général, toute propriété mobilière de l'État de nature à servir aux opérations de la guerre.

Le matériel des chemins de fer, les télégraphes de terre, les téléphones, les bateaux à vapeur et autres navires, en dehors des cas régis par la loi maritime, de même que les dépôts d'armes et en général toute espèce de munitions de guerre, même appartenant à des Sociétés ou à des personnes privées, sont également des moyens de nature à servir aux opérations de la guerre, mais devront être restitués, et les indemnités seront réglées à la paix.

ARTICLE LIV

Le matériel des chemins de fer provenant d'États neutres, qu'il appartienne à ces États ou à des Sociétés ou personnes privées, leur sera renvoyé aussitôt que possible.

ARTICLE LV

L'État occupant ne se considérera que comme administrateur et usufruitier des édifices publics, immeubles, forêts et exploitations agricoles appartenant à l'État ennemi et se trouvant dans le pays occupé. Il devra sauvegarder le fonds de ces propriétés et les administrer conformément aux règles de l'usufruit.

ARTICLE LVI

Les biens des communes, ceux des établissements consacrés aux cultes, à la charité et à l'instruction, aux arts

ARTICLE LIII

An army of occupation can only take possession of the cash, funds, and property liable to requisition belonging strictly to the State, depôts of arms, means of transport, stores and supplies, and, generally, all movable property of the State which may be used for military operations.

Railway plant, land telegraphs, telephones, steamers, and other ships, apart from cases governed by maritime law, as well as depôts of arms and, generally, all kinds of war material, even though belonging to Companies or to private persons, are likewise material which may serve for military operations, but they must be restored at the conclusion of peace, and indemnities paid for them.

ARTICLE LIV

The plant of railways coming from neutral States, whether the property of those States, or of companies, or of private persons, shall be sent back to them as soon possible.

ARTICLE LV

The occupying State shall only be regarded as administrator and usufructuary of the public buildings, real property, forests, and agricultural works belonging to the hostile State, and situated in the occupied country. It must protect the capital of these properties, and administer it according to the rules of trusteeship.

ARTICLE LVI

The property of the municipalities, that of religious, charitable, and educational institutions, and those of arts

et aux sciences, même appartenant à l'État, seront traités comme la propriété privée.

Toute saisie, destruction ou dégradation intentionnelle de semblables établissements, de monuments historiques, d'œuvres d'art et de science, est interdit et doit être poursuivie.

Section IV. — Des Belligérants Internés et des Blessés Soignés chez les Neutres

ARTICLE LVII

L'État neutre qui reçoit sur son territoire des troupes appartenant aux armées belligérantes, les internera, autant que possible, loin du théâtre de la guerre.

Il pourra les garder dans des camps, et même les enfermer dans des forteresses ou dans des lieux appropriés à cet effet.

Il décidera si les officiers peuvent être laissés libres en prenant l'engagement sur parole de ne pas quitter le territoire neutre sans autorisation.

ARTICLE LVIII

A défaut de Convention spéciale, l'État neutre fournira aux internés les vivres, les habillements, et les secours commandés par l'humanité.

Bonification sera faite, à la paix, des frais occasionnés par l'internement.

ARTICLE LIX

L'État neutre pourra autoriser le passage sur son territoire des blessés ou malades appartenant aux armées belligérantes, sous la réserve que les trains qui les amèneront ne transporteront ni personnel ni matériel de guerre. En pareil cas, l'État neutre est tenu de prendre

and science, even when State property, shall be treated as private property.

All seizure, destruction, or intentional damage done to such institutions, to historical monuments, works of art or science, is prohibited, and should be made the subject of civil and criminal proceedings.

Section IV. — On the Detention of Belligerents and the Care of the Wounded in Neutral Countries

ARTICLE LVII

A neutral State which receives in its territory troops belonging to the belligerent armies shall detain them, if possible, at some distance from the theatre of war.

It can keep them in camps, and even confine them in fortresses or localities assigned for this purpose.

It shall decide whether officers may be left at liberty on giving their parole that they will not leave the neutral territory without authorization.

ARTICLE LVIII

Failing a special Convention, the neutral State shall supply the detained with the food, clothing, and relief required by humanity.

At the conclusion of peace, the expenses caused by the detention shall be repaid.

ARTICLE LIX

A neutral State may authorize the passage through its territory of wounded or sick belonging to the belligerent armies, on condition that the trains bringing them shall carry neither combatants nor war material. In such a case, the neutral State is bound to adopt such measures

les mesures de sûreté et de contrôle nécessaires à cet effet.

Les blessés ou malades amenés dans ces conditions sur le territoire neutre par un des belligérants, et qui appartiendraient à la partie adverse, devront être gardés par l'État neutre, de manière qu'ils ne puissent de nouveau prendre part aux opérations de la guerre. Celui-ci aura les mêmes devoirs quant aux blessés ou malades de l'autre armée qui lui seraient confiés.

ARTICLE LX

La Convention de Genève s'applique aux malades et aux blessés internés sur territoire neutre.

DÉCLARATION

Les Soussignés, Plénipotentiaires des Puissances représentées à la Conférence Internationale de la Paix à La Haye, dûment autorisés à cet effet par leurs Gouvernements, s'inspirant des sentiments qui ont trouvé leur expression dans la Déclaration de Saint-Pétersbourg du 29 Novembre (11 Décembre), 1868,

Déclarent : —

Les Puissances Contractantes consentent, pour une durée de cinq ans, à l'interdiction de lancer des projectiles et des explosifs du haut de ballons ou par d'autres modes analogues nouveaux.

La présente Déclaration n'est obligatoire que pour les Puissances Contractantes, en cas de guerre entre deux ou plusieurs d'entre elles.

Elle cessera d'être obligatoire du moment où dans une guerre entre des Puissances Contractantes, une Puissance non-Contractante se joindrait à l'un des belligérants.

of safety and control as may be necessary for the purpose.

Wounded and sick brought under these conditions into neutral territory by one of the belligerents, and belonging to the hostile party, must be guarded by the neutral State, so as to insure their not taking part again in the military operations. The same duty shall devolve on the neutral State with regard to wounded or sick of the other army who may be committed to its care.

ARTICLE LX

The Geneva Convention applies to sick and wounded detained in neutral territory.

Inclosure 5 in No. 88

DECLARATION

The Undersigned, Plenipotentiaries of the Powers represented at the International Peace Conference at The Hague, duly authorized to that effect by their Governments, inspired by the sentiments which found expression in the Declaration of St. Petersburg of the 29th November (11th December), 1868,

Declare as follows: —

The Contracting Powers agree to prohibit, for a term of five years, the launching of projectiles and explosives from balloons, or by other new methods of a similar nature.

The present Declaration is only binding on the Contracting Powers in case of war between two or more of them.

It shall cease to be binding from the time when, in a war between the Contracting Powers, one of the belligerents is joined by a non-Contracting Power.

La présente Déclaration sera ratifiée dans le plus bref délai possible.

Les ratifications seront déposées à La Haye.

Il sera dressé du dépôt de chaque ratification un procès-verbal, dont une copie, certifiée conforme, sera remise par la voie diplomatique à toutes les Puissances Contractantes.

Les Puissances non-Signataires pourront adhérer à la présente Déclaration. Elles auront, à cet effet, à faire connaître leur adhésion aux Puissances Contractantes, au moyen d'une notification écrite, adressée au Gouvernement des Pays-Bas et communiquée par celui-ci à toutes les autres Puissances Contractantes.

S'il arrivait qu'une des Hautes Parties Contractantes dénonçât la présente Déclaration, cette dénonciation ne produirait ses effets qu'un an après la notification faite par écrit au Gouvernement des Pays-Bas et communiquée immédiatement par celui-ci à toutes les autres Puissances Contractantes.

Cette dénonciation ne produira ses effets qu'à l'égard de la Puissance qui l'aura notifiée.

En foi de quoi, les Plénipotentiaires ont signé la présente Déclaration et l'ont revêtue de leurs cachets.

Fait à La Haye, le 29 Juillet, 1899, en un seul exemplaire, qui restera déposé dans les archives du Gouvernement des Pays-Bas et dont des copies, certifiées conformes, seront remises par la voie diplomatique aux Puissances Contractantes.

(Signatures.)

DÉCLARATION

Les Soussignés, Plénipotentiaires des Puissances représentées à la Conférence Internationale de la Paix à La Haye, dûment autorisés à cet effet par leurs Gouvernements, s'inspirant des sentiments qui ont trouvé leur

The present Declaration shall be ratified as soon as possible.

The ratifications shall be deposited at The Hague.

A *procès-verbal* shall be drawn up on the receipt of each ratification, of which a copy, duly certified, shall be sent through the diplomatic channel to all the Contracting Powers.

The non-Signatory Powers may adhere to the present Declaration. For this purpose they must make their adhesion known to the Contracting Powers by means of a written notification addressed to the Netherland Government, and communicated by it to all the other Contracting Powers.

In the event of one of the High Contracting Parties denouncing the present Declaration, such denunciation shall not take effect until a year after the notification made in writing to the Netherland Government, and by it forthwith communicated to all the other Contracting Powers.

This denunciation shall only affect the notifying Power.

In faith of which the Plenipotentiaries have signed the present Declaration, and affixed their seals thereto.

Done at The Hague the 29th July, 1899, in a single copy, which shall be kept in the archives of the Netherland Government, and of which copies, duly certified, shall be sent through the diplomatic channel to the Contracting Powers.

(Signatures.)

DECLARATION

The Undersigned, Plenipotentiaries of the Powers represented at the International Peace Conference at The Hague, duly authorized to that effect by their Governments, inspired by the sentiments which found expression

expression dans la Déclaration de Saint-Pétersbourg du 29 Novembre (11 Décembre), 1868,

Déclarent : —

Les Puissances Contractantes s'interdisent l'emploi de balles qui s'épanouissent ou s'aplatissent facilement dans le corps humain, telles que les balles à enveloppe dure dont l'enveloppe ne couvrirait pas entièrement le noyau ou serait pourvue d'incisions.

La présente Déclaration n'est obligatoire que pour les Puissances Contractantes, en cas de guerre entre deux ou plusieurs d'entre elles.

Elle cessera d'être obligatoire du moment où dans une guerre entre des Puissances Contractantes, une Puissance non-Contractante se joindrait à l'un des belligérants.

La présente Déclaration sera ratifiée dans le plus bref délai possible.

Les ratifications seront déposées à La Haye.

Il sera dressé du dépôt de chaque ratification un procès-verbal, dont une copie, certifiée conforme, sera remise par la voie diplomatique à toutes les Puissances Contractantes.

Les Puissances non-Signataires pourront adhérer à la présente Déclaration. Elles auront, à cet effet, à faire connaître leur adhésion aux Puissances Contractantes, au moyen d'une notification écrite, adressée au Gouvernement des Pays-Bas et communiquée par celui-ci à toutes les autres Puissances Contractantes.

S'il arrivait qu'une des Hautes Parties Contractantes dénonçât la présente Déclaration, cette dénonciation ne produirait ses effets qu'un an après la notification faite par écrit au Gouvernement des Pays-Bas et communiquée immédiatement par celui-ci à toutes les autres Puissances Contractantes.

Cette dénonciation ne produira ses effets qu'à l'égard de la Puissance qui l'aura notifiée.

in the Declaration of St. Petersburg of the 29th November (11th December), 1868,

Declare as follows: —

The Contracting Parties agree to abstain from the use of bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core, or is pierced with incisions.

The present Declaration is only binding for the Contracting Powers in the case of a war between two or more of them.

It shall cease to be binding from the time when, in a war between the Contracting Powers, one of the belligerents is joined by a non-Contracting Power.

The present Declaration shall be ratified as soon as possible.

The ratification shall be deposited at The Hague.

A *procès-verbal* shall be drawn up on the receipt of each ratification, a copy of which, duly certified, shall be sent through the diplomatic channel to all the Contracting Powers.

The non-Signatory Powers may adhere to the present Declaration. For this purpose they must make their adhesion known to the Contracting Powers by means of a written notification addressed to the Netherland Government, and by it communicated to all the other Contracting Powers.

In the event of one of the High Contracting Parties denouncing the present Declaration, such denunciation shall not take effect until a year after the notification made in writing to the Netherland Government, and forthwith communicated by it to all the other Contracting Powers.

This denunciation shall only affect the notifying Power.

En foi de quoi, les Plénipotentiaires ont signé la présente Déclaration et l'ont revêtue de leurs cachets.

Fait à La Haye, le 29 Juillet, 1899, en un seul exemplaire, qui restera déposé dans les archives du Gouvernement des Pays-Bas et dont des copies, certifiées conformes, seront remises par la voie diplomatique aux Puissances Contractantes.

(Signatures.)

DÉCLARATION

Les Soussignés, Plénipotentiaires des Puissances représentées à la Conférence Internationale de la Paix à La Haye, dûment autorisés à cet effet par leurs Gouvernements, s'inspirant des sentiments qui ont trouvé leur expression dans la Déclaration de Saint-Pétersbourg du 29 Novembre (11 Décembre), 1868,

Déclarent : —

Les Puissances Contractantes s'interdisent l'emploi de projectiles qui ont pour but unique de répandre des gaz asphyxiants ou délétères.

La présente Déclaration n'est obligatoire que pour les Puissances Contractantes, en cas de guerre entre deux ou plusieurs d'entre elles.

Elle cessera d'être obligatoire du moment où dans une guerre entre des Puissances Contractantes, une Puissance non-Contractante se joindrait à l'un des belligérants.

La présente Déclaration sera ratifiée dans le plus bref délai possible.

Les ratifications seront déposées à La Haye.

Il sera dressé du dépôt de chaque ratification un procès-verbal, dont une copie, certifiée conforme, sera remise par la voie diplomatique à toutes les Puissances Contractantes.

Les Puissances non-Signataires pourront adhérer à la présente Déclaration. Elles auront, à cet effet, à faire

In faith of which the Plenipotentiaries have signed the present Declaration, and have affixed their seals thereto.

Done at The Hague the 29th July, 1899, in a single copy, which shall be kept in the archives of the Netherland Government, and of which copies, duly certified, shall be sent through the diplomatic channel to the Contracting Powers.

_____ (Signatures.)

DECLARATION

The Undersigned, Plenipotentiaries of the Powers represented at the International Peace Conference at The Hague, duly authorized to that effect by their Governments, inspired by the sentiments which found expression in the Declaration of St. Petersburg of the 29th November (11th December), 1868,

Declare as follows : —

The Contracting Powers agree to abstain from the use of projectiles the object of which is the diffusion of asphyxiating or deleterious gases.

The present Declaration is only binding on the Contracting Powers in the case of a war between two or more of them.

It shall cease to be binding from the time when, in a war between the Contracting Powers, one of the belligerents shall be joined by a non-Contracting Power.

The present Declaration shall be ratified as soon as possible.

The ratifications shall be deposited at The Hague.

A *procès-verbal* shall be drawn up on the receipt of each ratification, a copy of which, duly certified, shall be sent through the diplomatic channel to all the Contracting Powers.

The non-Signatory Powers can adhere to the present Declaration. For this purpose they must make their

connaître leur adhésion aux Puissances Contractantes, au moyen d'une notification écrite, adressée au Gouvernement des Pays-Bas et communiquée par celui-ci à toutes les autres Puissances Contractantes.

S'il arrivait qu'une des Hautes Parties Contractantes dénonçât la présente Déclaration, cette dénonciation ne produirait ses effets qu'un an après la notification faite par écrit au Gouvernement des Pays-Bas et communiquée immédiatement par celui-ci à toutes les autres Puissances Contractantes.

Cette dénonciation ne produira ses effets qu'à l'égard de la Puissance qui l'aura notifiée.

En foi de quoi, les Plénipotentiaires ont signé la présente Déclaration et l'ont revêtue de leurs cachets.

Fait à La Haye, le 29 Juillet, 1899, en un seul exemplaire, qui restera déposé dans les archives du Gouvernement des Pays-Bas et dont des copies, certifiées conformes, seront remises par la voie diplomatique aux Puissances Contractantes.

(Signatures.)

CONVENTION POUR L'ADAPTATION À LA GUERRE MARITIME DES PRINCIPES DE LA CONVENTION DE GENÈVE DU 22 AOÛT, 1864

(Pour l'entête voir la Convention pour le reglement pacifique des conflits internationaux)

Également animés du désir de diminuer autant qu'il dépend d'eux les maux inséparables de la guerre et voulant dans ce but adapter à la guerre maritime les principes de la Convention de Genève du 22 Août, 1864, ont résolu de conclure une Convention à cet effet.

adhesion known to the Contracting Powers by means of a written notification addressed to the Netherland Government, and by it communicated to all the other Contracting Powers.

In the event of one of the High Contracting Parties denouncing the present Declaration, such denunciation shall not take effect until a year after the notification made in writing to the Government of the Netherlands, and forthwith communicated by it to all the other Contracting Powers.

This denunciation shall only affect the notifying Power.

In faith of which the Plenipotentiaries have signed the present Declaration, and affixed their seals thereto.

Done at The Hague, the 29th July, 1899, in a single copy, which shall be kept in the archives of the Netherland Government, and copies of which, duly certified, shall be sent by the diplomatic channel to the Contracting Powers.

(Signatures.)

CONVENTION FOR THE ADAPTATION TO MARITIME WARFARE OF THE PRINCIPLES OF THE GENEVA CONVENTION OF AUGUST 22, 1864

(For the heading see the Convention for the pacific solution of International Differences)

Alike animated by the desire to diminish, as far as depends on them, the evils inseparable from warfare, and wishing with this object to adapt to maritime warfare the principles of the Geneva Convention of the 22d August, 1864, have decided to conclude a Convention to this effect.

Ils ont en conséquence nommé pour leurs Plénipotentiaires, savoir : —

(Noms.)

Lesquels, après s'être communiqué leurs pleins pouvoirs, trouvés en bonne et due forme, sont convenus des dispositions suivantes : —

ARTICLE I

Les bâtiments-hôpitaux militaires, c'est-à-dire, les bâtiments construits ou aménagés par les États spécialement et uniquement en vue de porter secours aux blessés, malades, et naufragés, et dont les noms auront été communiqués, à l'ouverture ou au cours des hostilités, en tout cas avant toute mise en usage, aux Puissances belligérantes, sont respectés et ne peuvent être capturés pendant la durée des hostilités.

Ces bâtiments ne sont pas non plus assimilés aux navires de guerre au point de vue de leur séjour dans un port neutre.

ARTICLE II

Les bâtiments-hospitaliers, équipés en totalité ou en partie aux frais des particuliers ou des Sociétés de Secours officiellement reconnues, sont également respectés et exempts de capture si la Puissance belligérante dont ils dépendent leur a donné une commission officielle et en a notifié les noms à la Puissance adverse à l'ouverture ou au cours des hostilités, en tout cas avant toute mise en usage.

Ces navires doivent être porteurs d'un document de l'autorité compétente déclarant qu'ils ont été soumis à son contrôle pendant leur armement et à leur départ final.

ARTICLE III

Les bâtiments-hospitaliers, équipés en totalité ou en partie aux frais des particuliers ou des Sociétés officielle-

They have, in consequence, appointed as their Plenipotentiaries, to wit: —

(Names.)

Who, after communication of their full powers, found in good and due form, have agreed on the following provisions: —

ARTICLE I

Military hospital-ships, that is to say, ships constructed or assigned by States specially and solely for the purpose of assisting the wounded, sick, or shipwrecked, and the names of which shall have been communicated to the belligerent Powers at the commencement or during the course of hostilities and in any case before they are employed, shall be respected and cannot be captured while hostilities last.

These ships, moreover, are not on the same footing as men-of-war as regards their stay in a neutral port.

ARTICLE II

Hospital-ships, equipped wholly or in part at the cost of private individuals or officially recognized relief Societies, shall likewise be respected and exempt from capture, provided the belligerent Power to whom they belong has given them an official commission and has notified their names to the hostile Power at the commencement of or during hostilities, and in any case before they are employed.

These ships should be furnished with a certificate from the competent authorities, declaring that they had been under their control while fitting out and on final departure.

ARTICLE III

Hospital-ships, equipped wholly or in part at the cost of private individuals or officially recognized Societies of neu-

ment reconnues de pays neutres, sont respectés et exempts de capture si la Puissance neutre dont ils dépendent leur a donné une commission officielle et en a notifié les noms aux Puissances belligérantes à l'ouverture ou au cours des hostilités, en tout cas avant toute mise en usage.

ARTICLE IV

Les bâtiments qui sont mentionnés dans les Articles I, II, et III, porteront secours et assistance aux blessés, malades, et naufragés des belligérants sans distinction de nationalité.

Les Gouvernements s'engagent à n'utiliser ces bâtiments pour aucun but militaire.

Ces bâtiments ne devront gêner en aucune manière les mouvements des combattants.

Pendant et après le combat, ils agiront à leurs risques et périls.

Les belligérants auront sur eux le droit de contrôle et de visite ; ils pourront refuser leur concours, leur enjoindre de s'éloigner, leur imposer une direction déterminée et mettre à bord un commissaire, même les détenir, si la gravité des circonstances l'exigeait.

Autant que possible, les belligérants inscriront sur le journal de bord des bâtiments-hospitaliers les ordres qu'ils leur donneront.

ARTICLE V

Les bâtiments-hôpitaux militaires seront distingués par une peinture extérieure blanche avec une bande horizontale verte d'un mètre et demi de largeur environ.

Les bâtiments qui sont mentionnés dans les Articles II et III seront distingués par une peinture extérieure blanche avec une bande horizontale rouge d'un mètre et demi de largeur environ.

Les embarcations des bâtiments qui viennent d'être

tral countries, shall be respected and exempt from capture, if the neutral Power to whom they belong has given them an official commission and notified their names to the belligerent Powers at the commencement of or during hostilities, and in any case before they are employed.

ARTICLE IV

The ships mentioned in Articles I, II, and III shall afford relief and assistance to the wounded, sick, and shipwrecked of the belligerents independently of their nationality.

The Governments engage not to use these ships for any military purpose.

These ships must not in any way hamper the movements of the combatants.

During and after an engagement they will act at their own risk and peril.

The belligerents will have the right to control and visit them; they can refuse their assistance, order them off, make them take a certain course, and put a Commissioner on board; they can even detain them, if important circumstances require it.

As far as possible the belligerents shall inscribe in the sailing papers of the hospital-ships the orders they give them.

ARTICLE V

The military hospital-ships shall be distinguished by being painted white outside with a horizontal band of green about a metre and a half in breadth.

The ships mentioned in Articles II and III shall be distinguished by being painted white outside with a horizontal band of red about a metre and a half in breadth.

The boats of the ships above mentioned, as also small

mentionnés, comme les petits bâtiments qui pourront être affectés au service hospitalier, se distingueront par une peinture analogue.

Tous les bâtiments-hospitaliers se feront reconnaître en hissant, avec leur pavillon national, le pavillon blanc à croix rouge prévu par la Convention de Genève.

ARTICLE VI

Les bâtiments de commerce, yachts, ou embarcations neutres, portant ou recueillant des blessés, des malades, ou des naufragés des belligérants, ne peuvent être capturés pour le fait de ce transport, mais ils restent exposés à la capture pour les violations de neutralité qu'ils pourraient avoir commises.

ARTICLE VII

Le personnel religieux, médical, et hospitalier de tout bâtiment capturé est inviolable et ne puet être fait prisonnier de guerre. Il emporte, en quittant le navire, les objets et les instruments de chirurgie qui sont sa propriété particulière.

Ce personnel continuera à remplir ses fonctions tant que cela sera nécessaire, et il pourra ensuite se retirer lorsque le Commandant-en-chef le jugera possible.

Les belligérants doivent assurer à ce personnel tombé entre leurs mains la jouissance intégrale de son traitement.

ARTICLE VIII

Les marins et les militaires embarqués blessés ou malades, à quelque nation qu'ils appartiennent, seront protégés et soignés par les capteurs.

craft which may be used for hospital work, shall be distinguished by similar painting.

All hospital-ships shall make themselves known by hoisting, together with their national flag, the white flag with a red cross provided by the Geneva Convention.

ARTICLE VI

Neutral merchantmen, yachts, or vessels, having, or taking on board, sick, wounded, or shipwrecked of the belligerents, cannot be captured for so doing, but they are liable to capture for any violation of neutrality they may have committed.

ARTICLE VII

The religious, medical, or hospital staff of any captured ship is inviolable, and its members cannot be made prisoners of war. On leaving the ship they take with them the objects and surgical instruments which are their own private property.

This staff shall continue to discharge its duties while necessary, and can afterwards leave when the Commander-in-chief considers it possible.

The belligerents must guarantee to the staff that has fallen into their hands the enjoyment of their salaries intact.

ARTICLE VIII

Sailors and soldiers who are taken on board when sick or wounded, to whatever nation they belong, shall be protected and looked after by the captors.

ARTICLE IX

Sont prisonniers de guerre les naufragés blessés, ou malades, d'un belligérant qui tombent au pouvoir de l'autre. Il appartient à celui-ci de décider, suivant les circonstances, s'il convient de les garder, de les diriger sur un port de sa nation, sur un port neutre ou même sur un port de l'adversaire. Dans ce dernier cas, les prisonniers ainsi rendus à leur pays ne pourront servir pendant la durée de la guerre.

ARTICLE X

(Exclu.[1])

ARTICLE XI

Les règles contenues dans les Articles ci-dessus ne sont obligatoires que pour les Puissances Contractantes, en cas de guerre entre deux ou plusieurs d'entre elles.

Les dites règles cesseront d'être obligatoires du moment où, dans une guerre entre des Puissances Contractantes, une Puissance non-Contractante se joindrait à l'un des belligérants.

ARTICLE XII

La présente Convention sera ratifiée dans le plus bref délai possible.

Les ratifications seront déposées à La Haye.

Il sera dressé du dépôt de chaque ratification un procès-verbal, dont une copie, certifiée conforme, sera remise par la voie diplomatique à toutes les Puissances Contractantes.

ARTICLE XIII

Les Puissances non-Signataires, qui auront accepté la Convention de Genève du 22 Août, 1864, sont admises à adhérer à la présente Convention.

[1] See p. 128.

ARTICLE IX

The shipwrecked, wounded, or sick of one of the belligerents who fall into the hands of the other, are prisoners of war. The captor must decide, according to circumstances, if it is best to keep them or send them to a port of his own country, to a neutral port, or even to a hostile port. In the last case, prisoners thus repatriated cannot serve as long as the war lasts.

ARTICLE X

(EXCLUDED.[1])

ARTICLE XI

The rules contained in the above Articles are binding only on the Contracting Powers, in case of war between two or more of them.

The said rules shall cease to be binding from the time when, in a war between the Contracting Powers, one of the belligerents is joined by a non-Contracting Power.

ARTICLE XII

The present Convention shall be ratified as soon as possible.

The ratifications shall be deposited at The Hague.

On the receipt of each ratification a *procès-verbal* shall be drawn up, a copy of which, duly certified, shall be sent through the diplomatic channel to all the Contracting Powers.

ARTICLE XIII

The non-Signatory Powers who accepted the Geneva Convention of the 22d August, 1864, are allowed to adhere to the present Convention.

[1] See p. 128.

Elles auront, à cet effet, à faire connaître leur adhésion aux Puissances Contractantes, au moyen d'une notification écrite adressée au Gouvernement des Pays-Bas et communiquée par celui-ci à toutes les autres Puissances Contractantes.

ARTICLE XIV

S'il arrivait qu'une des Hautes Parties Contractantes dénonçât la présente Convention, cette dénonciation ne produirait ses effets qu'un an après la notification faite par écrit au Gouvernement des Pays-Bas et communiquée immédiatement par celui-ci à toutes les autres Puissances Contractantes.

Cette dénonciation ne produira ses effets qu'à l'égard de la Puissance qui l'aura notifiée.

En foi de quoi, les Plénipotentiaires respectifs ont signé la présente Convention et l'ont revêtue de leurs sceaux.

Fait à La Haye, le 29 Juillet, 1899, en un seul exemplaire, qui restera déposé dans les archives du Gouvernement des Pays-Bas et dont des copies, certifiées conformes, seront remises par la voie diplomatique aux Puissances Contractantes.

(Signatures.)

For this purpose they must make their adhesion known to the Contracting Powers by means of a written notification addressed to the Netherland Government, and by it communicated to all the other Contracting Powers.

ARTICLE XIV

In the event of one of the High Contracting Parties denouncing the present Convention, such denunciation shall not take effect until a year after the notification made in writing to the Netherland Government, and forthwith communicated by it to all the other Contracting Powers.

This denunciation shall only affect the notifying Power.

In faith of which the respective Plenipotentiaries have signed the present Convention and affixed their seals thereto.

Done at The Hague the 29th July, 1899, in single copy, which shall be kept in the archives of the Government of the Netherlands, and copies of which, duly certified, shall be sent through the diplomatic channel to the Contracting Powers.

(Signatures.)

APPENDIX II

GENERAL REPORT OF THE COMMISSION OF THE UNITED STATES OF AMERICA TO THE INTERNATIONAL CONFERENCE AT THE HAGUE, WITH THE REPORTS OF THE AMERICAN MEMBERS OF THE VARIOUS COMMITTEES

A. GENERAL REPORT OF THE COMMISSION

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 Britain 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 M. de Beaufort, the Netherlands Minister of Foreign Affairs, and M. de Staal, representing Russia.

At the second meeting a permanent organization of the Conference was effected, M. de Staal being chosen President, M. de Beaufort honorary President, and M. 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 and contained in Articles 5 to 7 of the same circular.

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 sub-committees were appointed as follows : —

The first committee referred questions of a military

nature to the first sub-committee of which Captain Crozier was a member, and questions of a naval nature to the second sub-committee 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 sub-committee of which Captain Mahan was a member, and Article 7, concerning the revision of the laws and customs of war, to a sub-committee of which Captain Crozier was a member.

The third committee appointed a single sub-committee, 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 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 Dec. 30, 1898, presented to the Con-

ference 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, cannot 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 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 resolution offered 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 possi-

bly be hereafter adopted both 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 worse evils 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 3 and 6 which related to the extension to maritime warfare of the Red Cross Rules regarding care for the wounded adopted in the Geneva Conventions of 1864 and 1868 were, as already stated, referred as regards the discussion of technical questions in the committee and sub-committee 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.

In the Third great Committee of the Conference, which had in charge the matters concerned in Article 3 of the Russian circular, with reference to good offices, mediation, and arbitration, the proceedings of the sub-committee 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 centred 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 commissions is 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 to 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 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 permanently 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 why we acquiesced in 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 the 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 provided, 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 more 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.

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 Peaceful Adjustment of International Differences," 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 time goes on, it will form a thoroughly practical beginning, that it will produce valuable results from the outset, and that 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 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 or proposed subjects for compulsory arbitration, international conventions relating to rivers, to inter-oceanic 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 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 popular

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 those 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 Con-

ference 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 29th, for their signature. This Act embodied three Conventions, three Declarations, and seven Resolutions as follows : —

First, a Convention for the peaceful adjustment of international differences. This was signed by sixteen Delegations, including that of the United States of America, there being adjoined to our signatures a reference to our declaration above referred to, made in open Conference on July 25, and recorded in the proceedings of that day.

Second, a Convention concerning the laws and customs of war on land. This was signed by fifteen Delegations. The United States Delegation refer 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. 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.

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 Conferences. 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 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 calibres.

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 sub-committees, 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.

All of which is most respectfully submitted : —

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

B. REPORT OF CAPTAIN MAHAN TO THE UNITED STATES COMMISSION TO THE INTERNATIONAL CONFERENCE AT THE HAGUE, ON DISARMAMENT, ETC., WITH REFERENCE TO NAVIES

THE HAGUE, July 31, 1899.

TO THE COMMISSION OF THE UNITED STATES OF AMERICA TO THE INTERNATIONAL CONFERENCE AT THE HAGUE

Gentlemen: — I beg to make the following report concerning the deliberations and conclusions of the Peace Conference on the questions of disarmament, and the limitations to be placed upon the development of the weapons of war, so far as navies are concerned.

Three questions were embraced in the first four articles of the Russian Letter of December 30, 1898, and were by the Conference referred to a Committee, known as the First Committee. The latter was divided into two sub-committees, which dealt with Articles 2, 3, and 4, as they touched naval or military subjects, respectively. The general drift of these three Articles was to suggest limitations, present and prospective, upon the development of the material of war, either by increase of power, and of consequent destructive effect, in weapons now existing, or by new inventions. Article 1, which proposed to place limits upon the augmentation of numbers in the personnel of armed forces, and upon increase of expenditure in the budgets, was reserved for the subsequent consideration of the full Committee.

As regards the development of material, in the direction of power to inflict injury, there was unanimous assent to the proposition that injury should not be in excess of that clearly required to produce decisive results; but in the attempt to specify limitations in detail, insurmount-

able obstacles were encountered. This was due, partly to an apparent failure, beforehand, to give to the problem submitted that "*étude préalable technique*," a wish for which, expressed by the Conference to the Governments represented, was almost the only tangible result of the deliberations.

Three propositions were, however, adopted : one, unanimously, forbidding, during a term of five years, the throwing of projectiles, or explosives, from balloons, or by other analogous methods. Of the two others, one, forbidding the use of projectiles the sole purpose of which was, on bursting, to spread asphyxiating or deleterious gases, was discussed mainly in the naval sub-committee. It received in that, and afterward in the full Committee, the negative vote of the United States naval delegate alone, although of the affirmative votes several were given subject to unanimity of acceptance. In the final reference to the Conference, in full session, of the question of recommending the adoption of such a prohibition, the Delegation of Great Britian voted "No," as did that of the United States.

As a certain disposition has been observed to attach odium to the view adopted by this Commission in this matter, it seems proper to state, fully and explicitly, for the information of the Government, that on the first occasion of the subject arising in Sub-Committee, and subsequently at various times in full Committee, and before the Conference, the United States naval delegate did not cast his vote silently, but gave the reasons, which at his demand were inserted in the reports of the day's proceedings. These reasons were, briefly : 1. That no shell emitting such gases is as yet in practical use, or has undergone adequate experiment; consequently, a vote taken now would be taken in ignorance of the facts as to whether the results would be of a decisive character, or

whether injury in excess of that necessary to attain the end of warfare, the immediate disabling of the enemy, would be inflicted. 2. That the reproach of cruelty and perfidy, addressed against these supposed shells, was equally uttered formerly against fire-arms and torpedoes, both of which are now employed without scruple. Until we knew the effects of such asphyxiating shells, there was no saying whether they would be more or less merciful than missiles now permitted. 3. That it was illogical, and not demonstrably humane, to be tender about asphyxiating men with gas, when all were prepared to admit that it was allowable to blow the bottom out of an ironclad at midnight, throwing four or five hundred into the sea, to be choked by water, with scarcely the remotest chance of escape. If, and when, a shell emitting asphyxiating gases alone has been successfully produced, then, and not before, men will be able to vote intelligently on the subject.

The question of limiting armaments and budgets, military and naval, likewise resulted in failure to reach an agreement, owing to the extensive and complicated considerations involved. A general wish was emitted that the subject in its various relations might in the future receive an attentive study on the part of the various Governments : and there was adopted without dissent a resolution proposed in the First Committee, in full session, by M. Bourgeois, the First Delegate of France, as follows: "The Committee consider that the limitation of the military expenditures which now weigh upon the world is greatly to be desired, for the increase of the moral and material welfare of humanity." This sentiment received the assent of the Conference also.

The military and naval delegates of the United States Commission bore a part in all the proceedings in Sub- and Full Committee ; but, while joining freely in the discus-

sion of questions relating to the development of material, reserve was maintained in treating the subject of disarmament and of limitation of budgets, as being more properly of European concern alone. To avoid the possibility of misapprehension of the position of the United States on this matter, the following statement, drawn up by the Commission, was read at the final meeting of the First Committee, July 17, when the report to be presented to the Conference was under consideration : —

"The Delegation of the United States of America have 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, cannot now be accepted, and that a more profound study on 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 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."

I have the honor to be

Your obedient servant,

A. T. MAHAN,

Captain U. S. Navy and Delegate.

C. REPORT OF CAPTAIN MAHAN TO THE UNITED STATES COMMISSION TO THE INTERNATIONAL CONFERENCE AT THE HAGUE, REGARDING THE WORK OF THE SECOND COMMITTEE OF THE CONFERENCE

THE HAGUE, July 31, 1899.

TO THE COMMISSION OF THE UNITED STATES OF AMERICA TO THE INTERNATIONAL CONFERENCE AT THE HAGUE

Gentlemen:—I have the honor to submit to the Commission the following report, which I believe to be in sufficient detail, of the general proceedings, and of the conclusions reached by the Second Committee of the Conference, in relation to Articles 5 and 6 of the Russian Circular Letter of December 30, 1898.

In the original distribution of labor of the Conference, Articles 5, 6, and 7, of the said letter, were attributed to the Second Committee. The latter was divided into two Sub-Committees, to one of which was assigned the Articles 5 and 6, as both related to naval matters. Of this

Sub-Committee I was a member, and it has fallen to me especially, among the United States Delegates, to follow the fortunes of the two articles named in their progress through the Sub-Committee, and through the full Committee ; but not through the smaller special Committee, the *Comité de Redaction*, to which the Sub-Committee intrusted the formulation of its views. Of that *Comité de Redaction* I was not a member.

These two articles are as follows : —

5. Adaptation to naval wars of the stipulations 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.

The general desirability of giving to hospital vessels the utmost immunity, consistent with the vigorous prosecution of war, was generally conceded, and met, in fact, with no opposition ; but it was justly remarked at the outset, that measures must be taken to put under efficient control of the belligerents all hospital ships fitted out by private benevolence, or by neutrals, whether associations or individuals. It is evident that unless such control is explicitly affirmed, and unless the various cases that may arise, in which it may be needed, are, as far as possible, foreseen and provided for, incidents may well occur which will bring into inevitable discredit the whole system of neutral vessels, hospital or others, devoted to the benevolent assistance of the sufferers in war.

The first suggestion, offered almost immediately, was that the simplest method of avoiding such inconvenience would be for the said neutral vessels, being engaged in service identical with that of belligerent hospital vessels to which it was proposed to extend the utmost possible immunity, should frankly enter the belligerent service by

hoisting the flag of the belligerent to which it offered its services. This being permitted by general consent, and for purposes purely humanitarian, would constitute no breach of neutrality, while the control of either belligerent, when in presence, could be exercised without raising those vexed questions of neutral rights which the experience of maritime warfare shows to be among the most difficult and delicate problems that belligerents have to encounter.

This proposition was supported by me, as being the surest mode of avoiding difficulties easy to be foreseen, and which in my judgment are wholly unprovided for by the articles adopted by the Conference. The neutral ship is, by common consent, permitted to identify itself with the belligerent and his operations for certain laudable purposes: why not for the time assume the belligerent's flag? The reasoning of the opposition was that such vessels should be considered in the same light as national vessels, and that to require them to hoist a foreign flag would be derogatory (*porterait atteinte*) to the sovereignty of the State to which they belonged. This view prevailed.

The first three meetings of the Sub-Committee, May 25, 30, and June 1, were occupied in a general discussion of the Additional Articles of 1868, suggested by the Russian letter of December 30, 1898, as the basis of the adaptation to naval wars of the Geneva Convention of 1864. In this discussion was also embraced Article 6 of the Russian letter, relating to the neutralization of boats engaged in rescuing the shipwrecked (*naufragés*), that is, men overboard for any cause during, or after, naval battles.

At the close of the second meeting it was decided that the president of the Sub-Committee should appoint the *Comité de Redaction* before mentioned. As finally constituted, this *Comité de Redaction* contained a representative from Great Britain, from Germany, from Russia, and

from France. At the close of its third session the Sub-Committee was adjourned to await the report of the *Comité de Redaction*. It again assembled and received the report of June 13; this being the fourth meeting of the Sub-Committee.

The *Comité de Redaction* embodied in ten articles the conclusions of the Sub-Committee. The articles were preceded by a lucid or comprehensive report, the work chiefly of M. Renault, the French member of the *Comité de Redaction*. This report embraces the reasoning upon which the adoption of the articles is supported. A copy of the report and of the articles (marked A) accompanies this letter.

Upon receiving the report and the articles, I pointed out to one of the members of the *Comité de Redaction*, that no adequate provision was made to meet the case of men who, by accident connected with a naval engagement, such, for instance, as the sinking of their ship, were picked up by a neutral vessel. The omission was one likely to occur to an American, old enough to remember the very concrete and pertinent instance of the British yacht *Deerhound* saving the men of the *Alabama*, including her captain, who were then held to be under the protection of the neutral flag. It requires no flight of imagination to realize that a hostile commander-in-chief, whom it has always been a chief object of naval warfare to capture, as well as other valuable officers, might thus escape the hands of a victor.

At the meeting of the Sub-Committee on June 16, I drew attention to this omission when the vote was reached on Article 6, which provides that neutral vessels of various classes, carrying sick, wounded, or shipwrecked (*naufragés*) belligerents, cannot be captured for the mere fact of this transportation; but that they do remain exposed to capture for violation of neutrality which they

may have committed. I had then — unaccountably now to myself — overlooked the fact that there was an equal lack of satisfactory provision in the case of the hospital ships under neutral flags, whose presence on a scene of naval warfare is contemplated and authorized by Article 3. It was agreed that I should appear before the *Comité de Redaction*, prior to their final revision of the report and articles. This I did; but after two hours, more or less, of discussion, I failed to obtain any modification in the report or the articles. When, therefore, on the 15th of June, the matter came before the full Second Commission, I contented myself — as the articles were voted only *ad referendum* — subject to the approval of the Governments — with registering our regret that no suitable provision of the kind advocated had been made.

The matter was yet to come before the full Committee. Before it did so, I had recognized that the difficulty I had noted concerning neutral vessels other than hospital ships might arise equally as regards the latter, the presence of which was contemplated and authorized, whereas that of other neutral ships might very well be merely accidental. I accordingly drew up and submitted to the United States Commission, three additional articles, preceding these with a brief summary of the conditions which might readily occasion the contingency against which I sought to provide. This paper (annexed and marked B) having received the approval of the Delegation, was read, and the articles submitted to the Second Committee in a full session, held June 20, immediately prior to the session of the Conference, at 4 P.M. the same day, to ratify the work of the Committee. The three additional articles were referred to the *Comité de Redaction* with instructions to report to the full Committee. The ten articles were then reported to the Conference and passed without opposition, under the reserve that the articles submitted

by the United States Delegation were still to be considered.

Here matters rested for some time, owing, as I understand, to certain doubtful points arising in connection with the three proposed articles, which necessitated reference to home governments by one or more of the delegations. Finally, I was informed that not only was there no possibility of a favorable report, nor, consequently, of the three proposed articles passing, but also that, if pressed to a full discussion, there could scarcely fail to be developed such difference of opinion upon the construction of the ten articles already adopted as would imperil the unanimity with which they had before been received. This information was conveyed by me to the United States Commission, and after full consideration I was by it instructed to withdraw the articles. This was accordingly done immediately by letter, on July 18, to Vice-Admiral Sir John Fisher, Chairman of the *Comité de Redaction*, and through him to the President of the Second Commission.

At the subsequent meeting of the full Conference, July 20, the withdrawal being communicated by the President of the Second Committee, it was explained that this Commission, while accepting the ten Articles, and withdrawing its own suggested additions, must be understood to do so, not because of any change of opinion as to the necessity of the latter, but in order to facilitate the conclusion of the labors of the Conference ; that the Commission were so seriously impressed with the defects of the ten Articles, in the respects indicated, that it could sign them only with the most explicit understanding that the doubts expressed before the Second Committee would be fully conveyed to the United States Government, and the liberty of action of the latter wholly reserved, as to accepting the ten Articles.

By this course the ten Articles, which else might ultimately have failed of unanimous adoption, have been preserved intact, with several valuable stipulations embodied in them. But while there is much that is valuable, it seems necessary to point out to the Commission that to the hospital ships under neutral flags, mentioned in Article 3, and to neutral vessels in certain employments, under Article 6, are conceded a status and immunities hitherto unknown. While this is the case, there is not, in my opinion, in the Articles any clear and adequate provision to meet such cases as were meant to be met by the three Articles proposed by the Commission, and which are perfectly conceivable and possible. Upon reflection I am satisfied that no necessity exists for the authorization of hospital vessels under a neutral flag upon the scene of naval war, and that the adhesion of our Government to such a scheme may be withheld without injury to any one. As regards Article 6, conceding immunities heretofore not allowed to neutral vessels — for the transport of belligerents has heretofore been a violation of neutrality, without reservation in favor of the sick and wounded — it appears to me objectionable and premature, unless accompanied by reservations in favor of the belligerent rights of capture and recapture. These the Articles fail to provide explicitly. For these reasons it is my personal opinion that Articles 3 and 6 should not be accepted by the Government of the United States. If the Delegation concur in this view, I recommend that such opinion be expressed in the general report.

I have the honor to be

Your obedient servant,

A. T. Mahan,

Captain U. S. Navy and Delegate.

PAPER READ BY CAPTAIN MAHAN BEFORE THE SECOND COMMITTEE OF THE PEACE CONFERENCE ON JUNE 20, 1899

It is known to the members of the Sub-Committee, by which these Articles were accepted, that I have heretofore stated that there was an important omission, which I desired to rectify in an additional article or articles. The omission was to provide against the case of a neutral vessel, such as is mentioned in Article 6, picking up *naufragés* on the scene of a naval battle, and carrying them away, either accidentally or intentionally. What, I asked, is the status of such *combattants naufragés?*

My attention being absorbed by the case of vessels under Article 6, it was not until last night that I noticed that there was equally an omission to provide for the status of *combattants naufragés*, picked up by hospital ships. In order that non-professional men, men not naval officers, may certainly comprehend this point, allow me to develop it. On a field of naval battle the ships are constantly in movement; not merely the movement of a land battle, but a movement of progress, of translation from place to place more or less rapid. The scene is here one moment; a half-hour later it may be five miles distant. In such a battle it happens that a ship sinks; her crew become *naufragés;* the place of action shifts; it is no longer where these men are struggling for life; the light cruisers of their own side come to help, but they are not enough; the hospital ships with neutral flag come to help; neutral ships other than hospital also arrive; a certain number of *combattants naufragés* are saved on board neutral ships. To which belligerent do these men belong? It may happen that the neutral vessel, hospital or otherwise, has been with the fleet opposed to the sunken ship.

After fulfilling her work of mercy, she naturally returns to that fleet. The *combattants naufragés* fall into the power of the enemy, although it is quite probable that the fleet to which they belong may have had the advantage.

I maintain that unless some provision is made to meet this difficulty, much recrimination will arise. A few private seamen, more or less, a few sub-officers, may not matter, but it is possible that a distinguished general officer, or valuable officers of lower grade may be affected. This will tend to bring into discredit the whole system for hospital ships; but further, while hospital ships, being regularly commissioned by their own Government, may be supposed to act with perfect impartiality, such presupposition is not permissible in the case of vessels named in Article 6. Unless the status of *combattants naufragés* saved by them is defined, the grossest irregularities may be expected — the notoriety of which will fully repay the class of men who would perpetrate them.

As many cases may arise, all of which it is impossible to meet specifically, I propose the following additional articles based upon the single general principle that *combattants naufragés*, being *ipso facto* combatants *hors de combat*, are incapable of serving again during the war, unless recaptured or until duly exchanged.

ADDITIONAL ARTICLES PROPOSED BY CAPTAIN MAHAN

1. In the case of neutral vessels of any kind, hospital ships or others, being on the scene of a naval engagement, which may, as an act of humanity, save men in peril of drowning, from the results of the engagement, such neutral vessels shall not be considered as having violated their neutrality by that fact alone. They will, however, in so doing, act at their own risk and peril.

2. Men thus rescued shall not be considered under the cover of the neutral flag, in case a demand for their surrender is by a ship of war of either belligerent. They are open thus to capture, or to recapture. If such demand is made, the men so rescued must be given up, and shall then have the same status as though they had not been under a neutral flag.

3. In case no such demand is made by a belligerent ship, the men so rescued, having been delivered from the consequences of the fight by neutral interposition, are to be considered *hors de combat*, not to serve for the rest of the war, unless duly exchanged. The Contracting Governments engage to prevent, as far as possible, such persons from serving until discharged.

D. REPORT OF CAPTAIN CROZIER TO THE COMMISSION OF THE UNITED STATES OF AMERICA TO THE INTERNATIONAL CONFERENCE AT THE HAGUE, REGARDING THE WORK OF THE FIRST COMMITTEE OF THE CONFERENCE AND ITS SUB-COMMITTEE

The Hague, July 31, 1899.

The Commission of the United States of America to the International Conference at The Hague

Gentlemen:—I have the honor of submitting a résumé of the work of the First Committee of the Conference and of its First Sub-Committee, which was the military subdivision, concerning the following subjects, which are mentioned in the second and third numbered articles of the circular of Count Mouravieff of December 30, 1898 (January 11, 1899), namely: powders, explosives, field guns, balloons, and muskets; also the

subject of bullets which, although not mentioned in either of the above designated articles of Count Mouravieff's circular, were considered by this Committee, notwithstanding that it would have appeared more logical to consider them under the seventh numbered article of the circular, referring to the declaration concerning the laws and customs of war made by the Brussels Conference in 1874.

The Russian representative on the First Committee was Colonel Gilinsky, and the propositions for discussion were for the most part presented by him in the name of the Russian Government, and upon him generally devolved the duty of explaining the proposals and of supporting them in the first instance.

POWDERS

By this term was meant the propelling charge of projectiles, as distinguished from the bursting charge. The proposition presented was that which is contained in the second article of the circular, namely: an agreement not to make use of any more powerful powders than those now employed, both for field guns and muskets. There was little discussion on the proposition; in fact, the remarks of the United States Delegate were the only ones made upon the subject, and the proposition was unanimously rejected.

EXPLOSIVES

By this term was meant the bursting charges of projectiles. Two propositions were made. The first was not to make use of mining shells (*obus brisants ou à fougasses*) for field artillery. After a short discussion the proposition was decided in the negative by a vote of eleven to ten. The second proposition was not to make

use of any new explosives, or of any of the class known as high explosives for the bursting charges of projectiles. This proposition was also, after a short discussion, lost by a vote of twelve to nine.

FIELD GUNS

The proposition on this subject was for the Powers to agree that no field material should be adopted of a model superior to the best material now in use in any country, — those countries having inferior material to the best now in use to have the privilege of adopting such best material. During the discussion, which was extended to some length, the question divided itself into two parts, and two votes were taken upon it. The first was as to whether, in case improvements in field artillery should be forbidden, this interdiction should nevertheless permit everybody to adopt the most perfect material now in use anywhere. The vote upon this question was so accompanied by reservations and explanations, that it was impossible to state what the result of it was, — the only thing evident being that the question was not entirely understood by the voting delegates. Consequently, a second vote was taken upon the question whether the Powers should agree not to make use, for a fixed period, of any new invention in field artillery. This question was decided in the negative by a unanimous vote, with the exception of Russia and Bulgaria, which abstained from voting. The Russian Delegate, at a later period, explained that his abstention was due to the fact that the question had taken such a form that its decision in the affirmative would have prevented the adoption of rapid fire field guns, which, in the view that these were of an existing type, he desired to retain for his Government the privilege of adopting.

BALLOONS

The Sub-Committee first voted a perpetual prohibition of the use of balloons or similar new machines for throwing projectiles or explosives. In the full Committee, this subject was brought up for reconsideration by the United States Delegate and the prohibition was, by unanimous vote, limited to cover a period of five years only. The action taken was for humanitarian reasons alone, and was founded upon the opinion that balloons, as they now exist, form such an uncertain means of injury that they cannot be used with any accuracy; that the persons or objects injured by throwing explosives from them may be entirely disconnected from any conflict which may be in process, and such that their injury or destruction would be of no practical advantage to the party making use of the machines. The limitation of the interdiction of five years' operation preserves liberty of action under changed circumstances which may be produced by the progress of invention.

MUSKETS

The proposition presented under this head was that no Power should change their existing type of small arm. It will be observed that this proposition differed from that in regard to field guns, which permitted all Powers to adopt the most perfect material now in existence, — the reason for the difference being explained by the Russian delegate to be that, whereas there was a great difference in the excellence of field artillery material in use in different countries, they have all adopted substantially the same musket, and being on an equal footing, the present would be a good time to cease making changes. The object of the proposition was stated to be purely economic. It was explained that the prohibition to adopt a new type of musket would not be intended to prevent the

improvement of existing types ; whereupon there immediately arose a discussion as to what constituted a type and what improvements might be made without falling under the prohibition of not changing it. Efforts were made to effect a concord of views by specifying details, such as initial velocity, weight of projectile, etc., also by the proposition to limit the time for which the prohibition should hold, but no agreement could be secured. The United States delegate stated early in the discussion, on the attitude of the United States toward questions of this class, that our Government did not consider limitations in regard to the use of military inventions to be conducive to the peace of the world, and for that reason such limitation would in general not be supported by the American Commission.

A separate vote was taken upon the question whether the Powers should agree not to make use of automatic muskets, and as this may be taken as a fair example of the class of improvements which, although they may have reached such a stage as to be fairly before the world, have not yet been adopted by any nation, an analysis of the vote taken upon it may be interesting as showing the attitude of the different Powers in regard to such questions. The States voting in favor of the prohibition were Belgium, Denmark, Spain, Holland, Persia, Russia, Siam, Switzerland, and Bulgaria, (nine). Those voting against it were Germany, The United States, Austria-Hungary, Great Britian, Italy, Sweden and Norway, (six). And those abstaining were France, Japan, Portugal, Roumania, Servia, and Turkey, (six). From this statement it may be seen that none of the great Powers of the world, except Russia, was willing to accept restrictions in regard to military improvements when the question of increase of efficiency was involved, and that one great Power (France) abstained from expressing an opinion upon the subject.

In the Full Committee, after another effort to secure some action in the line of the proposition had failed, it was agreed that the subject should be regarded as open for the future consideration of the different Governments.

A question was also raised as to whether there should be any agreement in regard to the use of new means of destruction, which might possibly have a tendency to come into vogue, such as those depending upon electricity or chemistry. After a short discussion, in which the Russian representative declared his Government to be in favor of prohibiting the use of all such new instrumentalities because of their view that the means of destruction at present employed were quite sufficient, the question was also put aside as one for future consideration on the part of the different Powers.

The United States representative made no objection to these questions being considered as remaining open upon the general ground of not offering opposition to desired freedom of discussion, the attitude of the United States in regard to them having, however, been made known by his statement already given.

BULLETS

This subject gave rise to more active debate and to more decided differences of view than any other considered by the Sub-Committee. A formula was adopted as follows, "The use of bullets which expand or flatten easily in the human body, such as jacketed bullets of which the jacket does not entirely cover the core or has incisions in it, should be forbidden."

When this subject came up in the Full Committee the British representative, Major-General Sir John Ardagh, made a declaration of the position of his Government on the subject, in which he described their Dum Dum bullet

as one having a very small portion of the jacket removed from the point, so as to leave uncovered a portion of the core of about the size of a pin-head. He said that this bullet did not expand in such manner as to produce wounds of exceptional cruelty, but that on the contrary the wounds produced by it were in general less severe than those produced by the Snider, Martini-Henry, and other rifles of the period immediately preceding that of the adoption of the present small bore. He ascribed the bad reputation of the Dum Dum bullet to some experiments made at Tübingen in Germany with a bullet from the forward part of which the jacket, to a distance of more than a diameter, was removed. The wounds produced by this bullet were of a frightful character, and the bullets being generally supposed to be similar to the Dum Dum in construction, had probably given rise to the unfounded prejudice against the latter.

The United States representative here for the first time took part in the discussion, advocating the abandonment of the attempt to cover the principle of prohibition of bullets producing unnecessarily cruel wounds by the specification of details of construction of the bullet, and proposing the following formula : —

"The use of bullets which inflict wounds of useless cruelty, such as explosive bullets and in general every kind of bullet which exceeds the limit necessary for placing a man immediately *hors de combat*, should be forbidden."

The Committee, however, adhered to the original proposition, which it voted without acting on the substitute submitted.

The action of the Committee having left in an unsatisfactory state the record, which thus stated that the United States had pronounced against a proposition of humanitarian intent, without indicating that our Government

not only stood ready to support but also proposed by its representative a formula which was believed to meet the requirements of humanity much better than the one adopted by the Committee, the United States delegate, with the approval of the Commission and in its name, proposed to the Conference at its next full session the above-mentioned formula as an amendment to the one submitted to the Conference by the First Committee. In presenting the amendment he stated the objections to the Committee's proposition to be the following: First, that it forbade the use of expanding bullets, notwithstanding the possibility that they might be made to expand in such regular manner as to assume simply the form of a larger calibre, which property it might be necessary to take advantage of, if it should in the future be found desirable to adopt a musket of very much smaller calibre than any now actually in use. Second, that by thus prohibiting what might be the most humane method of increasing the shocking power of a bullet and limiting the prohibition to expanding and flattening bullets, it might lead to the adoption of one of much more cruel character than that prohibited. Third, that it condemned by designed implication, without even the introduction of any evidence against it, the use of a bullet actually employed by the army of a civilized nation.

I was careful not to defend this bullet, of which I stated that I had no knowledge other than that derived from the representations of the delegate of the Power using it, and also to state that the United States had no intention of using any bullet of the prohibited class, being entirely satisfied with the one now employed, which is of the same class as are those in common use.

The original proposition was, however, maintained by the Conference, — the only negative votes being those of Great Britian and the United States. It may be stated

that in taking the vote it was decided to vote first upon the proposition as it came from the Committee, instead of upon the amendment, notwithstanding the strong opposition of the United States and other Powers to this method of procedure as being contrary to ordinary parliamentary usage and preventing an expression of opinion upon the amendment submitted in the name of the United States Commission.

From this report results the advice that, of the two declarations of the Conference originating in the First Sub-Committee of the First Committee, viz.: that concerning the use of balloons and that concerning the use of expanding or flattening bullets, the first only be signed by the United States Commission.

The reports of General den Beer Portugael of the work of the Sub-Committee, and of M. de Karnebeek of that of the full First Committee, are hereto annexed and marked respectively "*A*" and "*B*."

I am, gentlemen,

Very respectfully, your obedient servant,

WILLIAM CROZIER,
Captain of Ordnance, U. S. A.
Commissioner.

E. REPORT OF CAPTAIN CROZIER TO THE COMMISSION OF THE UNITED STATES OF AMERICA TO THE INTERNATIONAL CONFERENCE AT THE HAGUE, REGARDING THE WORK OF THE SECOND SUB-COMMITTEE OF THE SECOND COMMITTEE OF THE CONFERENCE

The Hague, July 31, 1899.

Commission of the United States of America to the International Conference at The Hague

Gentlemen : — I have the honor to submit a summary of the work appertaining in the first instance to the Second Sub-Committee of the Second Committee of the Conference. This Sub-Committee was charged with the revision of the declaration concerning the laws and customs of war, prepared in 1874 by the Conference of Brussels but never ratified. It is the subject indicated by article number seven of the circular of Count Mouravieff of December 30, 1898. Although the work of the Conference of Brussels was mentioned in this circular, previous publication of a code of what might be called the laws and customs of war had been made in General Order No. 100, issued from the Adjutant-General's Office of the United States Army in 1863, having been prepared by Dr. Francis Lieber of Columbia University. A graceful allusion to this publication and acknowledgment of its value was made by the chairman of the Sub-Committee, M. de Martens of Russia, at one of its sessions.

A code of the "Laws and Customs of War on Land," comprising sixty articles, was elaborated by the Sub-Committee and by the Conference. This code, if accepted by the United States, would take the place of those portions of the present instructions for the Government of its armies in the field which are covered by its sixty articles.

It would not completely take the place of these instructions for the reasons that certain subjects relating to hostilities are omitted therefrom, some because of their delicacy, such as retaliation, and reprisals, etc., others because they relate to the internal administration of an army and to the methods to be used to enforce observation of the code, as by penalties for violations. An important example of this class of omissions is found in Article 46 of the United States instructions (General Order 100) which forbids, under severe penalties, officers or soldiers from making use of their position or power in a hostile country for private commercial transactions, even of such nature as would otherwise be legitimate. In regard to the omitted subjects the declaration is made that while awaiting the establishment of a more complete code of the laws of war, populations and combatants remain under the protection and exactions of the principles of the law of nations as it results from established usage, from the rules of humanity, and from the requirements of the public conscience.

The code in general presents that advance from the rules of General Order No. 100, in the direction of effort to spare the sufferings of the populations of invaded and occupied countries, to limit the acts of invaders to those required by military necessities, and to diminish what are ordinarily known as the evils of war, which might be expected from the progress of nearly forty years' thought upon the subject. It is divided into four sections and each of them into several chapters.

Section I, of three chapters, treats of the personnel of the belligerents.

Chapter I, Articles 1 to 30, prescribes what persons are legitimate combatants and has particular reference to *levée en masse*.

Article 2 represents the extreme concession to unorgan-

ized resistance in prescribing as the sole condition of treatment as legitimate combatants of populations of an unoccupied country suddenly invaded, without time for organization, and taking up arms in its defence, to be that they shall observe the laws and customs of war. During the discussion of this chapter an additional article was proposed for adoption by the representative of Great Britain, to the effect that nothing in it should be understood as tending to diminish or suppress the right of the population of an invaded country to fulfil its patriotic duty of offering to the invaders by all legitimate means the most strenuous resistance. The article was warmly supported by the representative of Switzerland, but was just as decidedly opposed by the representative of Germany. The proposed article was withdrawn by its author, under appeals from delegates favoring its spirit but deeming it superfluous and calculated to endanger the adoption of the portion of the code under consideration. It is the opinion of the United States representative that the withdrawal was wise, in view of the concession in Article 2 of all that is covered by the one proposed.

Chapter II, Article 4 to 20, treats of prisoners of war.

Article 4 stipulates that their personal property, with the exception of arms, horses, and military papers, shall remain in their possession. The case is not specially covered of large sums of money which may be found on the persons of prisoners or in their private luggage, and referred to in Article 72 of General Order No. 100 in such way as to throw doubt upon the strictly private character of such funds.

Article 6 provides, as does Article 76 of General Order 100, that prisoners of war may be required to perform work, but it goes further, in that it covers the fact and the determination of the rate of payment for such work and the disposition to be made of such pay.

Article 77 of General Order No. 100, which provides for severe penalty, even for death, for conspiracy among prisoners of war to effect a united or general escape or to revolt against the authority of the captors, has no counterpart in the new code. Article 12 of the new code provides that in case of breach of parole the offender shall be brought to trial, but it does not prescribe the death penalty as does Article 124 of General Order No. 100.

Articles 14, 15, 16, and 17 are quite new in their scope. They provide for the establishment of a bureau of information in regard to prisoners of war and prescribe its duties ; also for the extension, under necessary guarantees, of all proper facilities to members of duly organized prisoners' aid societies ; for franking privileges for the bureau of information ; for exemption from postal and customs charges of letters, orders, money, and packages of or for prisoners of war, and of the possible advance to officers of the pay allowed by their Government in such situation, to be afterward repaid by the latter. It will be observed that in case of adoption of the code by the United States, enabling legislation by Congress will be required for the operation of these four articles.

Chapter III, Article 21, treats of the sick and wounded, and it contains only a reference to the Geneva Convention.

Section II, of five chapters, treats of acts of war. Chapter I, Articles 22 and 23, refers to legitimate means of injuring the enemy, to sieges and to bombardments.

Article 23 prohibits the issue of the declaration that no quarter will be given, not making allowance for the special case contemplated in Article 60 of General Order No. 100, of a commander in great straits, such that his own salvation makes it impossible for him to encumber himself with prisoners, nor for the retaliatory measures contemplated by Articles 61, 62, 63, and 66 of General Order No. 100. The death penalty prescribed by Article

71 of the Order, for killing or wounding a disabled enemy, is not found among the provisions of the code.

Article 23 also forbids the destruction or seizure of private property except when imperiously required by the necessities of war. During the discussion of this prohibition the United States representative stated the desire of his Government that it should extend to private property both upon land and sea, and that the revision of the declaration of the Conference of Brussels which the Powers had been invited to make, had been understood to properly include this extension, that he could not accept the decision of the chairman that the Sub-Committee was not competent to consider it, because of the limitation of the revision strictly to the subject of land warfare, although he would not insist upon an immediate decision as to such competence, asking simply that the subject be left open for further treatment by the full Committee and by the Conference. The method of after-treatment, by which the subject was relegated to the consideration of a future Conference, is familiar to the Commission.

Article 25 forbids the bombardment of unprotected cities. It was proposed by the Italian representative that the interdiction should extend to bombardment from the sea as well as from the land, but upon the manifestation of opposition to this extension action was limited to the expression of a hope that the subject would be considered by a future conference; the representative of Great Britain abstaining from this expression because of lack of instruction upon the subject.

Chapter II, Articles 29 to 31, treats of spies. It does not prescribe the punishment to be inflicted in case of capture.

Chapter III, Articles 32 to 34, refers to flags of truce.

Chapter IV, Article 35, to capitulations.

Chapter V, Articles 36 to 41, to armistices.

Section III, of a single chapter, Articles 43 to 46, treats of the delicate subject of military authority upon hostile territory. The omission of some of its provisions was urged by the representatives of Belgium, upon the ground that they had the character of sanctioning in advance rights of an invader upon the soil and of thus organizing the régime of defeat ; that rather than to do this it would be better for the population of such territory to rest under the general principle of the law of nations. The provisions were retained upon the theory that, while not acknowledging the right, the possible fact had to be admitted and that wise provision required that proper measures of protection for the population and of restrictions upon the occupying force should be taken in advance.

Article 43 is stronger in its terms than Article 3 of General Order No. 100, in requiring respect by the occupying force, unless absolutely prevented, of the laws in force in the occupied territory.

Article 26 of General Order No. 100, in regard to an oath of allegiance and fidelity on the part of magistrates and other civil officers, may require modification in view of Article 45 of the new code, although this may possibly not be necessary as the latter article mentions only populations.

Articles 48 to 54 refer to contributions and requisitions in money and kind ; they are more detailed in their provisions than the articles of General Order No. 100 referring to the same subject, but they do not differ therefrom in spirit and general purport. They express the idea that such contributions are not to be made for the purpose of increasing the wealth of the invader. The provision that the shore-ends of submarine cables might be treated in accordance with the necessities of the occupying force and that restitution should be made and damages regulated at the conclusion of peace, after having at first found entry

into the code, was afterward stricken out at the instance of the British representative.

Article 46 forbids the seizure or destruction of works of art or similar objects, and is in this respect more restrictive than Article 36 of General Order No. 100, which permits the removal of such articles for the benefit of the Government of the occupying army and relegates the ultimate settlement of their ownership to the treaty of peace.

Section IV, of a single chapter, Articles 57 to 60, treats of belligerents confined, and of sick and wounded cared for, upon neutral territory, a subject not referred to in General Order No. 100. It provides generally that obligation is imposed upon the neutral to see that such persons shall not take further part in the war, but attention was invited by the United States representative to the fact that for sick and wounded simply passing through neutral territory on their way to their own country, no such provision is made. Because of anticipated difficulty in securing harmony or for other reasons the Committee did not decide the question, and a decision was not demanded by the United States representative, who could see no direct interest of the United States in question, which he had raised only in the interest of good work. During the progress of the work of the Sub-Committee expression was made, upon the initiative of the representative of Luxemburg, of the hope that the question of the regulation of the rights and duties of neutrals would form part of the programme of an early conference.

Foreign ambassadors, ministers, other diplomatic agents and consuls, whose treatment is regulated by Articles 8, 9, and 87 of General Order No. 100, are not mentioned in the new code. It is also silent upon the subject of guerillas, armed prowlers, war rebels, treachery, war

traitors and guides, treated in Sections 4 and 5 of General Order No. 100.

It is not attempted to make this report a full digest of the proposed code or a complete exposition of its relations with the existing instructions for the government of the armies of the United States in the field, — the object is to present such general summary as may indicate that the Convention containing the code is a proper one for the Commission to recommend the acceptance of by the Government of the United States, and also that because of the extent and importance of the subject such acceptance should be preceded by a careful examination of the code by the department of Military Law. The agreement in the Convention to issue to the armies of the Signatory Powers instructions in conformity with the code, is not understood to mean that such instructions shall contain nothing more than is found in the code itself, but that all the provisions of the code shall be met and none of them violated in such instructions. A very complete discussion of the articles of the code is contained in the report of Mr. Rolin, the official reporter of the sub-committee, which is hereto annexed and marked C.

William Crozier,
Captain of Ordnance, U. S. A.
Commissioner.

F. REPORT OF MR. WHITE, MR. LOW, AND MR. HOLLS, TO THE AMERICAN COMMISSION TO THE INTERNATIONAL CONFERENCE AT THE HAGUE, REGARDING THE WORK OF THE THIRD COMMITTEE OF THE CONFERENCE

The Hague, July 31, 1899.

Commission of the United States of America to the International Conference at The Hague

Gentlemen : — The undersigned members of the Third Commission of the Conference, to which was referred the matter of Arbitration and Mediation, have the honor of submitting the following report regarding the work of that Committee : —

The Committee on Arbitration was appointed at the second session of the Conference, held May 20, 1899 ; and on Tuesday, May 23, the Committee met for the first time under the chairmanship of M. Leon Bourgeois of France. It then discussed merely routine business and adjourned until Friday, May 25. At this meeting it was decided to appoint a sub-committee called the *Comité d'Examen*, to consist of eight members, for the purpose of drafting a plan for International Arbitration and Mediation. The membership of the *Comité d'Examen* was proposed by the so-called Bureau of the Full Committee, consisting of the President, Honorary Presidents, and the Vice-President, as follows : M. Chevalier Descamps of Belgium, M. Asser of the Netherlands, M. de Martens of Russia, Professor Zorn of Germany, Professor Lammasch of Austria, M. Odier of Switzerland, Baron d'Estournelles de Constant of France, and Mr. Holls of the United States of America. The Honorary Presidents of the Committee, Sir Julian Pauncefote of

England, Count Nigra of Italy, also took part in the work of the *Comité d'Examen*, as well as the President of the Conference, Baron de Staal of Russia. The *Comité d'Examen* held eighteen working sessions, all of its members being present at every session, with two exceptions caused by the absence of M. de Martens at the Venezuelan Arbitration in Paris.

On July 7, 1899, the *Comité d'Examen* presented to the full Committee the project for the peaceable settlement of international disputes, which, after discussion in the full Committee and in the Conference, was, on the 25th of July, unanimously adopted. A copy of this convention is annexed to this report. It consists of sixty-one articles, of which the first contains a general declaration regarding the maintenance of peace. Articles 2 to 8 inclusive relate to good offices and mediation ; Articles 9 to 14, to international commissions of inquiry ; Articles 15 to 20, to arbitral justice in general; Articles 30 to 57, to the procedure before the said court ; and Articles 58 to 61, to the ratification of the convention and the like. All of these articles and the considerations which led to their adoption have been carefully discussed, on behalf of the Committee, by its reporter, M. Descamps, whose report is annexed hereto.

At the opening of the first meeting of the Third Committee of the Conference the Russians proposed a carefully-worked-out scheme : —

1. For Good Offices and Mediation.

2. For Arbitrations *ad hoc*, to which was annexed a code for arbitral procedure.

3. For International Inquiries.

Sir Julian Pauncefote having been given the floor as one of the Vice-Presidents of the Conference, at once suggested a vote upon the principle of a Permanent Tribunal for International Arbitrations.

The Russians, thereupon, instantly gave notice that they also had a plan for a permanent Court which would be submitted in due course. It was thought best to discuss the principle of a permanent court only in connection with a careful discussion of definite plans, and it was therefore then resolved to send all plans bearing on this subject to the *Comité d'Examen*, together with the Russian proposals for Good Offices and Mediation.

At the meeting of the Committee, held Wednesday, May 31, the American project for an international tribunal of arbitration was presented, through the President of the Conference, M. de Staal. At about the same time, or just before, the English and the Russian plans for a permanent tribunal were also submitted. In the *Comité d'Examen* the plan proposed by Sir Julian Pauncefote was taken, by the consent of the Russians and Americans, as the basis of the Committee's work. This plan, however, has been greatly modified and enlarged, by provisions from both the American and the Russian plans, and also by suggestions made in Committee. The plan adopted by the Conference, therefore, while founded on the British proposals so far as the form of the Permanent Court is concerned, is really the work of the *Comité d'Examen*.

Compared with the original American project, it differs from it essentially in the following particulars. The fundamental idea of the American plan was a court which should not only be permanent but continuous in its functions, consisting of not less than nine judges, from whose number special benches might be chosen by the litigants; provision was also expressly made for the possibility of a session of the entire tribunal at one time. The latter idea was absolutely unacceptable to most of the Continental States. One objection raised to it was that there had not yet been sufficient experience in arbitrations to

warrant a continuously sitting tribunal, so that if one were provided it would probably have nothing to do during the greater portion of the year, and thus become an object of criticism, if not of ridicule. Another objection found expression in the fear that such a tribunal would assume a dignity and importance for which the nations were not yet prepared. The expense involved in the payment of salaries to judges whose time would be taken, was also a consideration of no little importance, and the payment of permanent salaries was looked upon as being likely to emphasize the undesirable spectacle of an international court with perhaps little to do. The plan of Sir Julian Pauncefote happily avoided these difficulties, while it yet provided a permanent court not altogether unlike the Supreme Court of the State of New York, which consists of a comparatively large number of judges who never sit as a body but who are constantly exercising judicial functions, either alone or in separate tribunals made up from among their number. This organization appears in the perfected plan adopted by the Conference.

The American plan further proposed that the tribunal for which it provided should itself appoint its secretary or clerk and supervise the administration of its own bureau or record office. When the idea of a continuously sitting tribunal was abandoned, another method of administration of the bureau or record office was made necessary. Accordingly, the proposal which has been adopted provides that as soon as nine of the Powers who have acceded to this convention have ratified it, the representatives of the signatory powers accredited to the Government of the Netherlands will meet under the presidency of the Minister of Foreign Affairs of the Netherlands and organize themselves as a permanent Council of Administration, whose first duty it will be to create a permanent Bureau of Arbitration. The Council of Administration

will appoint a secretary-general, secure quarters for the court and such assistants as may be necessary, in the shape of archivists and other officials who will sit in permanence at The Hague, and who will constitute the working staff and headquarters of the international system of arbitration. The Hague was selected as the seat of the permanent tribunal, by common consent, no proposition or vote favoring any other place having been received.

The American plan provided for one judge from each adhering country. The British proposal suggested two, and on the motion of the German delegate this number was increased to not more than four. The German delegation stated that their reason for proposing a larger number was that the Great Powers, at least, ought, in their opinion, to nominate as members of the tribunal men of eminence, not only in law, but also perhaps a diplomat and perhaps a military or naval expert. The Powers are not restricted to their own citizens in the choice of judges, and two or more Powers may unite in naming the same person. The judges to be named are to hold office for six years, and during the exercise of their functions and when outside of their own country they are to enjoy diplomatic privileges and immunities.

In place of the provision of the American proposal that the tribunal itself should fix its own rules of procedure, the Committee adopted a code of procedure proposed by the Russian delegation, with slight amendments. This code is almost identical with the rules of procedure adopted for the British and Venezuela Court of Arbitration, now in session at Paris. The authors of these rules were, it is understood, M. de Martens, President of the Court, Mr. Justice Brewer of the United States, and Lord Justice Collins of Great Britain.

The provision contained in the American plan that the

cases, counter cases, depositions, arguments, and opinions of the court should, after the delivery of the judgment, be at the disposition of any one willing to pay the cost of transcription, was, by common consent, left as an administrative detail for the consideration of the Council of Administration.

The American proposal that every case submitted to the tribunal must be accompanied by a stipulation signed by both parties, to agree in good faith to abide by the decision, which was also a feature of the Russian proposals, was unanimously adopted ; as was also the further American proposal that in each particular case the bench of judges should, by preference, be selected from the list of members of the tribunal. The *Comité d'Examen* was unwilling to make a categorical rule, as suggested in the American plan, that when the tribunal consisted of only three members none of them should be a native, subject, or citizen of either of the litigating States, but, on the other hand, the American objection to tribunals consisting of only one representative of each litigating State and one umpire was embodied in the provision that, except in case of an agreement to the contrary, the tribunal should, in all cases, consist of five members, two being nominated by each State, the four to choose the fifth. This enables the parties to have one representative each on the bench, while the majority of the tribunal may, nevertheless, consist of entirely impartial judges, who may not necessarily agree on all points with either side.

The American proposal regarding the expenses of the tribunal, that the judges should be paid only when on duty, was in effect adopted. The American proposal was the only one which contained provision for a second hearing for the correction of manifest errors. This provision was inserted in the code of procedure in a permissive form, after much opposition.

The American proposal that the Convention should be in force upon the ratification of nine States was adopted, but the restriction as to the character of these States, contained in the American plan, was omitted as unnecessary. It is substantially certain that among the first adhering States there will be eight European or American Powers, of whom at least four have been signatory Powers of the Treaty of Paris of 1856. It should be observed here that this description was made a part of the American Plan, only in order to make it clear that in the opinion of the United States Government the confirmation of a certain number of the Great Powers was essential to success.

The one distinctive feature of the American plan which was rejected on principle was that providing for the coöperation of the highest courts of each country in the selection of members of the Court of Arbitration. This idea proved absolutely unacceptable to the Continental Powers for various reasons, which have been stated to the department in our despatch Number 10. There is no highest court for the entire Empire of Austria-Hungary, and the relations between the different parts of the Empire are not calculated to make joint action by the two highest courts practicable or desirable. This is also true of Sweden and Norway. In Russia the highest court consists of a Senate of one hundred members, whose coöperation in the matter of appointment would contradict all local traditions. Besides this, the organization of the courts of nearly all Continental countries is based upon the traditions of the Roman Law, and those traditions always have excluded the idea of any action, on the part of a judicial tribunal, with reference to the selection of a man or men for any particular purpose, even if the latter were judicial in its nature. Furthermore, in several large European States, notably Germany, the rules governing the practice of the law are such as to prevent

the members of the highest court from having any knowledge of the ability or reputation of many of the most noted lawyers or judges, since no one is allowed to practise before the highest court unless he is a resident of the city of its location, and a member of its particular bar, and the rules providing for appeals are very narrow in their limitations. Under these circumstances, the members of those courts are not, like our Justices of the Supreme Court of the United States, or the members of the Privy Council of Great Britain, the best possible advisers with reference to the selection of creditable legal representatives upon the great tribunal, and it was stated that in many cases they were about the last authorities to whom the appointing Power would be likely to turn with success for such advice and coöperation. Under these circumstances, the adoption of this feature of our plan was hopeless from the first; but, out of courteous regard for the United States, the *Comité d'Examen* directed the reporter to mention the importance of a complete disregard of political considerations in the choice of members of the court.

It will be seen that nothing in the proposed plan of organization of the permanent tribunal is absolutely contrary to the fundamental ideas set forth in the American proposal, and the code of procedure contains nothing contrary to the principles of equity pleading in English or American courts. In view of the fact that a large majority of the members of the Arbitration Court must necessarily be Europeans trained in the principles of the Roman Law, it has been deemed important from the first to secure all possible guarantees against practice or procedure which would put nations having the Common Law as the basis of their jurisprudence at a disadvantage. It is believed that this end has been successfully accomplished.

Attention is called to the fact that the entire plan for

the tribunal and its use is voluntary, so far as sovereign States are concerned. The only seeming exceptions to this rule are contained in Article 1, which provides that the Signatory Powers agree to employ their efforts for securing the pacific regulation of international differences; and Article 27, which says that the Signatory Powers consider it to be a duty, in the case where an acute conflict threatens to break out between two or more of them, to remind those latter that the permanent court is open to them. The obligation thus imposed is not legal or diplomatic in its nature. These articles merely express a general moral duty for the performance of which each State is accountable only to itself. In order, however, to make assurance doubly sure and to leave no doubt whatever of the meaning of the Convention, as affecting the United States of America, the Commission made the following declaration in the full session of the Conference, held July 25: —

"The Delegation of the United States of America, in signing the Convention regulating the peaceful adjustment of international differences, as proposed by the International Peace Conference, make 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."

Under the reserve of this declaration the United States delegates signed the Arbitration Convention itself.

Article 8 of the Convention, providing for a special

form of Mediation, was proposed individually by Mr. Holls of the United States Commission. It is fully explained in the report of M. Descamps and in the minutes of the meeting of the Committee at which it was unanimously adopted. Being purely voluntary in its character, it is at least certain that it conflicts with no American interest, while, on the contrary, it is hoped that in particular crises, when the other means provided by the Convention for keeping or restoring peace have failed, it may prove to have real and practical value. It is certain that, by the Continental States of Europe, it has been exceedingly well received.

The Convention for the peaceful adjustment of international differences, if ratified by the Senate, will require no special enabling legislation on the part of Congress, beyond the annual appropriation of a sum sufficient to pay the share of the United States of the expenses of the Arbitration Bureau at The Hague. It is provided that these expenses shall be borne by the Signatory Powers in the same proportion as is now prescribed by the World's Postal Convention, so that the share, even of a great Power, will be very small.

All of which is most respectfully submitted.

Andrew D. White.
Seth Low.
Frederick W. Holls.

APPENDIX III

THE HUGO GROTIUS CELEBRATION AT DELFT, JULY 4, 1899

THE one hundred and twenty-third anniversary of American Independence, occurring during the sessions of the Peace Conference, afforded a suitable occasion for a celebration under the auspices of the American Commission to the Conference. At the suggestion of Ambassador White, the President of the American Commission, and with the cordial approval of the Secretary of State, this celebration took the character of a festival in honor of Hugo Grotius, including the deposit upon his tomb in the Grote Kerk of Delft, of a silver wreath, and a luncheon at the Stadhuis or City Hall of Delft immediately afterward. The wreath was made by Eugene Marcus, Court Jeweller, Berlin, and is twenty-eight inches in diameter : the leaves of frosted silver, on one side being oak with acorns in silver gilt, and on the other side laurel, with berries in silver gilt. The stems at the base are held together by a large ribbon and bow of silver gilt, and upon this the inscription is placed in blue enamel. Attached to this ribbon and bow and held together by it are shields of silver gilt bearing in enamel on the right side the arms of the Netherlands, and on the left those of the United States of America. The inscription on the ribbon is as follows : —

TO THE MEMORY OF HUGO GROTIUS

En Reverence and Gratitude

FROM THE UNITED STATES OF AMERICA ON THE OCCASION OF THE INTERNATIONAL PEACE CONFERENCE OF THE HAGUE

JULY 4, 1899

The celebration was held in the apse of the great church, in front of the tomb of Grotius, — that of William the

Silent being immediately adjoining. A platform, upon which the presiding officer and speakers were seated, was erected between one of the great pillars of the church and the tomb of William the Silent. A choir of one hundred voices, carefully selected from among the best singers of The Hague, and all of whom had volunteered their services, was placed at the end of the apse on a slight elevation. The choir was under the direction of Mr. Arnold Spoel, Director of the Royal Conservatory of Music in The Hague.

The invited guests included all members of the Peace Conference, and all members of the Dutch Government and the Diplomatic Corps accredited to The Hague, the Deans of the Law Faculties of the Universities of Leyden, Utrecht, Amsterdam, and Gröningen, the Burgomaster and city authorities of Delft, and other distinguished visitors, and although the weather was inclement, one of the severest rain-storms of the season raging all the morning, nearly all the invited guests were present. At eleven o'clock, which was the hour set for the commencement of the exercises, the apse and the greater part of the body of the church were well filled. Beginning at a quarter after ten o'clock, Mr. John Kethel, the organist and director of the Nieuwe Kerk of Delft, played international airs on the beautiful chimes of the church for half an hour, and at quarter before eleven o'clock and during the arrival of the guests he played an organ prelude, including the Russian National Anthem, which was given at the moment when Baron de Staal, President of the Conference, entered the church.

At precisely eleven o'clock Jonkheer van Karnebeek, the First Delegate of the Netherlands to the Peace Conference and Vice-President of the Conference itself, who had been chosen to preside, took the chair and the exercises were opened by a magnificent rendering, on the part

of the choir, of the selection from Mendelssohn's Oratorio of St. Paul: "How lovely are the messengers who bring us good tidings of Peace," which was sung in the German language.

Jonkheer van Karnebeek then delivered the following address: —

"Ladies and Gentlemen:

"It is the American custom that every meeting should be conducted by a Chairman, and it is my good fortune to enjoy the great honor of having been selected to act as such on the occasion of this imposing ceremony, which is so flattering to my country, and so highly valuable as a proof of the friendly spirit of the United States of America toward the Netherlands. It also marks the sympathetic disposition of the representatives of so many nations, who have come forward to take part in this pilgrimage to the 'New Church' of Delft, which, in fact, is an old church full of historical memories dear to the hearts of my countrymen.

"Allow me to state, in a few words, what the nature of this ceremony is.

"Nowhere, I dare say, has the Peace Conference, to which many of those present belong, met with a more hearty and general sympathy, than in the United States of America, and it is a token of this feeling, and also — I may somewhat proudly say — as an acknowledgment of the reception of the Conference by the Netherlands, that the American Delegation, in the name of their Government, desire to place on the tomb of Hugo Grotius a tribute of honor to the memory of a Dutchman, who may be justly reckoned among the principal founders of international law and international justice, with which the Conference, now assembled at The Hague, is so closely connected.

"The American Delegation have asked you to be kindly

present at their act of sympathy and courtesy, and, in order to give it additional significance as a demonstration of the feelings prevalent among their people, they have chosen for its accomplishment their great national festival, the Fourth of July.

"Your responsive gathering to this call gives the assurance of your good will on this occasion and of your interest in what is about to take place."

At the conclusion of his address, M. van Karnebeek introduced M. de Vries van Heyst, the Burgomaster of the city of Delft, who briefly welcomed the American Delegation and their guests, in the Dutch language, on behalf of the city.

The choir then sang the Dutch national anthem: "Wien Neerlandsch Bloed," at the conclusion of which the Chairman introduced the President of the Commission of the United States, Ambassador Andrew D. White, who spoke as follows: —

"Your Excellencies, Mr. Burgomaster, Gentlemen of the University Faculties, my Honored Colleagues of the Peace Conference, Ladies and Gentlemen:

"The Commission of the United States comes here this day to discharge a special duty. We are instructed to acknowledge, on behalf of our country, one of its many great debts to the Netherlands.

"This debt is that which, in common with the whole world, we owe to one of whom all civilized lands are justly proud, — the poet, the scholar, the historian, the statesman, the diplomatist, the jurist, the author of the treatise 'De Jure Belli ac Pacis.'

"Of all works not claiming divine inspiration, that book, written by a man proscribed and hated both for his poli-

tics and his religion, has proved the greatest blessing to humanity. More than any other it has prevented unmerited suffering, misery, and sorrow ; more than any other, it has ennobled the military profession ; more than any other, it has promoted the blessings of peace and diminished the horrors of war.

"On this tomb, then, before which we now stand, the Delegates of the United States are instructed to lay a simple tribute to him whose mortal remains rest beneath it — Hugo de Groot, revered and regarded with gratitude by thinking men throughout the world as GROTIUS.

"Naturally we have asked you to join us in this simple ceremony. For his name has become too great to be celebrated by his native country alone ; too great to be celebrated by Europe alone : it can only be fitly celebrated in the presence of representatives from the whole world.

"For the first time in human history there are now assembled delegates with a common purpose, from all the nations ; and they are fully represented here. I feel empowered to speak words of gratitude, not only from my own country but from each of these. I feel that my own country, though one of the youngest in the great sisterhood of nations, utters at this shrine to-day, not only her own gratitude but that of every part of Europe, of all the great Powers of Asia, and of the sister republics of North and South America. From nations now civilized, but which Grotius knew only as barbarous ; from nations which in his time were yet unborn ; from every land where there are men who admire genius, who reverence virtue, who respect patriotism, who are grateful to those who have given their lives to toil, hardship, disappointment, and sacrifice, for humanity — from all these come thanks and greetings heartily mingled with our own.

"The time and place are well suited to the acknowledgment of such a debt. As to time, so far as the world at

large is concerned, I remind you not only that this is the first conference of the entire world, but that it has, as its sole purpose, a further evolution of the principles which Grotius, first of all men, developed thoroughly and stated effectively. So far as the United States is concerned, it is the time of our most sacred national festival — the Anniversary of our National Independence. What more fitting period, then, in the history of the world and of our own country, for a tribute to one who has done so much, not only for our sister nations but for ourselves.

"And as to the place. This is the ancient and honored city of Delft. From its Haven, not distant, sailed the *Mayflower* — bearing the Pilgrim Fathers, who, in a time of obstinate and bitter persecution, brought to the American Continent the germs of that toleration which had been especially developed among them during their stay in the Netherlands, and of which Grotius was an apostle. In this town Grotius was born; in this temple he worshipped; this pavement he trod when a child; often were these scenes revisited by him in his boyhood; at his death his mortal body was placed in this hallowed ground. Time and place, then, would both seem to make this tribute fitting.

"In the vast debt which all nations owe to Grotius, the United States acknowledges its part gladly. Perhaps in no other country has his thought penetrated more deeply and influenced more strongly the great mass of the people. It was the remark of Alexis de Tocqueville, the most philosophic among all students of American institutions, that one of the most striking and salutary things in American life is the widespread study of law. De Tocqueville was undoubtedly right. In all parts of our country the Law of Nations is especially studied by large bodies of young men in colleges and universities; studied not professionally merely, but from the point of view of men eager to

understand the fundamental principles of international rights and duties.

"The works of our compatriots, Wheaton, Kent, Field, Woolsey, Dana, Lawrence, and others, in developing more and more the ideas to which Grotius first gave life and strength, show that our country has not cultivated in vain this great field which Grotius opened.

"As to the bloom and fruitage evolved by these writers out of the germ ideas of Grotius, I might give many examples, but I will mention merely three.

"The first example shall be the act of Abraham Lincoln. Amid all the fury of Civil War, he recognized the necessity of a more humane code for the conduct of our armies in the field; and he intrusted its preparation to Francis Lieber, honorably known to jurists throughout the world, and at that time Grotius's leading American disciple.

"My second example shall be the act of General Ulysses Grant. When called to receive the surrender of his great opponent, General Lee, after a long and bitter contest, he declined to take from the vanquished General the sword which he had so long and so bravely worn; imposed no terms upon the conquered armies save that they should return to their homes; allowed no reprisals; but simply said, 'Let us have peace.'

"My third example shall be the act of the whole people of the United States. At the close of that most bitter contest, which desolated thousands of homes and which cost nearly a million of lives, no revenge was taken by the triumphant Union on any of the separatist statesmen who had brought on the great struggle, or on any of the soldiers who had conducted it; and, from that day to this, North and South, once every year, on Decoration Day, the graves of those who fell wearing the blue of the North and the gray of the South are alike strewn with flowers. Surely I may claim for my countrymen that, whatever

other shortcomings and faults may be imputed to them, they have shown themselves influenced by those feelings of mercy and humanity which Grotius, more than any other, brought into the modern world.

"In the presence of this great body of eminent jurists from the Courts, the Cabinets, and the Universities of all nations, I will not presume to attempt any full development of the principles of Grotius or to estimate his work; but I will briefly present a few considerations regarding his life and work which occur to one who has contemplated them from another and distant country.

"There are, of course, vast advantages in the study of so great a man from the nearest point of view; from his own land, and by those who from their actual experience must best know his environment. But a more distant point of view is not without its uses. Those who cultivate the slopes of some vast mountain know it best; yet those who view it from a distance may sometimes see it brought into new relations and invested with new glories.

"Separated thus from the native land of Grotius by the Atlantic, and perhaps by a yet broader ocean of customary thinking; unbiassed by any of that patriotism so excusable and indeed so laudable in the land where he was born; an American jurist naturally sees, first, the relations of Grotius to the writers who preceded him. He sees other and lesser mountain peaks of thought emerging from the clouds of earlier history, and he acknowledges a debt to such men as Isidore of Seville, Suarez, Ayala, and Gentilis. But, when all this is acknowledged, he clearly sees Grotius, while standing among these men, grandly towering above them. He sees in Grotius the first man who brought the main principles of those earlier thinkers to bear upon modern times; — increasing them from his own creative mind, strengthening them from the vast stores of his knowledge, en-

riching them from his imagination, glorifying them with his genius.

"His great mind brooded over that earlier chaos of opinion, and from his heart and brain, more than from those of any other, came a revelation to the modern world of new and better paths toward mercy and peace. But his agency was more than that. His coming was like the rising of the sun out of the primeval abyss : his work was both creative and illuminative. We may reverently insist that, in the domain of International Law, Grotius said 'Let there be light,' and there was light.

"The light he thus gave has blessed the earth for these three centuries past, and it will go on through many centuries to come, illuminating them ever more and more.

"I need hardly remind you that it was mainly unheeded at first. Catholics and Protestants alike failed to recognize it — 'The light shone in the darkness, and the darkness comprehended it not.' By Calvinists in Holland and France, and by Lutherans in Germany, his great work was disregarded if not opposed ; and at Rome it was placed on the Index of books forbidden to be read by Christians.

"The book, as you know, was published amid the horrors of the Thirty Years' War ; the great Gustavus is said to have carried it with him always, and he evidently at all times bore its principles in his heart. But he alone among all the great commanders of his time stood for mercy. All the cogent arguments of Grotius could not prevent the fearful destruction of Magdeburg, or diminish, so far as we can now see, any of the atrocities of that fearful period.

"Grotius himself may well have been discouraged ; he may well have repeated the words attributed to the great Swedish Chancellor, whose Ambassador he afterward became, 'Go forth, my son, and see with how little

wisdom the world is governed.' He may well have despaired as he reflected that throughout his whole life he had never known his native land save in perpetual, heart-rending war; nay, he may well have been excused for thinking that all his work for humanity had been in vain, when there came to his deathbed no sign of any ending of the terrible war of thirty years.

"For not until three years after he was laid in this tomb did the Plenipotentiaries sign the Treaty of Münster. All this disappointment and sorrow and life-long martyrdom invests him, in the minds of Americans, as doubtless in your minds, with an atmosphere of sympathy, veneration, and love.

"Yet we see that the great light streaming from his heart and mind continued to shine; that it developed and fructified human thought; that it warmed into life new and glorious growths of right reason as to international relations; and we recognize the fact that, from his day to ours, the progress of reason in theory, and of mercy in practice, has been constant, on both sides of the Atlantic.

"It may be objected that this good growth, so far as theory was concerned, was sometimes anarchic, and that many of its developments were very different from any that Grotius intended or would have welcomed. For if Puffendorff swerved much from the teachings of his great master in one direction, others swerved even more in other directions; — and all created systems more or less antagonistic. Yet we can now see that all these contributed to a most beneficent result, — to the growth of a practice ever improving, ever deepening, ever widening, ever diminishing bad faith in time of peace and cruelty in time of war.

"It has also been urged that the system which Grotius gave to the world has been utterly left behind as the

world has gone on; that the great writers on International Law in the present day do not accept it; that Grotius developed everything out of an idea of natural law which was merely the creation of his own mind, and based everything on an origin of jural rights and duties which never had any real being; that he deduced his principles from a divinely planted instinct which many thinkers are now persuaded never existed, acting in a way contrary to everything revealed by modern discoveries in the realm of history.

"It is at the same time insisted against Grotius that he did not give sufficient recognition to the main basis of the work of modern international jurists; to positive law, slowly built on the principles and practice of various nations in accordance with their definite agreements and adjustments.

"In these charges there is certainly truth; but I trust that you will allow one from a distant country to venture an opinion that, so far from being to the discredit of Grotius, this fact is to his eternal honor.

"For there was not and there could not be at that period, anything like a body of positive International Law adequate to the new time. The spirit which most thoroughly permeated the whole world, whether in war or peace, when Grotius wrote, was the spirit of Machiavelli — unmoral: immoral. It had been dominant for more than a hundred years. To measure the service rendered by the theory of Grotius, we have only to compare Machiavelli's 'Prince' with Grotius's 'De Jure Belli ac Pacis.' Grant that Grotius's basis of International Law was, in the main, a theory of natural law which is no longer held: grant that he made no sufficient recognition of positive law; we must nevertheless acknowledge that his system, at the time he presented it, was the only one which could ennoble men's theories or reform their practice.

"From his own conception of the attitude of the Divine Mind toward all the falsities of his time grew a theory of international morals which supplanted the principles of Machiavelli: from his conception of the attitude of the Divine Mind toward all the cruelties which he had himself known in the Seventy Years' War of the Netherlands, and toward all those of which tidings were constantly coming from the German Thirty Years' War, came inspiration to promote a better practice in war.

"To one, then, looking at Grotius from afar, as doubtless to many among yourselves, the theory which Grotius adopted seems the only one which, in his time, could bring any results for good to mankind.

"I am also aware that one of the most deservedly eminent historians and publicists of the Netherlands, during our own time, has censured Grotius as the main source of the doctrine which founds human rights upon an early social compact, and, therefore, as one who proposed the doctrines which have borne fruit in the writings of Rousseau, and in various modern revolutions.

"I might take issue with this statement; or I might fall back upon the claim that Grotius's theory has proved, at least, a serviceable provisional hypothesis; but this is neither the time nor the place to go fully into so great a question. Yet I may at least say that it would ill become me, as a representative of the United States, to impute to Grotius as a fault, a theory out of which sprang the nationality of my country: a doctrine embodied in that Declaration of Independence which is this day read to thousands on thousands of assemblies in all parts of the United States, from the Atlantic to the Pacific, and from the Great Lakes to the Gulf of Mexico.

"But however the Old World may differ from the New on this subject, may we not all agree that, whatever

Grotius's responsibility for this doctrine may be, its evils would have been infinitely reduced could the men who developed it have caught his spirit . . . his spirit of broad toleration, of wide sympathy, of wise moderation, of contempt for 'the folly of extremes,' of search for the great principles which unite men rather than for the petty differences which separate them?

"It has also been urged against Grotius that his interpretation of the words *jus gentium* was a mistake, and that other mistakes have flowed from this. Grant it; yet we, at a distance, believe that we see in it one of the happiest mistakes ever made; a mistake comparable in its fortunate results to that made by Columbus when he interpreted a statement in our sacred books regarding the extent of the sea as compared with the land, to indicate that the western continent could not be far from Spain,—a mistake which probably more than anything else encouraged him to sail for the New World.

"It is also not unfrequently urged by eminent European writers that Grotius dwelt too little on what International Law really was, and too much on what, in his opinion, it ought to be. This is but another form of an argument against him already stated. But is it certain after all that Grotius was so far wrong in this as some excellent jurists have thought him? May it not be that, in the not distant future, International Law, while mainly basing its doctrines upon what nations have slowly developed in practice, may also draw inspiration, more and more, from 'That Power in the Universe not ourselves, which makes for Righteousness.'

"An American, recalling that greatest of all arbitrations yet known, the Geneva Arbitration of 1872, naturally attributes force to the reasoning of Grotius. The heavy damages which the United States asked at that time and which Great Britain honorably paid were justified mainly,

if not wholly, not on the practice of nations then existing, but upon what it was claimed *ought to be* the practice ; not upon positive law, but upon natural justice ; and that decision forms one of the happiest landmarks in modern times ; it ended all quarrel between the two nations concerned, and bound them together more firmly than ever.

"But while there may be things in the life and work of Grotius which reveal themselves differently to those who study him from a near point of view and to those who behold him from afar, there are thoughts on which we may all unite, lessons which we may learn alike, and encouragements which may strengthen us all for the duties of this present hour.

"For as we now stand before these monuments, there come to us not only glimpses of the irony of history, but a full view of the rewards of history. Resounding under these arches and echoing among these columns, prayer and praise have been heard for five hundred years. Hither came, in hours of defeat and hours of victory, that mighty hero whose remains rest in yonder shrine and whose fame is part of the world's fairest heritage. But when, just after William the Silent had been laid in the vaults beneath our feet, Huig de Groot, as a child, gazed with wonder on this grave of the father of his country, and when, in his boyhood, he here joined in prayer and praise, and caught inspiration from the mighty dead, no man knew that in this beautiful boy — opening his eyes upon these scenes which we now behold — not only the Netherlands, but the whole human race, had cause for the greatest of thanksgivings.

"And when, in perhaps the darkest hour of modern Europe, in 1625, his great book was born, yonder organ might well have pealed forth a most triumphant Te Deum ; — but no man recognized the blessing which in

that hour had been vouchsafed to mankind: no voice of thanksgiving was heard.

"But if the dead, as we fondly hope, live beyond the grave: if, undisturbed by earthly distractions, they are all the more observant of human affairs: if, freed from earthly trammels, their view of life in our lower world is illumined by that infinite light which streams from the source of all that is true and beautiful and good, may we not piously believe that the mighty and beneficent shade of William of Orange recognized with joy the birth-hour of Grotius as that of a compatriot who was to give the Netherlands a lasting glory? May not that great and glorious spirit have also looked lovingly upon Grotius, as a boy, lingering on this spot where we now stand, and recognized him as one whose work was to go on adding in every age new glory to the nation which the mighty Prince of the House of Orange had, by the blessing of God, founded and saved; may not, indeed, that great mind have foreseen, in that divine light, another glory not then known to mortal ken? Who shall say that in the effluence of divine knowledge he may not have beheld Grotius, in his full manhood, penning the pregnant words of the 'De Jure Belli ac Pacis,' and that he may not have foreseen — as largely resulting from it — what we behold to-day, as an honor to the August Monarch who convoked it, to the Netherlands who have given it splendid hospitality, and to all modern states here represented: the first Conference of the entire world ever held; and that Conference assembled to increase the securities for peace and to diminish the horrors of war.

"For, my Honored Colleagues of the Peace Conference, the germ of this work in which we are all so earnestly engaged, lies in a single sentence of Grotius's great book. Others indeed had proposed plans for the peaceful settlement of differences between nations, and the world re-

members them with honor: to all of them, from Henry IV and Kant and St. Pierre and Penn and Bentham, down to the humblest writer in favor of peace, we may well feel grateful; but the germ of arbitration was planted in modern thought when Grotius, urging arbitration and mediation as preventing war, wrote these solemn words in the 'De Jure Belli ac Pacis': '*Maxime autem christiani reges et civitates tenentur hanc inire viam ad arma vitanda.*'[1]

"My Honored Colleagues and friends, more than once I have come as a pilgrim to this sacred shrine. In my young manhood, more than thirty years ago, and at various times since, I have sat here and reflected upon what these mighty men here entombed have done for the world, and what, though dead, they yet speak to mankind. I seem to hear them still.

"From this tomb of William the Silent comes, in this hour, a voice bidding the Peace Conference be brave, and true, and trustful in That Power in the Universe which works for Righteousness.

"From this tomb of Grotius I seem to hear a voice which says to us as the delegates of the Nations: 'Go on with your mighty work: avoid, as you would avoid the germs of pestilence, those exhalations of international hatred which take shape in monstrous fallacies and morbid fictions regarding alleged antagonistic interests. Guard well the treasures of civilization with which each of you is intrusted; but bear in mind that you hold a mandate from humanity. Go on with your work. Pseudo-philosophers will prophesy malignantly against you: pessimists will laugh you to scorn: cynics will sneer at you: zealots will abuse you for what you have *not* done: sublimely unpractical thinkers will revile you for what you *have* done: ephemeral critics will ridicule you as dupes: enthusiasts, blind to the difficulties in

[1] Grotius, "De Jure Belli ac Pacis," II, Cap. 23, II 3.

your path and to everything outside their little circumscribed fields, will denounce you as traitors to humanity. Heed them not: go on with your work. Heed not the clamor of zealots, or cynics, or pessimists, or pseudo-philosophers, or enthusiasts, or fault-finders. Go on with the work of strengthening peace and humanizing war: give greater scope and strength to provisions which will make war less cruel: perfect those laws of war which diminish the unmerited sufferings of populations: and, above all, give to the world at least a beginning of an effective, practicable scheme of arbitration.'

"These are the words which an American seems to hear issuing from this shrine to-day; and I seem also to hear from it a prophecy. I seem to hear Grotius saying to us: 'Fear neither opposition nor detraction. As my own book, which grew out of the horrors of the Wars of Seventy and the Thirty Years' War, contained the germ from which your great Conference has grown, so your work, which is demanded by a world bent almost to breaking under the weight of ever increasing armaments, shall be a germ from which future Conferences shall evolve plans ever fuller, better, and nobler.' And I also seem to hear a message from him to the jurists of the great universities who honor us with their presence to-day, including especially that renowned University of Leyden which gave to Grotius his first knowledge of the law; and that eminent University of Königsberg which gave him his most philosophical disciple: to all of these I seem to hear him say: 'Go on in your labor to search out the facts and to develop the principles which shall enable future Conferences to build more and more broadly, more and more loftily for peace.'

"And now, Your Excellencies, Mr. Burgomaster, and Honored Deans of the various Universities of the Netherlands, a simple duty remains to me. In accordance with

instructions from the President and on behalf of the People of the United States of America, the American Commission at the Peace Conference, by my hand, lays on the Tomb of Grotius this simple tribute. It combines the oak, symbolical of civic virtue, with the laurel, symbolical of victory. It bears the following inscription: 'To the Memory of Hugo Grotius / In Reverence and Gratitude / From the United States of America / On the Occasion of the International Peace Conference at The Hague / July 4, 1899,' / and it encloses two shields, one bearing the arms of the House of Orange and of the Netherlands, the other bearing the arms of the United States of America; and both these shields are bound firmly together. They represent the gratitude of our country, one of the youngest among the nations of the earth, to this old and honored Commonwealth; gratitude for great services in days gone by, gratitude for recent courtesies and kindnesses; and, above all, they represent, to all time, a union of hearts and minds, in both lands, for peace between the nations."

At the conclusion of Mr. White's address, the box in which the wreath had been enclosed, and which was on a table immediately in front of the speaker, was opened, and Mr. White, taking the wreath, attached it to the tomb of Grotius.

The choir then sang the Dutch national anthem "Wilhelmus van Nassouwe," the audience standing.

The Chairman thereupon introduced His Excellency, W. H. de Beaufort, Minister of Foreign Affairs of the Government of the Netherlands, who spoke as follows: —

"The Queen's government has conferred on me the honorable task of expressing its sincere gratitude to the American Delegates and the Government of the United

States which they represent, for placing a wreath on the tomb of Hugo de Groot.

"The ceremony of to-day will, I am sure, make a deep impression throughout our whole country. We Hollanders are proud of our glorious history, and the memory of our great men in past centuries is dear to us all. We are pleased to see them appreciated by foreigners, and especially when these foreigners are citizens of a country for which we feel so much respect and regard. We have been closely connected by historical traditions with America. The first settlers on the banks of the Hudson River were Hollanders, and we always remember, not without a certain pride, that it was a Dutch captain who was the first to salute the stars and stripes. To-day we salute your star-spangled banner in our own country, and while celebrating with you your Independence Day, we beg you to accept our best wishes for the welfare of your country.

"Your country is one of the largest of the world, and ours is one of the smallest, but we have one thing in common, which is that we both have won our country and its independence by our own valor.

"We have had the advantage in the last weeks of extending hospitality to some of the most eminent men of the United States, who came here to give their valuable aid for the realization of the noble designs framed by the Emperor of Russia and applauded by the whole civilized world, of founding international law on the basis of justice and peace. It is a matter of course that, having in mind this noble task, our thoughts have been called back to the great man who found his last resting place under the vaults of this church, and who has always been venerated as the founder of the science of international law.

"When he wrote his admirable work 'De Jure Belli ac

Pacis,' America was still a great wilderness with a few scattered European settlements. Still, he knew America and took an interest in it, for he wrote a small and very remarkable tract on the antipathy of the original inhabitants of America.

"More than two centuries and a half have since elapsed, and if Grotius came back into this world and stood in the midst of us, how great would be his astonishment when hearing that the inhabitants of America had come here to pay homage to his memory ; but at the same time he would express his joy and his satisfaction when learning that the noble and generous principles he advocated during his lifetime had taken root throughout the whole world, and I am sure he would exclaim, 'Thanks to God, I have not lived in vain.'

"For the purpose of acknowledging the great merits of Grotius, a wreath has been placed, by order of the American Government, on his tomb. I sincerely hope that this fine and precious work of art will remain forever on the place where it it is now fixed. May the numerous visitors of this church look on it with a sentiment of gratitude and admiration. May it act as a stimulus for future generations in their exertions in behalf of still further reforms in the practice of international law, and, last not least, may this wreath be an everlasting emblem of the friendly relations between America and Holland, and a guarantee for the unbroken continuance of that historical friendship of which America gives us on this memorable day such a splendid and highly valued testimony."

The Chairman then announced that a message had been received from His Majesty, the King of Sweden and Norway, representing the country in whose service Grotius had spent many years of his life, and he thereupon introduced Baron de Bildt, First Delegate of Sweden and

Norway, who stated that he had been directed by telegraph to offer the sincere congratulations and good wishes of His Majesty, the King of Sweden and Norway, to the Commission of the United States of America and to the Government of the Netherlands, on the occasion of this celebration. He added that the memory of Grotius would always be highly cherished in the speaker's native country, which Grotius had served so long and so faithfully.

The Chairman thereupon introduced the Honorable T. M. C. Asser, Delegate to the Peace Conference from the Netherlands, and President of the Institute of International Law, who spoke as follows : —

"Ladies and Gentlemen :

"Having the honor to be the President of the Institute of International Law, I consider it my duty to add a few words, in the name of that body, to the eloquent speeches that we have heard.

"It is a great pleasure for the members of the Institute who attend this meeting, in their capacity of delegates to the Peace Conference, to declare through their President that they fully sympathize with the congratulations and the thanks addressed to the eminent American delegates, — congratulations on this most important memorial day, thanks for their homage to the father of our science — my great Compatriot, Hugo Grotius.

"And these thanks, Ladies and Gentlemen, do not only concern the splendid ceremony of this day. Our gratitude is inspired, above all, by the most valuable services that American jurists and American statesmen have rendered to the development of International Law.

"The Annals of our Institute show the great influence that American science and practice have exercised upon its resolutions.

"Among the founders of the Institute we read the name of the celebrated American jurist David Dudley Field, the first who, in his Draft Outlines of an International Code, undertook to formulate precise rules for the legal intercourse between the different nations, and between the citizens of different states.

"During a quarter of a century, our Institute has devoted its best force to this work of codification, after having by serious and uninterrupted endeavors succeeded in establishing a *communis opinio* on many matters, with regard to which there was a great divergence between the jurists of different nationalities.

"This is neither the place nor the time to recount the results which have been obtained.

"I must, however, ask leave to mention that in its first scientific session at Geneva, just twenty-five years ago, the Institute resolved that three very important objects ought to have its attention before all other matters.

"The first was the codification of *private international law*.

"The illustrious Italian, Mancini, then President of the Institute, took the initiative in this urgent reform.

"The Dutch Government continued what he had begun, and, as a first practical result of the diplomatic Conference which met at The Hague in 1893 and 1894, the first page of a code of private international law, having legal force in almost all continental Europe, was written in the form of a convention, and signed at The Hague on November 14, 1896. We hope that the following pages of the code will be written in the next years, as a consequence of new conferences on the subject.

"We also hope that, in indicating the States which accept the code, the word 'continental' may soon prove to be inexact, and it is our sincere wish that the fatherland of the jurist, who in his 'Draft Outlines' did not omit the

rules of private law, may join old Europe, so that the States united to accept that code of private international law may embrace the New as well as the Old World.

"The second matter to which the priority was granted by the Institute concerned International Arbitration, and the rules of procedure to be adopted by States that agree to submit to arbitration the controversies arising between them. A most remarkable draft by the well-known German jurist Professor Goldschmidt formed the basis of the Institute's resolutions.

"Since 1874 the practice of International Arbitration has made enormous progress, and we may now expect that the generous and magnanimous initiative of His Majesty the Emperor of Russia will bring into operation a set of uniform rules for the decision of international controversies, and for the establishment of a Court of Arbitration.

"In the meantime the special arbitration treaties, concluded by some Governments (among which the Anglo-American, though not ratified, is one of the most remarkable), have exercised a strong influence on public opinion and the feelings of leading statesmen; and I may add, without being guilty of indiscretion, that the Government of the United States is one of those which have provided the Conference with most valuable materials for the organization of the new institution.

"The third object chosen by the Institute in its first session has quite an American character.

"The three rules of the Washington treaty of 1871 concerning the duties of neutral Governments had to be examined on the basis of proposals made by a Committee, to which belonged the American scholar and jurist, Theodore Woolsey.

"I have called this matter quite American, because the

United States had the merit of permanently fixing the doctrine of neutrality.

"When Grotius wrote his famous book, the state of war — and of war in which all nations were concerned — was almost permanent in Europe.

"It was Grotius's great merit to have shown how war ought to be submitted to certain rules in the interest of humanity and of justice. The rights and obligations of belligerents form the principal contents of his work. Those of neutrals are indicated in a very brief and rather superficial way.

"At two great epochs — that of the first French revolutionary war in 1793, during the administration of Washington and the secretaryship of Jefferson, and about twenty-five years later, in 1818, Mr. Monroe being President and Mr. John Quincy Adams Secretary of State, when the Spanish colonies in America threw off their allegiance to the mother country — the United States had the opportunity of establishing liberal and humane principles of international law.

"On the former occasion they passed their first neutrality Statute, that of 1794, and on the latter the act of Congress of 1818, called the amended foreign enlistment act.

"One of the greatest English authorities on international law, Sir Robert Phillimore, says that the British statute was during the next year (1819) carried through Parliament in accordance with the American act of Congress.

"The principal object of the law of neutrality up to this time has been to state the duties of neutrals, and the conditions under which their neutrality is to be respected by the belligerents.

"If, in the future, war should be rendered impossible, neutrality would cease to exist.

"As long, however, as war may, from time to time, appear to be unavoidable, it will be a great blessing for

humanity if the new Code of Neutrality shall not only prevent neutrals from favoring one of the belligerents and from disturbing the belligerents in their military operations, but if it shall also — and in the first place — prevent the belligerents from disturbing the neutrals in their peaceful occupations, in their trade and navigation, and in the practice of science and arts.

"The United States of America would again render an immense service to humanity if they induced the States of Europe and the other parts of the world to prepare in time of peace a Code of Neutrality so favorable for the pacific nations, and so severe with regard to those who may feel desirous to have recourse to war, that it would prove to be in fact the best guarantee for the maintenance of peace.

"This would be a glorious task for the statesmen of the new world, in the beginning of a new century!"

At the conclusion of M. Asser's speech, the choir sang a magnificent Dutch hymn of the sixteenth century, — "Prayer for the Fatherland," by Valerius, — whereupon the Chairman introduced the Honorable Seth Low, Commissioner of the United States of America, President of Columbia University of New York, who spoke as follows: —

"Mr. Chairman, Ladies and Gentlemen:

"The pleasing task has been devolved upon me of expressing the thanks of the American Delegation to those whose kindness has made this occasion possible.

"First of all our thanks are due, and are most heartily given to you, Sir, for so courteously presiding; to the Burgomaster and City of Delft and to the Trustees of this venerable Church for the generous hospitality that has permitted the use of this sacred edifice and of the City

Hall; and to the chorus whose volunteered services have added to the proceedings the welcome charm and inspiration of song.

"We think ourselves fortunate, also, in being able to avail of this opportunity to express our thanks to Her Majesty, the Queen, for the gracious kindness she has shown to us in common with our colleagues of the Conference of Peace. It has been to us a sincere pleasure to have the honor of a presentation to Her Majesty, for the accents of her voice when she took the coronation oath found an echo in every American heart. Motley has enabled us to understand what it signifies when the Head of the House of Orange swears, 'Je maintiendrai!'

"We are glad, also, to offer our thanks to the distinguished Minister of Foreign Affairs of the Netherlands, his Excellency, M. de Beaufort, and, through him, to his Government and the people of The Hague for the great hospitality in which we have had a share as members of the Conference.

"We are grateful, also, for the message that has been received from His Majesty, the King of Sweden and Norway, through his distinguished Representative at the Conference of Peace; and for the kind words spoken in the name of the Institute of International Law by its gifted and able President.

"The International Conference at The Hague doubtless will take its place in history as the first attempt on the part of the nations of the East and of the West, of Asia, and Europe and America, to create a body of International Law by formal and joint enactment. Great national assemblies have sprung from seeds not more promising than this; so that it is not strange that men should see in this Conference a distinct step toward the poet's dream: 'The Parliament of Man, the Federation of the World.' Our own Lowell has said: —

"'For I believed the poets; it is they
Who gather wisdom from the central deep,
And, listening to the inner flow of things,
Speak to the age out of eternity.'

"But those of us who have taken part in these deliberations, can never dissociate the experience from the hearty welcome we have received in the historic Capital of Holland, — the beautiful city of The Hague. Both Peace and Hospitality appear to us to have laid aside their sandals at The Hague, as if there they had found their permanent abiding-place.

"On this day, so full for Americans of thoughts connected with their national independence, we may not forget that Americans have yet other grounds for gratitude to the people of the Netherlands. We cannot forget that our flag received its first foreign salute from a Dutch officer, nor that the Province of Friesland gave to our independence its first formal recognition. By way of Leyden and Delft-Haven and Plymouth Rock, and again by way of New Amsterdam, the free public school reached American shores.

"The United States of America have taken their name from the United States of the Netherlands. We have learned from you not only that 'In Union there is Strength,' — that is an old lesson, — but also, in large measure, how to make 'One out of many.' From you we have learned, what we, at least, value, to separate Church and State; and from you we gather inspiration at all times in our devotion to learning, to religious liberty, and to individual and national freedom. These are some of the things for which we believe the American people owe no little gratitude to the Dutch; and these are the things for which to-day, speaking in the name of the American people, we venture to express their heartfelt thanks."

The choir then sang two verses of "America," in which they were joined by the audience, standing, and a postlude, including the "Star Spangled Banner" and the "Hallelujah" Chorus from Handel's "Messiah," ended the celebration.

At the close of the exercises in the church, the invited guests, about three hundred and thirty-eight in number, sat down with the American Commission to a luncheon served in the ancient Town Hall of Delft. This building, as well as the colossal bronze statue of Grotius standing in front of it, and the contemporary portrait of Grotius in the Hall of the Burgomaster, was decorated with the flags of the Netherlands and the United States.

During the progress of the luncheon, the American representatives, headed by Ambassador White, visited the various tables, and toasts to the President of the United States, the Queen of the Netherlands, the Emperor of Russia, and the President of the Peace Conference, as well as to the various countries represented, were exchanged.

At three o'clock the weather had moderated, and the guests returned to The Hague.

In the evening the orchestra at Scheveningen made American national airs the chief feature of the gala concert, which was attended by most of the members of the Conference.

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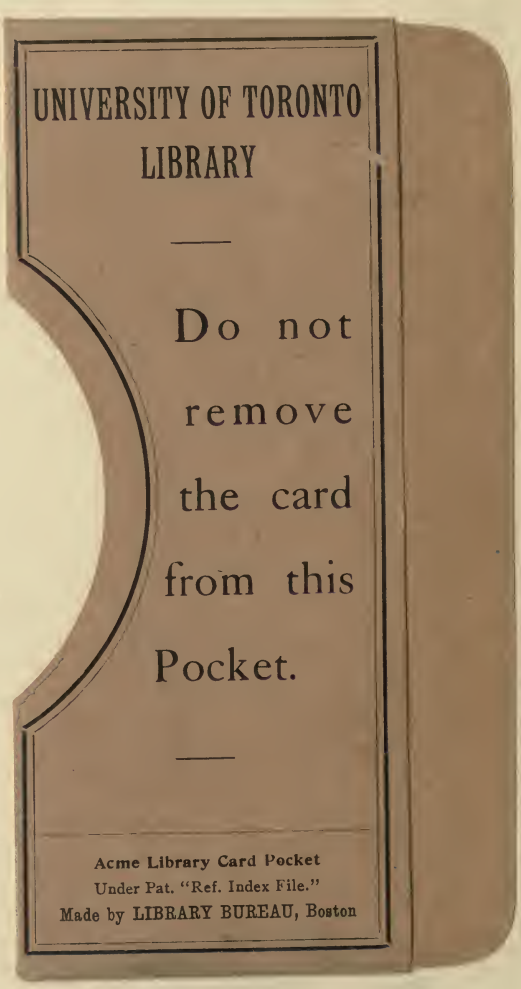
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