American Peace Society, Washington, D. C.

PEACE THROUGH JUSTICE

THREE PAPERS ON INTERNATIONAL JUSTICE AND THE MEANS OF ATTAINING IT

BY

JAMES BROWN SCOTT

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President of the American Institute of International Law

"Justice, sir, is the great interest of man on earth."
—DANIEL WEBSTER

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The American Peace Society
Colorado Building

Washington, D. C., December 15, 1916

Dr. James Brown Scott,
Secretary, Carnegie Endowment for International Peace

2 Jackson Place, Washington, D. C.

My Dear Dr. Scott:

Since the beginning of the European war, in August, 1914, you have been gracious enough to write three important documents each of which relates directly to the aims and work of the American Peace Society.

I refer to the letter written by you, under date of June 16, 1915, to Mr. Jackson H. Ralston, which letter appeared, with your very kind consent, in the *Advocate of Peace* for November, 1915.

During the year 1916, the Carnegie Endowment for International Peace republished the essay entitled, "An Essay on a Congress of Nations for the Adjustment of International Disputes Without Resort to Arms," by William Ladd, the founder of the American Peace Society. The Introduction to this Essay, comprising forty-four pages also written by yourself, constitutes a most valuable contribution to the historical setting of the peace movement in America.

In the *Advocate of Peace* for January, 1917, is to appear still another contribution from you entitled, "The Organization of International Justice."

These three papers, one relating directly to the position of this ancient Society in the presence of the war now raging, another to the past out of which our work must necessarily develop, and the last an amplification of the principles for which we must stand and strive, are of such clarity, poise and importance that they should, it seems to me, be made available in a single volume for wide distribution.

I am therefore writing to ask if, in addition to these favors which you have already rendered, you will grant to this Society the privilege of publishing these articles in book form?

Assuring you of my personal obligation to you for the debt under which you have placed all of us other peace workers not only in this country but abroad, and hoping that you will find it agreeable to grant to us this additional favor, I am,

Most sincerely yours

(Signed) ARTHUR D. CALL.

WASHINGTON, D. C., December 16, 1916

MR. ARTHUR DEERIN CALL,
Secretary, American Peace Society
Colorado Building
WASHINGTON, D. C.

MY DEAR MR. CALL:

In reply to your all too flattering letter of the 15th instant, asking permission to reprint and to issue in volume form three papers, written I should add at your request, I beg to say that I consider it both a pleasure and an honor to have them appear as you propose and to have them thought worthy to represent the movement towards International Peace through the recognition of justice by the Nations and its impartial and passionless application by and to them in their mutual relations.

Thanking you for your courteous request and gladly acceding to it, I am, my dear Mr. Call,

Very sincerely yours,

(Signed) JAMES BROWN SCOTT.

THE FUTURE OF THE AMERICAN PEACE SOCIETY*

By James Brown Scott

Carnegie Endowment for International Peace
2 Jackson Place

Washington, D. C., June 16, 1915.

My Dear Mr. Ralston:

At the conclusion of the very pleasant and profitable interview which we had yesterday about the future policy of the American Peace Society you were good enough to ask that I put into writing some of the views that I ventured to express concerning the policy which the American Peace Society might properly pursue.

I stated that it seemed to me best for the Peace Society, during the present war, to consider carefully its traditions, in order to determine whether, upon the conclusion of the war, if not before, it might take up those traditions and attempt to secure, if possible, their realization. When I speak of traditions, I mean more especially the views of William Ladd, the founder and later a president of the American Peace Society and author of "Essay on a Congress of Nations," published in 1840, which, in my opinion, is still the greatest literary contribution ever made to the cause of international peace; the views of William Jay, likewise a president of the American Peace Society, as expressed in his admirable little tractate entitled "War and Peace," published in 1842, and the views of Elihu Burritt, in essentials the views of Ladd, which Burritt set forth in various

* Reprinted from the *Advocate of Peace*, November, 1915, vol. 77, page 239.

addresses to the European peace congresses which he called into being.

Now it is hard to give an adequate idea of Ladd's " Congress of Nations " without an analysis of the book, and it is difficult to obtain a copy of this work. Therefore I proposed, at the last meeting of our Executive Committee, held on May 21, to issue a new edition of this work, to be published by the Oxford Press and to be widely circulated. This proposal was approved, subject to the condition that I should prefix to the essay a biographical sketch and a statement of the relation of Ladd's work to the peace movement and to The Hague Conferences, which he foresaw and outlined. This I agreed to do. I intend to propose later a new edition of William Jay's little work, and I hope that I may be able to get together a collection of Burritt's addresses and articles which will justify their separate publication and distribution.

The reason for republishing these works is that they are in reality the head and front of the scientific and practicable peace movement.

Ladd proposed a Congress of Nations, as he foresaw the possibilities of international conferences to consider questions of international importance and to agree upon rules of conduct and of law to be adopted by the various states. He described in detail the work of such a diplomatic body as The Hague Conference; he stated how it was to be called, and he framed its program, and for many years to come The Hague Conferences will busy themselves with the topics suggested by Ladd.

In the next place, he advocated a Court of Nations to decide disputes, submitted voluntarily by the nations, in accordance with generally recognized principles of law and of equity. To future disputes the court was to apply the principles of international law or of international conduct drafted by the Congress of Nations and accepted by such nations as cared to be bound by them. Ladd had no illusions. He believed that the congress or conference of nations would do its work slowly, but he felt that this would be an advantage, as what was slowly done would not need to be done over again. He believed further

that public opinion would force the nations to live up to their agreements, and that public opinion would likewise secure compliance with the judgments of the court. He was not an advocate of force, either to get the nations into court or to get them out of it.

Jay's little book proposed the *compromis* clause, to be embodied in treaties subsequently concluded by the United States, by which the contracting parties bound themselves to decide all disputes arising under these treaties by means of arbitration, and indeed to agree to decide all disputes between them by arbitration.

Burritt was the disciple of Ladd. He called into being unofficial congresses, presided over by men like Victor Hugo and Sir David Brewster, and which men like Richard Cobden attended. The outbreak of the Crimean War stopped his work. At these different conferences Mr. Burritt spoke of an international court and of the services which it would render.

Enough has been said to show that the American Peace Society has great traditions. It seems to me that it should call this fact to the attention of the public; that it should claim as its own the traditions of its distinguished officers, for Ladd and Jay were presidents and Burritt was secretary of the American Peace Society. I do not mean by this that it should call attention to the views of its great men of the past, and, having done so, fold its arms and rest. I mean that the American Peace Society should take up the program of these men, that the American Peace Society should state this program as it was stated by them, and that the American Peace Society should show how the program as thus stated fits into the present day. The Society should not, however, content itself with an exposition of the views of the three men mentioned; it should develop their views and attempt to secure, as far as possible, acceptance of them today and their incorporation into the practice of nations.

I would venture to suggest that the work of the American Peace Society should be constructive, in the sense that it should seek by all practicable means to advance the cause of peaceable settlement, whether it be a settlement by good offices, mediation,

friendly composition, commissions of inquiry, arbitration, or judicial decision. It should advocate the creation of agencies fitted to secure these different kinds of adjustment. It should endeavor to devise other methods of peaceable settlement and to suggest appropriate agencies for these newer methods. I think that better results would be reached in the long run by advocating this constructive policy than by indulging in the denunciation of concrete abuses, real or alleged. To be specific, I think that we do not make much progress by denouncing an increase of the army or navy, or by insisting upon a decrease of military and naval budgets. I admit that an increase of the army and navy and of military expenditures is to be regretted for many reasons, one of which is that, in our country at least, an increase may well mean a new danger known to the small circle of the well informed, but not to the public at large. In other countries an increase is largely a concession to militarism, which exists there but which, fortunately for us, does not exist in our country.

Now, my view is that societies and organizations other than the American Peace Society may be counted upon to oppose an increase of the army or navy and of military expenditures if the members of those societies or organizations believe that an increase of the land and naval forces and that an increase of military expenditures should be checked. Personally I have a feeling that, in the present condition of affairs, a larger army and a more efficient navy are needed by the United States for purely defensive purposes. At the same time, I believe that, even although the army and navy should be increased, we should strive to advance the cause of peaceful settlement, and to create agencies to compose differences peaceably, so that a public opinion may be formed so strongly in favor of peaceful adjustment that the resort to the army and navy for the decision of international disputes will become the rare exception, rather than the frequent rule.

I think that the peace movement owes it to itself to submit a substitute, or a series of substitutes, for a resort to arms. We have denounced the old-fashioned method of force, and in my opinion we are right in denouncing it, but, having denounced

it, I think the burden rests upon us of proposing other and more adequate methods which shall have positive advantages of their own and few or none of the defects of the older system which we unsparingly condemn.

I have merely mentioned the army and navy as a concrete instance, and although it is apparently very inviting to take up the cudgels against the partisans of increased armament, I am deeply convinced that the American Peace Society should live up to its traditions, that it should develop them, and that it should leave to others that part of the peace movement which falls outside of those traditions. There will be a large task for the Peace Society if it consciously restricts itself to a definite program. It may not hope to cover the entire field. It will gain strength by concentration, and if it limits itself to constructive measures of the kind to be found in the plans of its great officers, it can hope to win the confidence of men of affairs, and thereby increase its standing and its influence in the community.

Now, I do not mean by this that other methods should be discouraged. The peace movement is like a stream, fed from many sources, but I think the wisest course for the American Peace Society is to withdraw within itself, as it were, during the present war, to consider carefully what can best be done in the future, to limit its program consciously, and, having so limited it, endeavor to carry it into effect when the conclusion of peace will give the Society a hearing.

It may, perhaps, seem to you that some of the views which I have expressed are stated in the abstract, whereas what really interests people and influences them is the concrete. This is true to a certain extent, because I have not analyzed, and cannot within the short compass of a letter, analyze the views of Messrs. Ladd, Jay and Burritt. A careful reading of their works, however, will show that there is plenty of the concrete under the abstract.

I would not limit myself solely to the views of these great men. I would, as previously said, develop them as experience suggests that they should be developed or modified, and I would consciously start from these views. Having traditions, I would

state what those traditions are, and at the same I would indicate an intention to stand by them and to live up to them, and to endeavor to secure their realization in the practice of nations. It is because I believe that the traditions of the American Peace Society set it apart and give it a unique position in the peace movement, that I advocate a return to its traditions. Let other societies without those traditions follow their best judgment. Encourage and aid them to do so. But the American Peace Society should, in my opinion, go back to the Fathers, as it were, and consciously preach and carry out their doctrines to their logical conclusion. By so doing, the American Peace Society will occupy a very different position in the peace movement from that which it now occupies, and its influence will, I feel quite sure, be appreciably increased.

I have not mentioned the question of the reorganization of the society, or changes to be made in the *Advocate of Peace.* These are very delicate and difficult questions, and require to be considered with great care and with no little patience. The reorganization of the Society depends largely upon the policy which it is to pursue, and an agreement should be reached upon that policy before attempting a reorganization.

As regards the *Advocate of Peace,* I believe it should be made a great and worthy organ of the peace movement as a whole, that it should be issued monthly, that it should be attractive in form and interesting in substance, that it should be edited by a person at an adequate salary, who would give his whole time to it, and that its policy should be controlled by a representative and competent board of editors. This is a matter which needs much thought and in which the experience of editors and managers of other periodicals is likely to be controlling.

I am not a member of the Board of Directors or of the Executive Committee of the American Peace Society, and I hesitate to make any suggestions at this time concerning its reorganization. I am, however, deeply interested in its welfare and I would be willing to discuss it with you or with your committee, should you so desire. As regards the *Advocate of Peace,* I should be glad to take up with you and your committee the

changes which seem to be necessary to make it more representative of the peace movement and which are calculated to increase its circulation and its influence.

In the hope that I have not set forth my views on these subjects at too great length, I am, my dear Mr. Ralston,

Always sincerely yours,

(Signed) JAMES BROWN SCOTT.

Mr. Jackson H. Ralston, Union Savings Bank Building, Washington, D. C.

WILLIAM LADD,

FOUNDER OF THE AMERICAN PEACE SOCIETY, AND HIS PLACE IN THE CONSTRUCTIVE PEACE MOVEMENT *

Our distinguished fellow countryman, Elihu Burritt, known alike as a scholar and a philanthropist, summed up in the following paragraph, written in 1871, the claim to grateful remembrance of his master and friend, William Ladd, whom he delighted to call the apostle of peace and whose *Essay on a Congress of Nations for the Adjustment of International Disputes without Resort to Arms,* originally published in 1840, is here reproduced:

> When we consider that such a permanent High Court of Nations [advocated by Mr. Ladd in the Essay] would not only be the noblest and loftiest bar that could be established on earth for the appeal and settlement of all serious questions of difficulty between them, but that such a bar would be a bond of confederation to them, we must recognize the fullness of Mr. Ladd's plan for abolishing war, and establishing permanent and universal peace. He gave to the advocacy and development of this scheme years of indefatigable faith and effort. He enlisted a large number of writers to elaborate it with their best arguments and illustrations. As a stimulus to these efforts, the American Peace Society offered $1,000 as a prize for the best essay on the subject. A considerable number were produced, and submitted to such a jury of award as Wirt, Webster, Story, and Marshall could form. As their excellence was so good and even, the jury could not desire to say which was the best. So, six of them were published in a large volume by the Society, including one written by Mr. Ladd himself, which developed the scheme more completely than any of the rest, and which to this day is accepted as its best exponent and argument. This was the largest and most costly volume ever published on either side of the Atlantic on the subject of peace. As soon as it left the press, Mr. Ladd set himself to the work of distributing copies to the crowned heads and leading men of Christendom with all the glowing zeal and activity which he brought to the cause. And it is the best tribute to his clear judicious mind that the main proposition as he developed it has been pressed upon the consideration of the public mind of

* This is the author's Introduction to "An Essay on a Congress of Nations for the Adjustment of International Disputes without Resort to Arms," by William Ladd. Published by the Carnegie Endowment for International Peace, Division of International Law, Washington, 1916.

> Christendom ever since his day, without amendment, addition, or subtraction. The writer of these introductory notes, who was one of Mr. Ladd's disciples and successors, felt it his duty to present the proposition, pure and simple as his master developed it, at the great Peace Congresses at Brussels, Paris, Frankfort, and London; and to-day it stands before the world, the scheme of William Ladd.*

If this language was true, as it undoubtedly was, thirty years after Mr. Ladd's death, it is equally true at the present day, some forty-four years after Mr. Burritt's tribute, and seventy-four years after the death of William Ladd, when the Congress which he proposed, to agree upon the principles of international law, had been called in 1898 by a "respectable state," to use the words of the *Essay*, and when the Court of Nations which he advocated was approved, in 1907, in the second Conference of the Nations, likewise called by the same respectable state, and when the Court itself can be said to be in the process of formation.

The career of a man whose services have been so highly rated, but not over-rated, by Mr. Burritt, and whose project is being carried out slowly and piecemeal by the Hague Conference, whose possibility he foresaw and whose labors he outlined, deserves to be recorded and to be placed before persons interested in international organization. And yet, like those whose lives are merged in their ideals, there is but little to relate. Mr. Ladd was born in Exeter, New Hampshire, on the 10th day of May, 1778. He fitted for college at the academy of his native town; he entered Harvard College in 1793; and he graduated with the class of 1797. He followed the sea for a number of years, to which he returned after a philanthropic but not altogether successful experience in Florida, but left it permanently upon the outbreak of the War of 1812 with Great Britain. In 1812 he settled at Minot in the State of Maine upon a farm which had belonged to his father. The successful management of his modest inheritance, to which he added from time to time, made him independent, indeed wealthy, and he was therefore able to devote the leisure of the winter season, and to give very considerable sums of money, to causes of a philanthropic nature in which he was inter-

* John Hemmenway, *Memoir of William Ladd*, 1872, introductory notes, pp. 14-5.

ested. He died at Portsmouth, New Hampshire, on April 7th, 1841.

In his early years, indeed until 1819, Mr. Ladd is not known to have taken any interest in peace as such, and his connection with the movement was as accidental to him as it was fortunate to the cause of peace. His own account is as follows:

> I had the privilege of witnessing some of the last hours of the Rev. Jesse Appleton, D.D., President of Bowdoin College. In his joyful anticipations of the growing improvement of the world, and the enumeration of the benevolent societies of the day, he gave a prominent place to *Peace Societies;* and this was almost the first time I ever heard of them. The idea then passed over my mind as the day-dream of benevolence; and so every one views the subject, who does not examine it. It is probable that the impressions made at this interview first turned my attention to the subject, but it probably would soon have escaped from me, had not the *Solemn Review* *, which came soon after into my possession, in a very singular way, riveted my attention in such a manner as to make it the principal object of my life to promote the cause of Peace on earth and good-will to man.†

Leaving out of consideration isolated expressions in favor of peace, to be found in the writings of Dr. Franklin, in the letters and state papers of Washington as private citizen and as President, and the negotiation of the Jay Treaty of 1794, which called attention to arbitration and introduced it again into the practice of nations, it may be said that the first attempt to bring the friends of peace together and to combine their efforts in a movement to advance the cause of peace dates from 1809, in which year Mr. David Low Dodge, a high-minded and successful merchant of New York City, published a tract entitled *The Mediator's Kingdom not of this World: but Spiritual,* in which, to quote his own words, he bore "public testimony against the anti-Christian custom of war." Mr. Dodge reports, in his interesting autobiography, that during the ensuing year "more than twenty leading members of evangelical churches

* *A Solemn Review of the Custom of War,* a pamphlet by the Rev. Noah Worcester, D. D. First published in 1814. Now published by The American Peace Society.

† Hemmenway, op. cit., p. 38.

appeared fully to embrace the doctrine of peace on earth and goodwill to men, repudiating the spirit and maxims of war." *

Two or three years later he wrote:

> By this time the friends of peace in New York had so much increased, that early in 1812, they deliberated on the expediency of forming a peace society, wholly confined to decided evangelical Christians, with a view to diffuse peace principles in the churches, avoiding all party questions. Our object was not to form a popular society, but to depend, under God, upon individual personal effort, by conversation and circulating essays on the subject; . . .
>
> At this juncture, there was much political excitement and war was threatened against Great Britain, and fearing that our motives would be misapprehended we judged it not wise to form a peace society openly, until the public mind was more tranquil. In the mean time we resolved to be active individually in diffusing information on the subject, and answering the objections of our friends. I was appointed to prepare an essay on the subject, stating and answering objections.†

The result was the preparation and publication, in 1812, of an elaborate tractate entitled *War Inconsistent with the Religion of Jesus Christ*,‡ which expanded and modified the views briefly set forth in the *Mediator's Kingdom*,‡ and which can at this day be taken as an authoritative exposition of the views of those who believe that defensive as well as offensive war is inconsistent with the Christian religion.

A further quotation from the autobiography shows not only Mr. Dodge's interest in the peace movement but the progress it was making. "The friends of peace," he said, "had two or three meetings relative to the organization of a society. In August, 1815, they unanimously formed the New York Peace Society, of between thirty and forty members, probably the first that was ever formed in the world for that specific object." Mr. Dodge's society, the first in the world for the specific object of promoting peace, was not long allowed to remain in undisturbed possession of the field

* *Memorial of Mr. David L. Dodge*, 1854, p. 90.

† Ibid., p. 95.

‡ In 1905 Mr. Edwin D. Mead published Mr. Dodge's two tractates and prefixed an interesting biographical sketch of the author.

which it was the first to enter. Indeed, in the same year, and within the course of the next few years, peace societies in Europe as well as in the United States "were," to quote his own words, "formed, without any correspondence or knowledge of each other, the providence of God having paved the way." *

It has been thought well to state the genesis of the peace movement in the language of its founder, because Mr. Dodge can fairly be considered as such. The passages from his autobiography make it clear that what is now regarded as an economic, biological, and juridical as well as a religious movement began as a protest of high-minded and deeply religious persons against war as inconsistent with the teachings of the New Testament.

In 1815, the following peace societies were created in the United States:

The New York Peace Society, the first of its kind, organized, as has been seen, by Mr. Dodge in August; the Ohio Peace Society, founded on December 2; the Massachusetts Society, founded on December 26, by the Rev. Noah Worcester, D.D., author of the tract entitled *A Solemn Review of the Custom of War* which appears to have converted Mr. Ladd to the ways of peace.

In the interval between the founding of these societies and the creation of a National Association in 1828, peace societies were formed in at least the following States: Pennsylvania, Maine, New Hampshire, Vermont, Rhode Island, Connecticut, Georgia, and North Carolina.

As Mr. Ladd said, in the interesting passage which has already been quoted, the cause of peace became the principal object of his life. He felt the necessity of gathering the various peace societies of the United States which have been mentioned into a larger and national organization to be known as the American Peace Society, which he succeeded in forming in May 1828, with the aid of the indefatigable Mr. Dodge, and of which he himself was the executive officer and for the last four years of his life its president. In the same year and month he began the *Harbinger of Peace*, which appeared monthly and had a circulation of 1,500 copies,† as the organ of the movement, and continued to edit it for three years. Its name was then changed to the *Calumet*. In 1835 it gave way to the

* Ibid., p. 99.

† Hemmenway, op. cit., p. 48.

American Advocate of Peace, which in turn became, in 1837, the *Advocate of Peace*, the monthly journal which is now, as then, the organ of the American Peace Society.

Mr. Ladd was untiring as a lecturer and writer upon his chosen subject, and in 1840 he published the *Essay on a Congress of Nations*, which is his abiding title to fame. In this remarkable essay, which will later be briefly analyzed, he advocated a Congress of Nations and a Court of Nations, each of which was to be separate and distinct, as diplomatic and judicial functions require, as he properly said, "different, not to say opposite, characters in the exercise of their functions." Thus, he said:

> I consider the Congress as the legislature, and the Court as the judiciary, in the government of nations, leaving the functions of the executive with public opinion, "the queen of the world." This division I have never seen in any essay or plan for a congress or diet of independent nations, either ancient or modern; and I believe it will obviate all the objections which have been heretofore made to such a plan.*

His many writings prove that Mr. Ladd possessed a facile pen and his style may fairly be judged by his *Essay on a Congress of Nations*. His agitation from the platform shows him to have been a ready speaker, interesting alike to the select audiences of colleges and universities, and to the simpler minded folk, who are, it is believed, a severer and a juster judge.

Hemmenway's *Memoir*, published in 1872, which is still the chief, indeed the only, account of Mr. Ladd's life, is full of tributes to his ability as a speaker and to his power to instruct, to interest, and to hold an audience. He was licensed to preach in 1837, and in a letter written some two months before his death he thus describes an experience which he and the good people of Geneva, New York, seem to have enjoyed:

> I went to Geneva, and preached three times on the Sabbath, as usual to large and attentive audiences. But my strength failed me in the last sermon, which was to an overflowing audience, and I was obliged to request the minister to give out a

* Advertisement, post, p. 1.

hymn, in the middle of the sermon which was an hour and a half long.*

The reasons for his success both in the pulpit and upon the platform are admirably stated in the following letter, written by Mr. John S. C. Abbott in 1870:

> A little over forty years ago, when I was a student in the Theological Seminary at Andover, Captain Ladd addressed the young divinity students there upon the subject of peace. As I remember him, he was a florid, handsome man, looking like the bluff Christian sailor. His address was very fervent and convincing, though at this distance of time I cannot recall its details. He was received cordially by the students. His arguments were appreciated; and with no little enthusiasm, as I remember, a peace society was organized in the seminary. . . .
>
> Upon one other occasion I met him some years after, in a social circle, in Brunswick, Maine. He was the life of the party, full of fun and frolic. I was told that his natural temperament was of the most joyous kind. He played with the children as though he were one of them. Some one pleasantly remarked, "When you become a man, you should put away childish things." He promptly replied, "Ah, I fear that I shall never be a *man*. I can never be anything more than a *Ladd*." †

The anecdote related by Mr. Abbott indicates a sense of humor which made him agreeable and persuasive in the social circle, and an interesting statement by an intimate friend shows that the humor was not confined to his friends in easy and familiar intercourse, but that it invaded, to his friend's regret, the pulpit as well. Thus the Rev. Dr. Cummings solemnly states that "If he erred at all, it was by an excess of pleasantry; or more truly perhaps, by *ill-timed* pleasantry, suffering it occasionally to break out amidst the solemn exercises of a religious meeting. This would not interfere with the edification of minds constituted like his own; but all cannot make such sudden transitions." ‡

Charles Sumner's tribute to Mr. Ladd, in his War System of the Commonwealth of Nations, is well known, and need not be quoted

* Hemmenway, op. cit., pp. 96-7.

† Ibid., pp. 142-3.

‡ Ibid., p. 129.

in full. In concluding his encomium, Senator Sumner felt justified in saying:

> By a long series of practical labors, and especially by developing, maturing, and publishing the plan of an International Congress, has William Ladd enrolled himself among the benefactors of mankind.*

In a later portion of the address, Senator Sumner said:

> The idea of a Congress of Nations with a High Court of Judicature is as practicable as its consummation is confessedly dear to the friends of Universal Peace. Whenever this Congress is convened, as surely it will be, I know not all the names that will deserve commemoration in its earliest proceedings; but there are two, whose particular and long-continued advocacy of this Institution will connect them indissolubly with its fame,—the Abbé Saint-Pierre, of France, and William Ladd, of the United States.*

The less known but convincing tribute of the gentle and kindly Andrew Preston Peabody, for many years Plummer Professor of Christian Morals in Harvard University, and who knew him well and appreciated his labors, may fittingly be quoted as placing the man and his work in their true light. Thus, Dr. Peabody said:

> William Ladd seemed to live only for his race. He was a peace-maker, not merely by profession or public efforts, but in private life. He was not one of those who, in their love for the race as a whole, forget the charity due the individual. But he was gentle, forbearing, and conciliatory, thoughtful of the rights of others, always earnest to mediate between those at variance, ready to make sacrifice, to cherish kind feelings among neighbors, fellow-citizens, and fellow-Christians. Few men have left so many warm friends as he; and we doubt whether he has left an enemy; sure we are that he was no man's enemy. The angel of death found him as free as he was in infancy from malice and hatred.
>
> He has for years exerted a commanding influence over the public mind, both in our own country and abroad. When he com-

* Senator Sumner's address was delivered before the American Peace Society May 28, 1849, and was published by the Society in 1854. The above passages are quoted from *The Works of Charles Sumner*, 1871, vol. ii, pp. 248, 264.

> menced his labors in the cause of peace, he stood almost alone. But our friend hoped against hope, and toiled on, undaunted by the seeming fruitlessness of his efforts. He knew that he was laboring in the cause of God and of man, and therefore not in vain. He has left many able and faithful fellow-workers; but the most of them derived their first impulse from his discourses or publications; and if mankind are to cease from war, if our country is to take the lead in putting away violence between nation and nation, his name must go down to posterity as essentially connected with the earliest steps of this Christian movement, and be transmitted for the lasting gratitude of his race.*

Statesmen, clergymen, philosophers, jurists, and dreamers of dreams, without a calling or a profession, have, from time to time, urged upon an unwilling and unappreciative world projects of international confederation, of international conferences, and of international tribunals, and it seems desirable, before considering Mr. Ladd's more modest proposal for a Congress of Nations, to premise some observations upon the more meritorious or better known of these, which have attracted attention and which have both stimulated and impressed the superior minds of Europe and America. For present purposes, it seems unnecessary to consider projects which were drafted before the Protestant Reformation shattered the claim of Rome even to spiritual supremacy, or before the seventeenth century which, rejecting the claims of the Empire to universal dominion, recognized in the Congress of Westphalia of 1648 the independence of states irrespective of origin, size or religion, thus making possible both the society and the law of nations.

Of seventeenth century projects, the most important are those of Emeric Crucé (1623), of Grotius (1625), of Sully (1638), and of William Penn (1693); and of the eighteenth century, those of the Abbé de Saint-Pierre, of Jean Jacques Rousseau, of Jeremy Bentham (1786-89), and of Kant (1795).

The first to be considered is "The New Cineas or Discourse of the Occasions and Means to establish a General Peace, and the Liberty of Commerce throughout the Whole World," which was written

* Hemmenway, op. cit., pp. 130-1.

by Emeric Crucé and published in 1623.* The title suggests the existence of an old Cineas, of whom Plutarch has something to say in his *Lives of Illustrious Men,* and as the new Cineas was to show the monarchs of his day the path of wisdom just as the old Cineas had endeavored to lead Pyrrhus, famous for his dubious victories, into the ways of wisdom and peace, it seems well to consider the man Cineas and the nature of his advice, which, unfortunately, was not taken by his royal master.

Plutarch says of him:

> This person, seeing Pyrrhus eagerly preparing for Italy, led him one day when he was at leisure into the following reasonings: "The Romans, sir, are reported to be great warriors and conquerors of many warlike nations; if God permit us to overcome them, how should we use our victory?" "You ask," said Pyrrhus, "a thing evident of itself. The Romans once conquered, there is neither Greek nor barbarian city that will resist us, but we shall presently be masters of all Italy, the extent and resources and strength of which any one should rather profess to be ignorant of, than yourself." Cineas, after a little pause, "And having subdued Italy, what shall we do next?" Pyrrhus not yet discovering his intention, "Sicily", he replied, "next holds out her arms to receive us, a wealthy and populous island, and easy to be gained; for since Agathocles left it, only faction and anarchy, and the licentious violence of the demagogues prevail." "You speak," said Cineas, "what is perfectly probable, but will the possession of Sicily put an end to the war?" "God grant us," answered Pyrrhus, "victory and success in that, and we will use these as forerunners of greater things; who could forbear from Libya and Carthage then within reach, which Agathocles, even when forced to fly from Syracuse, and passing the sea only with a few ships, had all but surprised? These conquests once perfected, will any assert that of the enemies who now pretend to despise us, any one will dare to make further resistance?" "None," replied Cineas, "for then it is manifest we may with such mighty forces regain Macedon, and make an absolute conquest of Greece; and when all these are in our power, what shall

* Emeric Crucé, *Le Nouveau Cynée ou Discours d'Estat représentant les occasions et Moyens d'establier une Paix générale, et la liberté du commerce par tout le Monde.* In 1909 Mr. Thomas Willing Balch published a sumptuous edition of the French text and an English translation of this remarkable work. References are to the Balch ed.

> we do then?" Said Pyrrhus, smiling, "We will live at our ease, my dear friend, and drink all day, and divert ourselves with pleasant conversation." When Cineas had led Pyrrhus with his argument to this point: "And what hinders us now, sir, if we have a mind to be merry, and entertain one another, since we have at hand without trouble all those necessary things, to which through much blood and great labor, and infinite hazards and mischief done to ourselves and to others, we design at last to arrive?" *

The meaning of the title of Crucé's book is thus evident, and the advice of the new fared no better than the advice of the old Cineas.

The proposal contained in this remarkable book, which had become so rare as almost to have disappeared, was that of a union of the nations and the settlement of their disputes in a general conference of their ambassadors, with the use of force if necessary to secure compliance. Although a Frenchman,† Crucé was disinterested, in the sense that he sought no special advantages for his country, his hope was to bring about and to maintain peace without aggrandizing France and his subject thus differed, as will be seen, in form as well as in substance, from the Great Design attributed to Henry IV, which, if realized, would have transferred the Austrian scepter to French hands. Crucé's desire was to secure the establishment of universal peace, and for this purpose he advocated "before resorting to arms, resort to the arbitration of the sovereign potentates and lords," ‡ apparently in an assembly composed of ambassadors, in a city chosen for this purpose—Venice was suggested—"where," to quote his language, "all sovereigns should have perpetually their ambassadors, in order that the differences that might arise should be settled by the judgment of the whole assembly. The ambassadors of those who would be interested would plead there the grievances of their masters and the other deputies would judge them without

* A. H. Clough's translation of *Plutarch's Lives of Illustrious Men*, 1881, vol. 2, pp. 73-4.

† Why should I a Frenchman wish harm to an Englishman, a Spaniard, or an Hindoo? I cannot wish it when I consider that they are men like me, that I am subject like them to error and sin and that all nations are bound together by a natural and, consequently, indestructible tie, which ensures that a man cannot consider another a stranger unless he follows the common and inveterate opinion that he has received from his predecessors. Crucé, loc. cit., p. 84.

‡ Ibid., p. 40.

prejudice. . . . And the better to authorize it, all the said princes will swear to hold as inviolable law what would be ordained by the majority of votes in the said assembly, and to pursue with arms those who would wish to oppose it." *

Two years after the appearance of the *Nouveau Cynée*, Grotius published the first systematic treatise on international law, entitled *De Jure Belli ac Pacis*, in which he said, influenced it may be, as Professor Nys says,† by Crucé's book:

> It would be useful, and indeed, it is almost necessary, that certain Congresses of Christian Powers should be held, in which the controversies which arise among some of them may be decided by others who are not interested; and in which measures may be taken to compel the parties to accept peace on equitable terms.‡

The plan of Grotius was not as with Crucé a union of states and a perpetual conference, but periodical conferences of independent and equal states, in which their disputes not otherwise settled were to be adjusted by diplomatic negotiations, such as happened in the Congress of Westphalia (1648), and in the Congress of Vienna (1814-15).

It is usual to begin the consideration of projects of the seventeenth century with the Great Design, composed by Sully but cunningly attributed to Henry IV; and it is eminently proper to do so, because the so-called Design of Henry IV is without question the most famous of the many projects advocating a federation of states in order to secure and to maintain peace between nations. The project is in very truth the classical project of international organization, and it has been both the inspiration and the foundation upon which

* Crucé, loc. cit., pp. 102, 122.

† In speaking of the passage of Grotius quoted above, the eminent Belgian publicist, Professor Ernest Nys, says: "We do not know what contemporary writers thought of the humanitarian theories of the *Nouveau Cynée;* it seems, however, that it exerted some influence. How are we, indeed, to explain that passage, not sufficiently illuminated, where Grotius, in his treatise upon *The Laws of War and Peace*, published two years after the *Nouveau Cynée*, extols the union and the congresses of sovereigns?" Ernest Nys, *Etudes de droit international et de droit politique*, 1896, p. 316.

‡ Grotius: *De Jure Belli ac Pacis*, Whewell's translation, vol. ii, Chap. xxiii, Sec. 8, Art. 4, p. 406.

well-wishers of their kind have, consciously or unconsciously, raised their humbler structures. The name of Henry IV is a name to conjure with, and his death at the hands of a fanatic, at the very moment when, as his friend and associate Sully asserts, he was putting himself at the head of his army to carry into effect the Great Design, has made it appear almost as the political testament of the great monarch.

A plan which Henry conceived could not be, and in fact has not been, lightly rejected, and the fact that it was, if Sully is to be trusted, upon the point of execution has impressed men so widely differing as Rousseau and Napoleon—to mention but two—with the possibility of its realization. Royalty runs better than commonfolks, a fact which Sully well knew, and in ascribing it to his royal master he prepared the minds of men for its acceptance. Still, it is not disrespectful to the memory of Henry IV to suggest that a plan fathered by a statesman such as Sully would be in itself sufficient to commend it to thoughtful consideration.

But in ascribing it to Henry IV it is fair to presume that Sully acted from no unworthy motives. Europe was in a state of expectancy at the death of Henry, and Sully sought to glorify his friend by having him fall upon the eve of the realization of great and beneficent plans, which, in Sully's opinion and in the opinion of his generation, would have immortalized the king had he been able to realize them. The important thing to be considered is not so much that the plan was not the plan of Henry, but that it ascribed to Henry views which were agitating the public mind and which had been voiced by the *New Cineas* of Crucé, which appears to have served as Sully's model.

But, before considering these two interesting and important questions, which, after all, are minor matters, it is advisable to state the purpose of the Great Design and in more detail the means by which it was to be realized. The Great Design, as sketched by Sully, contemplated the formation of a Christian republic, to be composed of fifteen states, with a general council or senate of approximately seventy persons representing the states of Europe, to deliberate on affairs as they arose, to occupy themselves with discussing different interests, to pacify quarrels, to throw light upon and oversee the civil, political, and religious affairs of Europe, whether internal

or foreign, whose decisions should have the force of irrevocable and unchangeable decrees, as being considered to emanate from the united authority of all the sovereigns, pronouncing as freely as absolutely.* The object was "to divide Europe equally among a certain number of powers, in such manner that none of them might have cause either of envy or fear from the possessions or power of the others," † which object, if accomplished, would result in the interest, it was alleged, of universal peace. The political part of the program was, to quote Sully's own words, "to divest the House of Austria of the Empire, and of all the possessions in Germany, Italy, and the Low Countries." ‡ That is to say, the Great Design proposed to humble the pride and power of Austria by force, and the federation of Europe, produced by force, was to be maintained by the sword. As Pfister has unquestionably made the most careful examination ever made, both of the manuscripts as well as of the printed editions of the *Economies Royales* of Sully, it seems advisable to state in his words the brief yet adequate summary which he has made of the Great Design:

> Henceforth, [he says] it [Europe] is divided into fifteen dominions, some of which are hereditary (France, Spain, Great Britain, Denmark, Sweden and Lombardy); others are elective, (the Papacy, the Empire, Poland, Hungary and Bohemia); lastly the republics (Venice, Switzerland, the Italian republics, the Republic of the Belgians). These fifteen states are reduced to an approximate equality of territory, of wealth, of power, and they form a perfect equilibrium. The same equilibrium exists with regard to the three religions: Catholic, Lutheran, and Calvinistic. Of these fifteen states, five are wholly Catholic (Sully does not name them), five are entirely Lutheran, and five Calvinistic.** These states are to form among themselves

* See *The Great Design of Henry IV*, ed. by Edwin D. Mead, 1909, pp. 34, et seq.

† Ibid., p. 33.

‡ Ibid., p. 25.

** Such is, indeed, the thought of Sully, if not exactly his language. With regard to the territories of the church, he states that neither Calvinists nor Lutherans shall be persecuted either in person or in property, but that they shall be "only enjoined to leave the country and to take with them their property within a year and a day after being so ordered, or in default thereof to accept the religion of the country." Michaud, ii, 349. Sully immediately follows this up by adding: "A similar course shall likewise be observed with regard to

> a confederation, administered by six Provincial Councils and by one General Council. The General Council is to settle disputes between the sovereign and his subjects (henceforth there will be no more revolutions!), and disputes between the states (hence no more wars in Christian Europe!). The united efforts of the confederation have but a single object; namely, to expel the Turks from Europe. The General Council is to fix the quota of troops and the taxes which each of the fifteen powers is to furnish for this new crusade. It is to levy troops and to raise money; to direct the military operations, and to apportion the conquests. When the Turk is expelled, Europe will at last enjoy this great and inestimable benefit: Universal peace.*

Pfister has shown the genesis and the growth of the Great Design by a careful and detailed study of the *Economies Royales* in comparison with the printed edition thereof, and he thus sums up his conclusions, after stating that the passages concerning the Great Design are not to be found in the original manuscript but that they were added from time to time until they assumed final form in the printed edition of 1638:

> The clean-cut policy followed by Henry IV, aiming at the reduction of the House of Austria was, if I may dare to say so, the actual foundation of all these combinations. By a first exaggeration, Sully maintained that his master desired to strip Austria of its possessions in Germany, in Bohemia, and in Hungary, and to reduce Spain to the territory of the Spanish Peninsula (the version of the manuscript of the *Economies Royales*). Then he recasts the map of Europe and assigns to one or the other of the states the provinces taken from the Spanish faction. Obsessed by these hallucinations, he composes a Christian Europe of fifteen absolutely equal powers, and completely carried away by his fantasies, he finally dreams that

the kingdoms of France, of the realms of Spain, and of Great Britain, of Denmark and of Sweden, in which countries only those forms of the three religions, to the exclusion of others, may be professed which are at present permitted within them, and they shall be dealt with as hereinbefore stated." Saint-Simon had given the same interpretation of this passage, and he put the question: "How could a pope confirm the existence, the duration, and firmly establish and protect the heresies of Calvin and of Luther so that each of the heresies constitute a third of the religious unity and stand on an equality with the Catholic Religion?" *Parallèle des trois premiers rois Bourbons*, Faugère's ed., pp. 138-9.

* Charles Pfister, *Les "Economies Royales" de Sully et le Grand Dessein de Henri IV* (*Revue Historique*, 1894, vol. 56, pp. 316-7).

universal peace might reign upon this earth. The Great Project was therefore not conceived by him at one and the same time, but was formed, as it were, of successive layers reared one upon the other.*

We are now in a position to state the relation between the *New Cineas* of Crucé and the so-called *Great Design of Henry IV*, and it appears that just as the old Cineas advised Pyrrhus to rejoice his soul in peace after his conquests, so did Sully, taking a leaf from Crucé's book, essay the rôle of the new Cineas to his royal master, Henry IV. This is the conclusion reached by Pfister after a careful examination of the tractate of Crucé and of the *Great Design* of Sully. To quote Pfister's own language, "Sully shared the ideas of his time, and it was natural that after having attributed to Henry IV great designs which the latter never had, he carried the exaggeration a step further by crediting the king with the project of maintaining peace and creating a council to adjudge all differences. This last conception does not appear to us to be even original. Sully took it, it would seem, from a very curious book of the epoch, *Le Cynée d'Estat*, written by Emeric Lacroix, an author who should not be forgotten. . . . Sully did not go so far as Emeric Lacroix. He only wished peace among Christian princes, and he even excluded the Czar from his confederation because a great part of his dominions belonged to Asia and was composed of savage, barbarian, and ferocious nations. But he demanded a general council for his very Christian association as Lacroix did for the entire world. Sully did not even seek peace for the Turks. He hurled against them the united Christian world and expelled them from Europe by new crusades; and here again Sully was of his day and generation, while Lacroix looked far beyond it." †

It may seem strange, but it is nevertheless a fact that this project which contemplated an armed alliance to humble the House of Austria, to rearrange the map of Europe, and to maintain by force the status created by force, should have been considered a peace plan, and that it should be not only referred to as such, but have been taken as the model of other plans really pacific and disinterested.

* Pfister, *Les "Economics Royales,"* etc. (*Revue Historique*, 1894, vol. 56, p. 318).

† Ibid., pp. 330-1.

The influence of the *Great Design* upon subsequent thought has been such as to justify this somewhat detailed account of its origin and of its authorship. William Penn refers to it as justifying his scheme, saying:

> I will not then fear to be censured for proposing an expedient for the present and future peace of Europe, when it was not only the design but glory of one of the greatest princes that ever reigned in it.

The Abbé de Saint-Pierre specifically calls his project "The Abridgment of the Project of Universal Peace invented by King Henry the Great."

After showing the influence of the Great Design, Pfister says that the ideas of the Abbé de Saint-Pierre, which were admittedly based upon the Great Design, were in 1795 "taken up again, arranged and formulated by the greatest of modern philosophers," adding "Is it not curious that, indirectly, the *Economies Royales* of Sully exercised an important influence upon the ethical system of Immanuel Kant." * It is indeed curious, but greatest and strangest of all is the influence which the Great Design apparently exercised upon the great Napoleon. Thus Count de Las Cases, in his "Memorial of St. Helena," quotes the Emperor as saying:

> One of my greatest ideas was the bringing together and the concentration of the peoples forming a geographical unit which revolution and policy had broken up and cut to pieces. Thus, though scattered, there are in Europe more than 30,000,000 Frenchmen, 15,000,000 Spaniards, 15,000,000 Italians, 30,000,000 Germans, and of each of these peoples I would fain have made a separate and distinct nation. . . .
>
> After this summary simplification, it would have been easier to give one's self up to the beautiful dream of civilization; for in such a state of things there would have been a greater chance of bringing about everywhere a unity of codes, of principles, of opinions, of sentiments, of views, and of interests. Then, perhaps, under the ægis of universal enlightenment, it would have been possible to conceive of an Amphictyonic assembly of Greece, or of an American Congress for the European family of nations.†

* Ibid., p. 334.

† Las Cases' *Mémorial de Sainte-Hélène*, 1823, vol. 4, pt. 7, pp. 125-6.

Upon this passage, summarized, but not quoted, in his masterly *Confederation of Europe*, Mr. Phillips says: "Whether this plan had ever been seriously contemplated or not, it is easy to recognize in it the source of its inspiration." *

In 1693 the gentle Penn published an *Essay towards the Present and Future Peace of Europe*, proposing the establishment of a European diet, parliament, or estates, moved thereto, as he says, by the project of Henry IV. The sovereign princes of Europe were to be represented in the diet, according to their revenues, not upon the plane of equality. The diet itself was to meet yearly, or every second or third year. The diet, or assembly, was to be called the sovereign, or imperial, diet, parliament, or estate of Europe, "before which sovereign assembly, should be brought all differences depending between one sovereign and another, that cannot be made up by private embassies, before the sessions begin." †

It occurred to the generous author that the sovereign Princes might prefer to settle their disputes by arms instead of submitting them to the diet, or that, if submitted, they might fail to execute the judgments of the assembly. To meet these various contingencies, he therefore provided that, "if any of the Sovereignties that constitute these imperial States, shall refuse to submit their claim or pretensions to them, or to abide and perform the judgment thereof, and seek their remedy by arms, or delay their compliance beyond the time prefixed in their resolutions, all the other Sovereignties, united as one strength, shall compel the submission and performance of the sentence, with damages to the suffering party, and charges to the Sovereignties that obligated their submission." †

It would seem that the Congress of Nations contemplated by Penn was to settle by diplomats, not necessarily by judges trained in the law, disputes of all kinds whatsoever, whether they were justiciable or non-justiciable. A distinction does not seem to be drawn between these two categories, so that diplomats would or might pass upon and determine each. But however highly we may appreciate the diplomat

* Walter Alison Phillips' *The Confederation of Europe: A Study of the European Alliance, 1813-1823, as an Experiment in the International Organization of Peace*, 1914, p. 20.

† William Penn, *An Essay towards the Present and Future Peace of Europe*, sec. iv.

in his proper sphere, the wisdom of mankind has established courts of justice for the settlement of justiciable questions. A further objection to Penn's project is the unequal representation of the states, for equality before the law is as true of nations as of individuals. Finally, the project seems to contain within it the germs of a league to enforce peace and of an international police which would make it objectionable to those who believe in public opinion as a sanction of law, whereas the provision for the use of force will commend it to those who believe in force as the sanction of law.

The chief projects of the eighteenth century are, as has been said, those of the Abbé de Saint-Pierre, Jean Jacques Rousseau, Jeremy Bentham, and Immanuel Kant.

The purpose of the Abbé de Saint-Pierre is indicated in the title, Perpetual Peace, which he gave to the various editions of his project. In the year 1712 he published anonymously, at Cologne, a volume small enough to be slipped in the pocket, but weighty in thought and purpose, entitled "Memoirs to Render Peace Perpetual in Europe." This is in the nature of an essay or of a first sketch. In the two-volume edition of his treatise, published in 1713, he states the relation of his project to that of Henry IV, and in the third volume, which appeared in 1717, this relation appears in the title. He informs us in the preface to the first volume of the enlarged edition that a friend, to whom he had shown the first sketch, informed him that "Henry IV had formed a project similar in substance. In the Memoirs of the Duke of Sully, his Prime Minister, and in the history of his reign by Mr. de Perefixe, I even found that this project had already been agreed to and approved by a large number of sovereigns at the commencement of the past century." *

The title to the third volume, which appeared in 1717, not only points out the relationship, but mentions the success with which, as Sully would have us believe, the Great Design of Henry IV had been crowned. The first sentence of the title thus defines the good Abbé's purpose: "Project of a treaty to render peace perpetual between Christian sovereigns and to maintain constantly free commerce between the nations to strengthen in greater degree the sovereign houses upon the throne." The second part of the title is evidently

* Abbé de Saint-Pierre's *Projet pour rendre la Paix perpétuelle en Europe* (1713), vol. 1, p. ix.

to convince the reader by the mere title page of the feasibility of the scheme, as he declares it to have been "proposed formally by Henry, the great king of France, agreed to by Queen Elizabeth, by James I, King of England, her successor, and by most of the other potentates of Europe."

Just as Sully had obtained a hearing for the Great Design, by ascribing it to Henry IV, so Saint-Pierre obtained a hearing for his Project of Perpetual Peace by declaring it to be substantially the Great Design of Henry IV. In 1728 Saint-Pierre published an abridgment of the project, which the title declares to have been "invented by King Henry the Great, approved by Queen Elizabeth, by King James, her successor, by the republics, and divers other potentates, adapted to the present state of affairs in Europe."

Without attempting in this place a comparison between the Great Design and Saint-Pierre's Perpetual Peace, the purpose of the first was to create by force of arms a new state of affairs in Europe, and to maintain, by force if necessary, the equilibrium thus brought about by force. The Abbé de Saint-Pierre believed that it was not necessary to make Europe over by force, but to procure, by force if necessary, the acceptance of the status created by the Treaty of Westphalia of 1648 and of Utrecht of 1713-14, in the conclusion of which he was interested as secretary to the French plenipotentiary. In simplest terms, the Abbé's project was to maintain the *status quo*, which could, in his opinion, be done by a treaty of alliance, consisting of twelve fundamental provisions which he stated in the form of a treaty, and which in his opinion only needed signature in order to be effective. Peace was thus to be ushered in by a stroke of the pen.

The project of the Abbé de Saint-Pierre was, as has been stated, based upon the Great Design of Henry IV and contemplated a union, if possible, of all Christian sovereigns, with a perpetual congress or senate in which the sovereigns should be represented by deputies. The union was, in the first instance, to be voluntary, but after enough states had joined it to make fourteen votes, a sovereign refusing to enter was to be declared an enemy to the repose of Europe, and force was to be used against him until he adhered to it or until he was entirely despoiled of his territories. The organ of the union, called the Senate, was to consist of some four and twenty members, and

before this body complaints of the sovereign members of the union were to be laid. The dispute was to be decided by the senate provisionally by a majority, finally by three-fourths of the members, and the failure of a sovereign or members of the union to accept the decision required the European society or union to declare war against the recalcitrant member and to continue it until he was disarmed, the judgment executed, the costs of the war paid by him, and the country conquered from him forever separated from his dominions. The purpose which Saint-Pierre had in mind was thus to confederate Europe by means of a treaty to be signed by the representatives of European powers, and the project itself has the form of a treaty for such signature. He regarded the treaty of Utrecht, which framed and contained the provisions of the treaty of Westphalia, as creating a satisfactory state of affairs, and his confederation was intended to perpetuate the status created by these treaties; and by the creation of a senate to legislate for members of the union and to decide conflicts arising among them he hoped to prevent a resort to arms, as by express agreement wars between the members of the union were to be renounced.

Such is, in summary terms, Saint-Pierre's project for perpetual peace, and it is perhaps possible to estimate the value of the plan by this simple statement of its provisions, but in view of the very great influence exercised by the Abbé's project—for, as pointed out by our countryman, Henry Wheaton, in his *History of the Law of Nations*,* and by the distinguished German publicist, von Holtzendorff, in his "Idea of Perpetual World Peace",† its main provisions were incorporated in the German confederation of 1815, and as pointed out by Mr. Phillips in his "Confederation of Europe",‡

* In speaking of the abridged plan of Saint-Pierre, published in 1729, reduced to five fundamental articles, Wheaton says that "the almost verbal coincidence of these articles with those of the fundamental act of the Germanic confederation established by the Congress of Vienna in 1815 is remarkable." Wheaton's *History of the Law of Nations in Europe and America*, 1845, p. 263.

† "The project of the Abbé de Saint-Pierre is of great interest from various standpoints. One would be inclined to maintain that its author had a presentiment of the Germanic confederation of 1815." Franz v. Holtzendorff's *Die Idee des ewigen Völkerfriedens* (*Sammlung gemeinverständlicher wissenschaftlicher Vorträge*, 1882, vol. xvii, p. 687).

‡ Speaking of the Great Design, Mr. Phillips says, "It inspired the *Projet de Paix perpétuelle* of the Abbé de Saint-Pierre, and through him the Emperor

the Abbé's project was, it would seem, the inspiration of the Holy Alliance—it is advisable to state the fundamental articles of Saint-Pierre's plan, twelve in number, which could only be changed by unanimous consent, omitting the "important articles", eight in number, and the "useful articles", likewise eight in number, which could be changed at any time by a three-fourths vote of the senate.

The fundamental articles are:

> 1. The present Sovereigns, by their undersigned Deputies, have agreed to the following Articles. There shall be from this day forward a Society, a permanent and perpetual Union between the undersigned Sovereigns, and, if possible, among all Christian Sovereigns, to preserve unbroken peace in Europe. . . .
>
> The Sovereigns shall be perpetually represented by their Deputies in a perpetual Congress or Senate in a free city.
>
> 2. The European Society shall not at all interfere with the Government of any State, except to preserve its constitution, and to render prompt and adequate assistance to rulers and chief magistrates against seditious persons and rebels. . . .
>
> 3. The Union shall employ its whole strength and care in order, during regencies, minorities, or feeble reigns, to prevent injury to the Sovereign, either in his person or prerogatives, or to the Sovereign House, and in case of such shall send Commissioners to inquire into the facts, and troops to punish the guilty. . . .
>
> 4. Each Sovereign shall be contented, he and his successors, with the Territory he actually possesses, or which he is to possess by the accompanying Treaty. . . . No Sovereign, nor member of a Sovereign Family, can be Sovereign of any State besides that or those which are actually in the possession of his family. The annuities which the Sovereigns owe to the private persons of another State shall be paid as heretofore. No Sovereign shall assume the title of Lord of any Country of which he is not in possession, and the Sovereigns shall not make an exchange of Territory or sign any Treaty among themselves except by a majority of the four-and-twenty votes of the Union, which shall remain guarantee for the execution of reciprocal promises.

Alexander I.'s idea of a universal Holy Alliance. . . . It is impossible to examine this project without being struck by the fact that there is scarcely one of its provisions which does not emerge, at least as a subject of debate among the Powers, during the years of European reconstruction after 1814" (Phillips, op. cit., pp. 19, 22-23).

5. No Sovereign shall henceforth possess two Sovereignties, either hereditary or elective, except that the Electors of the Empire may be elected Emperors, so long as there shall be Emperors. If by right of succession there should fall to a Sovereign a State more considerable than that which he possesses, he may leave that which he possesses, and settle himself on that which is fallen to him.

6. The Kingdom of Spain shall not go out of the House of Bourbon, . . .

7. The Deputies shall incessantly labor to codify all the Articles of Commerce in general, and between different nations in particular; but in such a manner that the laws may be equal and reciprocal towards all nations, and founded upon Equity. The Articles which shall have been passed by a majority of the votes of the original deputies, shall be executed provisionally according to their Form and Tenor, till they be amended and improved by three-fourths of the votes, when a greater number of members shall have signed the Union.

The Union shall establish in different towns Chambers of Commerce, consisting of Deputies authorized to reconcile, and to judge strictly and without Appeal, the disputes that shall arise either in relation to Commerce or others matters, between the subjects of different Sovereigns, in value above ten thousand pounds; the other suits, of less consequence, shall be decided, as usual, by the judges of the place where the defendant lives. Each Sovereign shall lend his hand to the execution of the judgments of the Chambers of Commerce, as if they were his own judgments.

Each Sovereign shall, at his own charge, exterminate his inland robbers and banditti, and the pirates on his coasts, upon pain of making reparation; and if he has need of help, the Union shall assist him.

8. No Sovereign shall take up arms, or commit any hostility, but against him who shall be declared an enemy to the European Society. But if he has any cause to complain of any of the Members, or any demand to make upon them, he shall order his Deputy to present a memorial to the Senate in the City of Peace, and the Senate shall take care to reconcile the difference by its mediating Commissioners; or, if they cannot be reconciled, the Senate shall judge them by arbitral judgment, by majority of votes provisionally, and by three-fourths of the votes definitely. This judgment shall not be given until each Senator shall have received the instructions and orders of his master upon that point, and until he shall have communicated them to the Senate.

The Sovereign who shall take up arms before the Union has declared war, or who shall refuse to execute a regulation of the Society, or a judgment of the Senate, shall be declared an enemy to the Society, and it shall make war upon him, until he be disarmed, and until its judgment and regulations be executed, and he shall even pay the charges of the war, and the country that shall be conquered from him at the close of hostilities shall be forever separated from his dominions.

If, after the Society is formed to the number of fourteen votes, a Sovereign should refuse to enter thereinto, it shall declare him an enemy to the repose of Europe, and shall make war upon him until he enter into it, or until he be entirely despoiled.

9. There shall be in the Senate of *Europe* four-and-twenty Senators or Deputies of the United Sovereigns, neither more nor less, namely:—*France, Spain, England, Holland, Savoy, Portugal, Bavaria* and Associates, *Venice, Genoa* and Associates, *Florence* and Associates, *Switzerland* and Associates, *Lorrain* and Associates, *Sweden, Denmark, Poland,* the Pope, *Muscovy, Austria, Courland* and Associates, *Prussia, Saxony, Palatine* and Associates, *Hanover* and Associates, Ecclesiastical Electors and Associates. Each Deputy shall have but one vote.

10. The Members and Associates of the Union shall contribute to the expenses of the Society, and to the subsidies for its security, each in proportion to his revenues, and to the riches of his people, and everyone's quota shall at first be regulated provisionally by a majority, and afterwards by three-fourths of the votes, when the Commissioners of the Union shall have taken, in each State, what instructions and information shall be necessary thereupon; and if anyone is found to have paid too much provisionally, it shall afterwards be made up to him, both in principal and interest, by those who shall have paid too little. The less powerful Sovereigns and Associates in forming one vote, shall alternately nominate their Deputy in proportion to their quotas.

11. When the Senate shall deliberate upon anything pressing and imperative for the security of the Society, either to prevent or quell sedition, the question may be decided by a majority of votes provisionally, and, before it is deliberated upon, they shall begin by deciding, by majority, whether the matter is imperative.

12. None of the eleven fundamental Articles above named shall be in any point altered, without the *unanimous* consent of all the members; but as for the other Articles, the Society may

always, by three-fourths of the votes, add or diminish, for the common good, whatever it shall think fit.*

In the preface to the Project the Abbé de Saint-Pierre makes several very wise remarks, which have not yet lost their aptness. Thus he says, "The present constitution of Europe can only produce almost continuous wars, because it can never have sufficient guaranty of the execution of treaties." And again, he calls attention to the impossibility of peace based upon the principle of equilibrium, thus: "The balance of power between the House of France and the House of Austria cannot result in a sufficient guaranty against foreign wars nor against civil wars, and consequently cannot result in sufficient security either for the preservation of nations or the preservation of commerce." †

It has been said that the Abbé's plan forecast the Germanic confederation of 1815, and not unnaturally so, because the project itself was based upon the Abbé's conception of the Germanic corps, as he calls it, and indeed he draws the comparison, on the one hand, between the Germanic corps, which existed in his time, and the European corps, which he hoped to call into being. Continuing, the Abbé de Saint-Pierre says that "the same motives and the same means which have sufficed formerly for a permanent society of all the sovereignties of Germany are within the reach and at the disposal of the sovereigns of to-day, and may suffice for the formation of a permanent society of all the Christian sovereignties of Europe." ‡ The possibility of this he bases upon the fact that "the approbation which most of the sovereigns of Europe gave to the project of the European society proposed to them by Henry IV [called by Saint-Pierre, Henry the Great] justifies us in hoping that a like project will be approved by their successors." ‡

After making the above statements, the good Abbé puts his entire case in the form of a premise: "If the European Society herein proposed can procure to the Christian princes sufficient surety of a perpetual peace within and beyond their estates, there is none

* The above translation is taken from W. Evans Darby, *International Tribunals*, 4th ed., 1904, pp. 70-6. The original French text is to be found in *Projet pour rendre la Paix perpétuelle en Europe*, 1713, vol. 1, pp. 284-356.

† Ibid., p. vi.

‡ Ibid., p. x.

of them to whom it would not be a greater advantage to sign a treaty for the establishment of this society than not to sign it." He next states as a fact that, "The European society herein proposed can procure to the crown princes sufficient guaranty of a perpetual peace within and without their estates." This being the case, he draws the logical conclusion that "there will be none of them to whom it will not be more advantageous to sign the treaty for the establishment of the society than not to sign it." *

Abbé Saint-Pierre's project has been stated at very considerable length, and the twelve fundamental articles quoted in his own words. His reasons for believing that his project would be successful have likewise been stated in his own language, for the twofold reason that the project was a serious, high-minded and wholly disinterested attempt to establish a permanent peace by means of a European society or union based upon the maintenance of the then existing status. Therein lay its strength and its weakness—its strength, because the sovereigns of Europe would be more inclined to sign a treaty guaranteeing them their thrones, their possessions and the rights of their successors against war from without and rebellion from within; its weakness, because it precluded the possibility of change, and change is apparently the one constant factor in the world's history. It closed the door to the ambition of the sovereign who might wish to increase his dominions, and it blighted the hope of the people who might wish to change their sovereigns or their forms of government, and by so doing better their own condition.

Rousseau was indeed a friendly critic of the project, but he criticized the Abbé for having appealed to the intelligence and judgment of the princes of Europe, instead of making the lower appeal to their interests, in a passage which well deserves quotation:

> I would not dare [he said] to reply with the Abbé de Saint-Pierre that the veritable glory of princes consists in advancing the interests and the happiness of their subjects; that all their interests are subordinated to their reputation, and that the reputation which is acquired with the wise depends upon the good which we do to our fellow beings; that perpetual peace being the greatest of all undertakings, and the most likely to cover its author with immortal glory, this undertaking, being the

* *Projet pour rendre la Paix perpétuelle en Europe*, vol. 1, pp. xiii-xiv.

most useful, is therefore the most honorable to sovereigns, the only one which is not stained with blood, rapine, tears, and maledictions; and finally, the surest way of obtaining distinction among the mob of kings is to work for the public good. Let us leave to the demagogues such reasons, which in the cabinets of the ministers overwhelmed with ridicule the author of these projects, but let us not despise, like them, his arguments, and whatever may be the virtue of princes, let us rather discourse of their interests.*

The great philosopher Leibnitz, to whom the Abbé de Saint-Pierre had sent his project, wrote in reply, " I have read carefully the Project of Permanent Peace for Europe, which the Abbé de St. Pierre has done me the honor to send me, and I am persuaded that such a proposal, taken as a whole, is feasible, and that its execution would be one of the most useful things in the world. Although my support is not worth much, I have thought that my sense of obligation compels me not to withhold it, but to add some remarks of my own for the satisfaction of an author of such merit, who must have had much force of character and firmness to have dared, and been able, to oppose with success the crowd of prejudices and the taunts of mockery." †

Leibnitz, however, considered that the subordination of the empire was a serious defect, and he proceeded to point out two respects in which the system of the empire was superior to that suggested by Saint-Pierre. In the first place, Leibnitz stated that the tribunal of the imperial chamber (Reichskammergericht) consists of judges and assessors free to follow their consciences without being bound by the instructions of the princes and states nominating them, and in the second place, he objected that, in the Abbé's project there was no provision for hearing the complaints of subjects against their sovereigns, whereas in the empire subjects could plead against their princes or their magistrates.

" The comment of Leibnitz is interesting ", says Mr. Phillips, " because it anticipates the objection which, a hundred years later, Castlereagh considered fatal to the system of guarantees, precisely similar to that suggested in the third article of St. Pierre's project, which

* *Extrait du projet de paix perpétuelle de M. l'Abbé de Saint-Pierre, Oeuvres complètes de J. J. Rousseau,* P. Pourrat Frères, Paris, 1832, vol. 6, pp. 432-3.

† Darby, op. cit., p. 98.

the reactionary powers sought to formulate at Aix-la-Chapelle and did formulate in the Troppau Protocol. The Abbé de Saint-Pierre pointed out how the proposals in this article would not weaken but strengthen the princes, by guaranteeing to each of them 'not only their states against all foreign invasion, but also their authority against all rebellions of their subjects.' In a Memorandum on the treaties presented to the powers at Aix-la-Chapelle, Castlereagh wrote:

> The idea of an *Alliance Solidaire* by which each state shall be bound to support the state of succession, government and possession within all other states from violence and attack, upon condition of receiving for itself a similar guarantee, must be understood as morally implying the previous establishment of such a system of general government as may secure and enforce upon all kings and nations an internal system of peace and justice. Till the mode of constructing such a system shall be devised, the consequence is inadmissible, as nothing could be more immoral, or more prejudicial to the character of government generally, than the idea that their force was collectively to be prostituted to the support of established power, without any consideration of the extent to which it was abused.

"In writing this," Mr. Phillips continues, "Castlereagh was unconsciously repeating and expanding a comment on the Abbé's third article made long before by Rousseau, who in his *Jugement sur la paix perpétuelle* had written: 'One cannot guarantee princes against the revolt of their subjects without at the same time guaranteeing subjects against the tyranny of princes. Otherwise the institution could not possibly survive.'" *

Partisans of peace projects insist that their plans are feasible and that their critics are not justified in denouncing them as impracticable, because until they have been tried it cannot be known that they would fail. This plea for the suspension of judgment cannot be granted the Saint-Pierre, because, as Wheaton and Holtzendorff have stated, the project was tried in the Germanic Confederation of 1815 and it failed, and as Mr. Phillips has pointed out in his *Confederation of Europe*, Abbé Saint-Pierre's principles were weighed and found wanting in the Holy Alliance. Saint-Pierre's project is never-

* Phillips, op. cit., pp. 24-5.

theless interesting and important, because, as Holtzendorff has said, and truly, "His plan limits in reality and with tolerable accuracy the field within which, at least since the end of the former century, the discussion concerning the possibility of perpetual peace has in its essentials taken place." *

It is usual to consider Rousseau's project of perpetual peace, but it will not be necessary in this connection to dwell upon it at length, because it is in reality an analysis and justification of Saint-Pierre's views, uncouthly expressed by the author but exquisitely expressed by Rousseau.

Rousseau lays down three premises from which he draws the conclusion that peace is possible. These premises are (1) that with the exception of Turkey there prevails among all the peoples of Europe a social connection, imperfect but more compact than the general and loose ties of humanity; (2) that the imperfection of this society makes the condition of those who compose it worse than would be the deprivation of all society amongst them; (3) that those primary bonds which render this society harmful make it at the same time easily capable of improvement, so that all its members may derive their happiness from that which actually constitutes their misery, and change the state of war which prevails among them into an abiding peace.

How can this be done? Rousseau disregards the twelve fundamental articles of the Abbé's project and thus restates the five articles which replaced them in Saint-Pierre's abridgment of the original project: That the contracting sovereigns shall establish a perpetual and irrevocable alliance, and shall name their plenipotentiaries in a diet or permanent congress in which all the differences of the contracting parties shall be adjusted by arbitration or by judicial decisions (Article 1); that the number of sovereigns shall be specified whose plenipotentiaries shall have the right to vote in the diet, those who shall be invited to accede to the treaty, the order, the time and the manner by which the presidency shall pass from one to another for an equal period, and finally the quota of contributions of money and the manner of assessing them to meet the common expenses (Article 2); that the confederation shall guarantee to each of its members the possession and government of their territories according to actual

* *Die Idee des ewigen Völkerfriedens*, loc. cit., pp. 19-20.

possession and the treaties then in effect, that disputes arising between them should be settled by the diet, and that the members of the diet should renounce the right to settle their disputes by force and also renounce the right to make war on one another (Article 3); that the member violating the fundamental treaty should be placed under the ban of Europe and prescribed as a common enemy, that is to say, if it refuses to execute the judgments of the diet, if it makes preparations for war, if it takes up arms to resist or to attack any of the allies, it should be proceeded against by the allies and reduced to obedience (Article 4); that the provisional decisions of the diet should be by a majority, the final decisions requiring a majority of three-fourths of the members of the diet acting under instructions from their governments, that the diet could legislate for the well-being of Europe, but could not change any of the provisions of the fundamental articles without the unanimous consent of the contracting powers (Article 5).*

In essence Rousseau's plan is that of Saint-Pierre, and indeed Rousseau specifically disclaimed originality. He had undertaken to arrange and to edit the papers and printed works of the good Abbé, and the project which bears his name is in reality the Abbé's with such comments as occurred to him in his analysis and exposition of the Abbé's project.

Nothing is more common in books of political theory than the statement that Rousseau was incompetent in matters political, and yet his *Social Contract* has profoundly influenced government as well as authorities of government, and its main propositions cannot be gainsaid, especially in the Americas, where the peoples have separated themselves from Europe and created states to their liking, and where they have changed governments and forms of government whenever they have felt disposed to do so.†

Rousseau abridged or restated the Abbé de Saint-Pierre's project

* *Extrait du projet de Paix perpétuelle de M. l'Abbé de Saint-Pierre*, loc. cit., pp. 423-5.

† Wheaton was a man of affairs as well as a theorist, and he says in his *History of the Law of Nations in Europe and America* that "Rousseau published in 1761 a little work to which he modestly gave the title of *Extrait du Projet de Paix perpétuelle de M. l'Abbé de Saint-Pierre*, but which is stamped with the marks of Rousseau's peculiar original genius as a system-builder and reasoner upon the problem of social science." (P. 264.)

of a perpetual peace, prefixing to it a masterly introduction, and he followed it up with a criticism called the "Judgment on the Perpetual Peace," in which he laid his finger not merely upon the weakness of Saint-Pierre's project but upon the simplicity of the good Abbé in imagining that princes could be counted upon to do the right thing if it were only shown them. Rousseau was hardly less a dreamer than Saint-Pierre but he realized that, if dreams were to be put into effect by princes and the great of the world, it could only be done by appealing to the motives that influence them, namely, their ambition and their self-interest.

In his "Judgment on the Perpetual Peace", Rousseau says:

> In regard to the disputes between prince and prince, can we hope to subject men to a superior tribunal who dare boast that they only hold their powers by the sword, and who only mention God himself because he is in heaven? Will sovereigns submit their quarrels to judicial solution when the rigor of the laws has never been able to force private citizens to do so in their own cases? A simple gentleman who has sustained an injury disdains to carry his complaints before the court of the marshals of France, and do you wish that a king should lay his before a European diet? There is, moreover, this difference, that one sins against the laws and doubly exposes his life, whereas the other only exposes his subjects; that he employs, in taking up arms, a right admitted by every human being, and for which he claims to be responsible to God alone. . . .
>
> Incessantly misled by the appearance of things, princes will reject, then, this peace when they weigh their interests themselves; what will be the result when these interests are weighed by their ministers, whose needs are always opposed to those of the people and almost always to those of the prince? Ministers need war to make them indispensable, to embarrass the prince so that he cannot extricate himself without their aid, and to ruin the state if necessary rather than that they should lose their places. . . .
>
> Nor must we believe with the Abbé de Saint-Pierre that even with good-will, which neither princes nor their ministers will ever have, it would be easy to find a favorable moment for the execution of this system, as it would be necessary in such a case that the sum of private interests should not outweigh the common interest, and that each should believe he saw in the well-being of all the greatest good to be hoped for himself. Now, this demands a union of wisdom in so many heads and a

union of relations in so many interests that we can hardly hope for a fortuitous union of all the necessary circumstances. However, if this agreement does not happen there is only force to take its place, in which event it is no longer a question of persuading but of compelling, and instead of writing books we must raise troops.

Thus, although the project might be very wise, the means of executing it betrayed the simplicity of the author. He imagined in his goodness that it was only necessary to assemble a congress and propose therein his articles, that they would be signed and that all would be ended. Let us admit that in all the projects of this honest man he saw well enough the effect of things when they were established, but that his judgment was that of a child as to the means of putting them into effect.

I do not need to add more to prove that the project of the Christian republic is not chimerical than to name its first author, for assuredly Henry IV was neither a fool nor Sully a visionary.*

The value of Rousseau's plan consists in the skill with which he justified the Abbé's purpose, and if the arguments which he himself advances do not warrant the confederation, they do at least justify the international organization of a looser kind for the negotiation of treaties and the settlement of disputes peaceably by proper agencies.

Bentham's "Plan for an Universal and Perpetual Peace" appears to have been written between 1786 and 1789, but it was first published in 1839. In justification of it he says, "The happiest of mankind are sufferers by war; and the wisest, nay, even the least wise, are wise enough to ascribe the chief of their sufferings to that cause." The project consists of some fourteen articles, to which are prefixed "two fundamental propositions:—1. The reduction and fixation of the force of the several nations that compose the European system; 2. The emancipation of the distant dependencies of each state." † In the matter of armament it may be said that the distinguished reformer was of the opinion that "general and perpetual treaties might be formed, limiting the number of troops to be maintained." The chief proposal to maintain the peace after the limitation of armament and the emancipation of distant depen-

* Rousseau's *Jugement sur la Paix perpétuelle*, loc. cit., vol. 6, pp. 452-6.

† *Principles of International Law*, essay iv, Bowring's ed. of *The Works of Jeremy Bentham*, pt. viii, p. 546.

dencies was "by the establishment of a common court of judicature for the decision of differences between the several nations, although such a court were not to be armed with any coercive powers." * The creation and operation of such a court was, in his opinion, the necessary complement of the reduction of armament, because war is the consequence of difference of opinion between two nations, because there is no tribunal common to them. "Establish a common tribunal," he says, "the necessity for war no longer follows from difference of opinion. Just or unjust, the decision of the arbiters will save the credit, the honor of the contending party." † The tribunal contemplated by Bentham was apparently a diplomatic body, which he calls a congress or diet, and which he says "might be constituted by each power sending two deputies to the place of meeting: one of these to be the principal, the other to act as an occasional substitute." The proceedings of the congress or diet were to be public, and "its power would consist", to quote his own language, "1. In reporting its opinion; 2. In causing that opinion to be circulated in the dominions of each state; . . . 3. After a certain time, in putting the refractory state under the ban of Europe." It will be seen that Bentham contemplated the use of force, for in commenting upon the third point he says, "There might, perhaps, be no harm in regulating, as a last resource, the contingent to be furnished by the several states for enforcing the decrees of the court." He felt, however, that a free press could be trusted to create a public opinion in behalf of compliance with the judgments of the court, and that the resort to force would be unnecessary.

It would seem that Bentham had in mind the submission to the congress or diet of all disputes between nations, although it might be inferred that in the use of the term judicature or court Bentham was speaking of justiciable disputes. However that may be, the plan in its entirety was nullified by the prerequisites, for nations are unwilling to renounce colonies, even though they may be the source of war, and disarmament or the limitation thereof will no doubt continue to be unacceptable until a satisfactory substitute has been proposed for war and incorporated in the practice of nations.

The philosopher Kant was no doubt influenced by the Treaty of Rastatt, which had just been negotiated at the Congress of Bâle

* Ibid., p. 547. † Ibid., p. 552.

in 1795, just as the Abbé de Saint-Pierre's project was due to the Congress of Utrecht of 1714-15. Both are in the form of treaties. The philosopher of Königsberg drafted six preliminary articles, the acceptance of which he believed to be essential to perpetual peace. They were interesting in his day and generation, and they are as timely to-day as when first drafted, although they are likely to wait many a day for their acceptance. They are therefore quoted in full, without comment, as comment seems unnecessary:

> 1. No treaty of peace shall be regarded as valid, if made with the secret reservation of material for a future war.
> 2. No state having an independent existence—whether it be great or small—shall be acquired by another through inheritance, exchange, purchase or donation.
> 3. Standing armies (*miles perpetuus*) shall be abolished in course of time.
> 4. No national debts shall be contracted in connection with the external affairs of the state.
> 5. No state shall violently interfere with the constitution and administration of another.
> 6. No state at war with another shall countenance such modes of hostility as would make mutual confidence impossible in a subsequent state of peace: such are the employment of assassins (*percussores*) or of poisoners (*venefici*), breaches of capitulation, the instigating and making use of treachery (*perduellio*) in the hostile state.*

Kant considered that to secure perpetual peace the civil constitution of every state must be republican and that all international right must be grounded upon a federation of free states. The term " republican " as used by Kant is, however, to be understood as synonymous with representative government, and he believed that neither a despotism nor a democracy would prevent war, but that representatives of the people could be trusted to pass upon the question of war and peace reasonably. We have unfortunately learned that constitutional, in the sense of representative, government does not necessarily have the effect which Kant hoped it would have. A confederation of states was, in the philosopher's opinion, requisite to international peace. It should be observed, however, that it is a federation of free states;

* *Perpetual Peace, A Philosophical Essay by Immanuel Kant, 1795*, translation of M. Campbell Smith, 1915, pp. 107-14.

that is to say, a federation in which the states do not lose their identity or their sovereign prerogatives, and Kant was very careful to point out that it was not to be a permanent confederation. It was to be brought about by the free consent of the states desiring to enter into it, and continuance in it was likewise to be voluntary. Kant's language on this point is so important as to suggest quotation, and in view of the peace conferences which have been called by the Czar of Russia and which have met at The Hague, although unfortunately not at stated periods, Kant's reference to The Hague has much more than a passing interest. However, he should be allowed to speak for himself, which he does as follows:

> Such a general association of states, having for its object the preservation of peace, might be termed the permanent congress of nations. Such was the diplomatic conference formed at The Hague during the first part of the eighteenth century, with a similar view, consisting of the ministers of the greater part of the European courts and even of the smallest republics. In this manner all Europe was constituted into one federal state, of which the several members submitted their differences to the decision of this conference as their sovereign arbiter. . . .
>
> What we mean to propose is a general congress of nations, of which both the meeting and the duration are to depend entirely on the sovereign wills of the several members of the league, and not an indissoluble union like that which exists between the several states of North America founded on a municipal constitution. Such a congress and such a league are the only means of realizing the idea of a true public law, according to which the differences between nations would be determined by civil proceedings as those between individuals are determined by civil judicature, instead of resorting to war, a mean of redress worthy only of barbarians.*

Kant does not work out in detail the idea of a congress, meeting from time to time, to agree upon principles of international law, nor does he suggest the establishment of an international court to administer the law which the practice and the custom of nations has made, or which has been agreed to in the Congress of Nations. Both these ideas present themselves to the mind of the reader, even

* *Rechtslehre*, pt. 2, sec. 61 (*Immanuel Kant's Sämmtliche Werke*, Rosenkranz and Schubert ed., 1838, pt. 9, p. 204); Wheaton, op. cit., p. 754.

though they may not have been formulated and expressed by Kant, who only says that

> If it be a duty to cherish the hope that the universal dominion of public law may ultimately be realized, by a gradual but continued progress, the establishment of perpetual peace to take the place of those mere suspensions of hostility called treaties of peace, is not a mere chimera, but a problem, of which time, abridged by the uniform and continual progress of the human mind, will ultimately furnish a satisfactory solution.*

The German philosopher certainly was one of the choice spirits not only of his time, but of all time.

The various projects which have been outlined in passing, without entering into their details, made but a limited appeal; they made little or no impression upon the public at large. They contemplated changes in the society of nations which would either have sacrificed or jeopardized the independence of nations. They disregarded systematically the equality of nations. For the most part they advocated either a perpetual and forcible union, or at least a voluntary federation, and they required for their operation a change of thought as well as a change in the standard of conduct. They were opposed to existing conditions, and for that reason they lacked a substantial basis on which to rear permanent structures. Mr. Ladd, on the contrary, accepted nations as actually constituted, proposed a Congress of such nations, in which each would be represented with an equal vote, and the establishment of a court of justice for the settlement of disputes between them. Living in a free country where public opinion is controlled by the people as a whole, he realized the necessity of following public opinion, and the spirit of his project was that an educated public opinion might in time force itself upon the government of its choice. Interesting in itself, Ladd's project deserves examination and consideration by reason of its prophecy

* Kant, *Zum ewigen Frieden* (*Sämmtliche Werke*); loc. cit., pt. 7, p. 291; Wheaton, op. cit., p. 753.

of a conference, and may not be dismissed with a mere mention. The various projects which have been mentioned were drafted by Europeans and had particular reference to European conditions and institutions insofar as actual conditions were considered or referred to. Mr. Ladd's plan betrays its American origin, although he himself refers to and relies upon Swiss experience and institutions, substituting an international for a national congress and an international for a supreme court.

Mr. Ladd's plan for the establishment of a Congress to make international law and a court to interpret and apply it is found in his *Essay on a Congress of Nations*, published in Boston in the year 1840, and it is not too much to say that this little book contained within its covers, and within singularly narrow compass, not merely the arguments for, but the arguments against the establishment of both institutions.

The plan consisted of two parts:

> 1st. A congress of ambassadors from all those Christian and civilized nations who should choose to send them, for the purpose of settling the principles of international law by compact and agreement, of the nature of a mutual treaty, and also of devising and promoting plans for the preservation of peace, and meliorating the condition of man.
>
> 2d. A court of nations, composed of the most able civilians in the world, to arbitrate or judge such cases as should be brought before it, by the mutual consent of two or more contending nations.

Upon this firm foundation Mr. Ladd rests his structure, which will one day take visible form in a stated periodic conference of the nations at The Hague and in an international court of justice, likewise at The Hague.

For the details and elaboration necessary for a correct understanding of the nature and the rôle each institution was destined to play in the economy of nations, we might refer to Mr. Ladd's *Essay* without further description, analysis, or quotation, and yet so to do would be unfair to Mr. Ladd, whose main principles should be here stated as far as possible in his own words, in order that his

project might be compared with the classic projects already mentioned, and in order that the reader might see its relation to the international movement which began with the Czar's manifesto for an international conference at The Hague. The material portion of Mr. Ladd's views, both as to the Congress and as to the Court of Nations, are therefore set out in his own words in this place.

First, as to the congress of nations:

> 1. Our plan is composed of two parts, viz., a Congress of Nations and a Court of Nations, either of which might exist without the other, but they would tend much more to the happiness of mankind if united in one plan, though not in one body. A congress of ambassadors from all those Christian and civilized nations who should choose to unite in the measure, is highly desirable to fix the fluctuating and various points of international law, by the consent of all the parties represented, making the law of nations so plain that a court composed of the most eminent jurists of the countries represented at the Congress, could easily apply those principles to any particular case brought before them. Such a congress would provide for the organization of such a court; but they would not constitute that court; which would be permanent, like the Supreme Court of the United States, while the Congress would be transient or periodical, with a change of members like the Congress or Senate of the United States. It is not proposed that the legislative and judiciary bodies shall be united. The Congress of Nations, therefore, is one body, and the creator of the Court of Nations, which is another distinct body. Any nation represented at the Congress might change its delegates as often as it pleased, like other ambassadors, but the members of the court would hold their offices during good behavior.
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> 2. The Congress of Nations would be organized by a convention, composed of ambassadors from all those Christian or civilized nations who should concur in the measure, each nation having one vote, however numerous may be the ambassadors sent to the convention. . . .
>
> 3. After organization, the Congress would proceed to the consideration of the first principles of the law of nations as they are laid down by civilians and agreed to by treaties, throwing all the light which the congregated wisdom of the civilized world contains on the principles of international law, and applying those principles to classes of individual cases. No principle would be established, unless it had the unanimous

consent of all the nations represented at the Congress, and ratified by all the governments of those nations, so that each and every principle would resemble a treaty, by which each nation represented bound itself to every other nation represented, to abide by certain expressed principles in their future intercourse with one another; which agreement or treaty shall not be annulled, except by the consent of all the parties making it.

4. That the progress of such a Congress would be very slow, it must be allowed; but so far from being the worse, it would be the better for that, and more likely to produce permanent and useful results. It would not be necessary that each article of the compact, thus entered into, should be ratified by the nations concerned, before the Congress proceeded to settle other points; but the whole, having been agreed on in Congress, could be submitted to the governments represented, and such points as should be unanimously adopted should be considered as settled points of international law, and the remainder left open for further investigation; and thus all the most material points of international law would be forever settled, and other points put in a fair way of being settled. The Court of Nations need not be delayed until all the points of international law were settled; but its organization might be one of the first things for the Congress of Nations to do, and in the mean time, the Court of Nations might decide cases brought before it on principles generally known and acknowledged.

Next, as to the court of nations:

1. It is proposed to organize a Court of Nations, composed of as many members as the Congress of Nations shall previously agree upon, say two from each of the powers represented at the Congress. The power of the court to be merely advisory. It is to act as a high court of admiralty, but without its enforcing powers. There is to be no sheriff, or posse, to enforce its commands. It is to take cognizance only of such cases as shall be referred to it, by the free and mutual consent of both parties concerned, like a chamber of commerce; and is to have no more power to enforce its decisions than an ecclesiastical court in this country.

2. The members of this court are to be appointed by the governments represented in the Congress of Nations, and shall hold their places according to the tenure previously agreed on in the Congress—probably during good behavior. Whether

they should be paid by the governments sending them, or by the nations represented in the Congress conjointly, according to the ratio of their population or wealth, may be agreed on in the Congress. The court should organize itself by choosing a president and vice-presidents from among themselves, and appoint the necessary clerks, secretaries, reporters, etc.; and they should hear counsel on both sides of the questions to be judged. They might meet once a year for the transaction of business, and adjourn to such time and place as they should think proper. Their meeting should never be in a country which had a case on trial. These persons should enjoy the same privileges and immunities as ambassadors.

3. Their verdicts, like the verdicts of other great courts, should be decided by a majority, and need not be, like the decrees of the Congress, unanimous. . . .

4. All cases submitted to the court should be judged by the true interpretation of existing treaties, and by the laws enacted by the Congress and ratified by the nations represented; and where these treaties and laws fail of establishing the point at issue, they should judge the cause by the principles of equity and justice.

5. In cases of disputed boundary, the court should have the power to send surveyors appointed by themselves, but at the expense of the parties, to survey the boundaries, collect facts on the spot, and report to the court. . . .

6. This court should not only decide on all cases brought before it by any two or more independent, contending nations, but they should be authorized to offer their mediation where war actually exists, or in any difficulty arising between any two or more nations which would endanger the peace of the world. . . .

8. It should be the duty of a Court of Nations, from time to time, to suggest topics for the consideration of the Congress, as new or unsettled principles, favorable to the peace and welfare of nations, would present themselves to the court, in the adjudication of cases. . . .

9. There are many other cases beside those above mentioned, in which such a court would either prevent war or end it. A nation would not be justified, in the opinion of the world, in going to war, when there was an able and impartial umpire to judge its case; and many a dispute would be quashed at the outset, if it were known that the world would require an impartial investigation of it by able judges.

Mr. Ladd, it will be recalled, regarded the congress as a diplomatic body and the court as a judicial body, and the only credit he takes to himself is for their separation. The line of separation, however, is on one occasion blurred or indistinctly drawn, as he allows the members of the court "to offer their mediation where war actually exists or in any difficulty arising between any two or more nations which would endanger the peace of the world." It would seem that providing the court with powers of mediation testifies to the goodness of his heart rather than to the strength of his understanding, for mediation is political, therefore diplomatic. It can hardly be called a judicial function. The matter, however, is trifling, and is mentioned as perhaps the chief if not the sole instance in which Mr. Ladd disregarded the separation of functions of the two international agencies.

In the following passage Mr. Ladd outlines at once the policy of his Congress and the actual program of the Hague Conferences:

> The Congress of Nations is to have nothing to do with the internal affairs of nations, or with insurrections, revolutions, or contending factions of people or princes, or with forms of government, but solely to concern themselves with the intercourse of nations in peace and war. 1st. To define the rights of belligerents towards each other; and endeavor, as much as possible, to abate the horrors of war, lessen its frequency, and promote its termination. 2d. To settle the rights of neutrals, and thus abate the evils which war inflicts on those nations that are desirous of remaining in peace. 3d. To agree on measures of utility to mankind in a state of peace; and 4th, To organize a Court of Nations. Those are the four great divisions of the labors of the proposed Congress of Nations.

The resemblance between Ladd's project and the Hague Conferences is so patent as to need no comment, and while it would be an exaggeration to insist that the Conference is the direct result of Ladd's *Essay on a Congress of Nations*, it would be unfair not to state that Ladd's project became widely known in America, where public opinion was created in its behalf; that it was published in England, and influenced the peace movement along Ladd's lines, and that the project for the establishment of a Congress and a

Court of Nations was, by the faithful disciple, Elihu Burritt, laid before the various Peace Conferences of Brussels (1848), Paris (1849), Frankfort (1850), and London (1851).

It is perhaps not too much to say that had not the Crimean War broken out in the fifties, the experiment of a conference would have been tried and a permanent court established long before the present generation.

In commenting upon Saint-Pierre's scheme, Cardinal Fleury pleasantly told the author of the *Essay* that "he had forgotten one preliminary article, which was the delegation of missionaries to dispose the hearts of the princes of Europe to submit to such a diet." To which Ladd replied:

> The peace societies must furnish these missionaries, and send them to the princes in monarchial governments, and to the people in mixed and republican governments. Let public opinion be on our side, and missionaries will not be wanting.

And again:

> Before either the President or the Congress of these United States will act on this subject, the sovereign people must act, and before they will act, they must be acted on by the friends of peace; and the subject must be laid before the people, in all parts of our country, as much as it has been in Massachusetts, where there has, probably, been as much said and done on the subject, as in all the other twenty-five states of the Union. When the whole country shall understand the subject as well as the state of Massachusetts, the Congress of the United States will be as favorable to a Congress of Nations as the General Court of Massachusetts; and when the American Government shall take up the subject in earnest, it will begin to be studied and understood by the enlightened nations of Europe.

Mr. Ladd cherished no illusions. He believed that his plan was practical, and believing, likewise, that it was wise and just, he felt that it could wait years, if need be, for its realization, and that repeated failures would not prevent ultimate triumph. For example, after describing various attempts to form a Congress of Nations, especially at Panama, he says:

> The inference to be deduced from this abortive attempt [at Panama] is, that the governments of Christendom are willing to send delegates to any such Congress, whenever it shall be called *by a respectable state*, well established in its own government, if called in a time of peace, to meet at a proper place. That this attempt at a Congress of Nations, or even a dozen more, should prove abortive on account of defects in their machinery or materials, ought not to discourage us, any more than the dozen incipient attempts at a steamboat, which proved abortive for similar reasons, should have discouraged Fulton. Every failure throws new light on this subject, which is founded in the principles of truth and equity. Some monarch, president, or statesman—some moral Fulton, as great in ethics as he was in physics, will yet arise, and complete this great moral machine, so as to make it practically useful, but improvable by coming generations. Before the fame of such a man, your Caesars, Alexanders, and Napoleons will hide their diminished heads, as the twinkling stars of night fade away before the glory of the full-orbed king of day.

When the Conference called by the "respectable state", namely, Russia, shall have become permanent and assemble periodically to correct the inequalities and deficiencies of the law of nations, and when a court of nations composed of judges exists as a permanent institution before which nations appear as suitors, and when mankind, accustomed to these institutions, recognize their importance, the name of William Ladd will undoubtedly figure among the benefactors of his kind.

James Brown Scott,
Director of the Division of International Law.

Washington, D. C.,
February 28, 1916.

THE ORGANIZATION OF INTERNATIONAL JUSTICE*

By James Brown Scott

Some people, indeed many people, will consider a word in behalf of the peaceful settlement of international disputes as out of place during war. Yet a word in behalf of peaceable settlement during war is more needed than in times of peace, and a failure during war to express belief in peaceful settlement is a confession of hopelessness and defeat. It is especially during war, when the brutality and uselessness of mere physical force in the settlement of international disputes is most evident, that the partisans of peaceful settlement should not only raise their voices, but should confer together—in a multitude of counselors there is safety—in order to devise some scheme, if possible, whereby wars which may not be prevented may at least be made of less frequent occurrence. It is at the end of war, when victor and victim have suffered in their persons and property, that they are most likely to listen to the still, small voice of reason unheard or unheeded in the din of arms.

Thus, Grotius, writing in 1625 during the horrors of the Thirty Years' War, confessed his faith in a law governing the conduct of belligerents, and the principles which he gave to the world during this war made their way after it into the practice of nations.

And thus, after the horrors of the wars of the French Revolution and of the Empire, victors and victim formed themselves into a league of nations to maintain and to enforce peace, which failed because physical force cannot be, at least never has been, safely entrusted to nations to be used against their fellow-members of the society of nations. That is to say, the wars of the Revolution and of the Empire had created a desire for peace and its maintenance, and the Holy Alliance (for this is the name of that league of nations)

* Reprinted from the *Advocate of Peace*, January, 1917, vol. 79, page 10. An address, as revised and enlarged, delivered before the Conference of Peace Workers, New York City, October 26, 1916.

is worthy of consideration, although we must regard the work of its hands as faulty.*

The great war of 1914, which is slowly running its course, will one day end, and, just as in times past nations have met in conference at the conclusion of war, so they will again meet in conference at the conclusion of the war of 1914. Because of this, it seems to be of more than passing interest for the friends of peace to confer one with another, to devise a plan more modest, it may be, than many would like, but perhaps, for that very reason, more possible of attainment; and to endeavor to secure the acceptance of this plan in the hope that the peace which is soon to be declared, for it cannot be much longer delayed, will be less readily broken in the future than in the past.

I would therefore venture to suggest concentration upon a very few points such as the following, in order to reach clear, definite, and acceptable conclusions upon them:

I

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

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

* Phillips' *Confederation of Europe: A Study of the European Alliance, 1813-1823, as an Experiment in the International Organization of Peace* (*1914*).

II

To advocate a stated meeting of The Hague Peace Conference which, thus meeting at regular, stated periods, will become a recommending if not a law-making body.

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

III

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

The American delegation to the Second Hague Peace Conference was thus instructed by the great and wise statesman, then Secretary of State:

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

* *Foreign Relations of the United States*, 1907, pt. 2, p. 1130; *Instructions to the American Delegates to The Hague Peace Conferences and Their Official Reports*, New York, Oxford University Press, 1916, p. 72.

Mr. Root then went on to say:

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

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

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

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

"Finally, the Conference recommends to the Powers the assembly of a Third Peace Conference, which might be held within a period corresponding to that which has elapsed since the preceding Conference, at a date to be fixed by common agreement between the Powers, and it calls their attention to the necessity of preparing the program of this Third Conference a sufficient time in advance to ensure its deliberations being conducted with the necessary authority and expedition.

* *Foreign Relations*, 1907, pt. 2, pp. 1130-1; *Instructions to the American Delegates*, pp. 72-3.

"In order to attain this object the Conference considers that it would be very desirable that, some two years before the probable date of the meeting, a preparatory committee should be charged by the Governments with the task of collecting the various proposals to be submitted to the Conference, of ascertaining what subjects are ripe for embodiment in an international regulation, and of preparing a program which the Governments should decide upon in sufficient time to enable it to be carefully examined by the countries interested. This committee should further be entrusted with the task of proposing a system of organization and procedure for the Conference itself." *

IV

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

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

There is, however, a body already in existence at The Hague, similar in all respects to the governing board of the Pan American Union at Washington, which can be used for like purposes if the Governments only become conscious of the existence of this body and of the services which it could render if it were organized and invested

* *Foreign Relations*, 1907, pt. 2, p. 1277; *The Hague Conventions and Declarations*, New York, 1915, Oxford University Press, pp. 29-30.

with certain powers. The body at Washington forming the governing board is composed of the diplomatic representatives of the American Republics accredited to the United States; the body at The Hague is formed of the diplomatic representatives of the Powers accredited to the Netherlands. If they were invited by His Excellency, the Minister of Foreign Affairs of the Netherlands, to meet in conference in the Foreign Office at The Hague, they would naturally meet under his chairmanship, just as the American diplomats meeting in Washington find themselves under the chairmanship of the Secretary of State of the United States. If the Dutch Minister of Foreign Affairs would suggest to them in conference that they should be authorized by their respective governments to meet, either in the Foreign Office or the Peace Palace at The Hague at regular intervals between the Conferences, to be determined by themselves or their countries, they would, by the mere fact of this association, form a governing board in which all nations would of right be represented which cared to maintain diplomatic agents at The Hague. By the mere fact of this association they would also, even without express authority, gradually and insensibly assume the duty of procuring the ratification of the Conventions and Declarations of the Conference and of calling the attention of the Powers represented at The Hague to the Conventions and Declarations, and in case of need to their provisions, in order that they might be observed.

It is only necessary for the nations to confess in public what they admit in private, that the interest of all is superior to the interest of any one, and that the general interest can best be promoted by the action of all met together for that purpose, instead of limited groups working often at cross purposes.

The first step toward this consummation devoutly to be wished has already been taken. Twenty-six nations at the First and forty-four nations at the Second Hague Peace Conference recognized in the preamble to the Convention for the Pacific Settlement of International Disputes "the solidarity which unites the members of the society of civilized nations." They considered it expedient to extend "the empire of law" and to strengthen "the appreciation of international justice" and "to record in an international agreement the principles of equity and right on which are based the security of States and the

welfare of peoples." They therefore created the so-called Permanent Court of Arbitration, " accessible to all " and " in the midst of the independent Powers," to extend the empire of law and to strengthen the appreciation of international justice, upon which the security of States and the welfare of peoples are based.

They thus recognized in the First and solemnly confirmed in the Second Conference the universal need of principles of equity and right to all nations, and, recognizing this need, they created an organization by availing themselves of the diplomatic agents accredited to The Hague to give effect to the principles of law and equity upon which their security as States and the welfare of their peoples depended. Thus the twenty-six nations said in 1899, and thus the forty-four nations restated it in 1907, in the Convention for the Pacific Settlement of International Disputes:

" A Permanent Administrative Council, composed of the diplomatic representatives of the signatory Powers accredited to The Hague and of the Netherland Minister for Foreign Affairs, who will act as president, shall be instituted in this town as soon as possible after the ratification of the present Act by at least nine Powers.

" This Council will be charged with the establishment and organization of the International Bureau [of the Permanent Court of Arbitration], which will be under its direction and control.

" It will notify to the Powers the constitution of the Court, and will provide for its installation.

" It will settle its rules of procedure and all other necessary regulations.

" It will decide all questions of administration which may arise with regard to the operations of the Court.

" It will have entire control over the appointment, suspension, or dismissal of the officials and employers of the Bureau.

" It will fix the payments and salaries, and control the general expenditure.

" At meetings duly summoned the presence of five members is sufficient to render valid the discussions of the Council. The decisions are taken by a majority of votes.

" The Council communicates to the signatory Powers without delay the regulations adopted by it. It furnishes them with an

annual report on the labors of the Court, the working of the administration, and the expenses." *

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

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

The appointment of such a committee for limited and specific purposes is highly desirable, if other and better methods are not devised and preferred, and it is not without a precedent in its behalf and favor. Under the 9th of the Articles of Confederation the Congress appointed "a committee of the States," composed of one delegate from each of the thirteen States, to sit during the recess of the Congress, then a diplomatic, not a parliamentary body, to look after the interests of the States as a whole and to exercise some, but not all, of the powers delegated to the Congress by the States, which in the 2d of the Articles had declared themselves to be sovereign, free, and independent. It is important to note that in the Articles

* *Foreign Relations,* 1899, p. 526; *Hague Conventions,* pp. 62-3.

of Confederation we are dealing with Sovereign States and to bear in mind that Sovereignty is not lessened by its mere exercise, because after as before the Articles the States were sovereign. What thirteen sovereign, free, and independent States have done, forty-four sovereign, free, and independent States may do, if they only can be made to feel and to see the consequences of this simple step in international development and supervision.

If the Conference in its wisdom should accept Mr. Root's proposal, it could utilize for this purpose the governing board already in existence, namely, the administrative council of the so-called Permanent Court of Arbitration at The Hague, or, if it should prefer a smaller committee, it could designate the members subject to the approval of the Powers represented in the Conference; or it might make even a more modest, and indeed the most modest, recommendation to accomplish the same result, namely, the suggestion that the diplomatic agents of the Powers accredited at The Hague should form from their number an executive committee, charged with the duties of an international committee between the Conferences, to report to the diplomatic corps at regular intervals, so that all countries believing and taking part in The Hague Conferences would be promptly informed of the action taken by their duly accredited representatives.

Let me quote in this connection the following paragraph from a work on The Hague Conferences, in which I ventured to point out the advantage of a committee between the Conferences, the nature of the committee, and the services which it could render to the society of nations:

"It may well be that the preparatory committee mentioned by the recommendation for a Third Conference, 'charged by the Governments with the task of collecting the various proposals to be submitted to the Conference, of ascertaining what subjects are ripe for embodiment in an international regulation,' will develop into a standing committee entrusted with international interests between the various Conferences. Especially would this be so if the committee were appointed by the Conference, instead of being selected by agreement of the Powers some time before the calling of the future Conference. It would not be an executive; it would not be a Government; it would, however, as a committee,

represent international interests during the periods between the Conferences." *

V

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

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

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

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

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

"5. Every nation entitled to a right by the law of nations is entitled to have that right respected and protected by all other nations, for right and duty are correlative, and the right of one is

* *The Hague Peace Conferences of 1899 and 1907*, vol. 1, p. 751.

the duty of all to observe. (United States *vs.* Arjona, 120 U. S., 479, 487.)

"6. International law is at one and the same time both national and international: national in the sense that it is the law of the land and applicable as such to the decision of all questions involving its principles; international in the sense that it is the law of the society of nations, and applicable as such to all questions between and among the members of the society of nations involving its principles." (Buvot *vs.* Barbuit, Cases Tempore Talbot, 281; Triquet *vs.* Bath, 3 Burrow, 1478; Heathfield *vs.* Chilton, 4 Burrow, 2015; The Paquete Habana, 175 U. S., 677, 700.)*

VI

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

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

The Powers might agree to establish an international commission as it is proposed to establish an international court, to be composed of a limited number of members appointed for a period of years, to which perhaps a representative of each of the countries in controversy might be added, in order that the views of the respective Governments should be made known and be carefully considered by

* For preamble and official commentary on this declaration, see Appendix, page 85.

those members of the commission strangers to the dispute. In this case there would be a permanent nucleus, and the powers at odds would not be obliged to agree upon the members of the commission, but only to appoint, each for itself, a national member. In this way the dispute could be submitted to the commission before it had become acute and had embittered the relations of the countries in question.

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

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

VII

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

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

The offer of good offices is a word of advice, it is not an award or

a decision. Mediation goes a step further, as the nation proposing it offers to co-operate with the parties in effecting a settlement. The agreement to ask and to offer good offices and mediation is qualified by the expression " as far as circumstances will allow." It is therefore highly desirable that frequent resort be made to good offices and mediation, in order that the nations may learn from experience that circumstances allow the offer and the acceptance of good offices and mediation without danger to either and with satisfaction to both.

Friendly composition is more than good offices or mediation, and may be less than arbitration. It is not limited to advice, and it is not restricted to co-operation; it is the settlement of a difference not necessarily upon the basis of law, but rather according to the judgment of a high-minded and conscientious person possessing in advance the confidence of both parties to the dispute and deserving it by his adjustment of the dispute. It may be a settlement in the nature of a compromise; it may be an adjustment according to the principles of fair dealing; it may be a bargain according to the principles of give and take. This remedy has been found useful in the past, and it can be of service in the future, where it is more to the advantage of nations to have a dispute adjusted than to have it determined in any particular way.

VIII

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

The arbiter is not, as is the friendly composer, a free agent in the sense that he may render an award in accordance with his individual sense of right or wrong, for, as the First Hague Peace Conference said in its Pacific Settlement Convention, " international arbitration has for its object the settlement of differences between States by judges of their own choice, and on the basis of respect for law." Even if law is not absolutely binding it cannot be arbi-

trarily rejected; it must be respected, and the sentence, if it be not just in the sense that it is based upon law, it must be equitable in the sense that it is based upon the spirit of the law as distinct from the letter.

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

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

The reasons for a resort to arbitration, even although an International Court of Justice be established and ready to receive and to decide the case, have never been better put than by Mr. Léon Bourgeois in advocating the retention of the so-called Permanent

Court of Arbitration and of creating alongside of it a permanent court composed of professional judges, which was proposed at the Second Hague Conference of 1907 and adopted in principle:

"If there are at present no judges at The Hague, it is because the Conference of 1899, taking into consideration the whole field open to arbitration, intended to leave to the parties the duty of choosing their judges, which choice is essential in all cases of peculiar gravity. We should not like to see the court created in 1899 lose its essentially arbitral character, and we intend to preserve this freedom in the choice of judges in all cases where no other rule is provided.

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

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

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

* *The Reports to the Hague Conferences,* Oxford, 1916, Clarendon Press, p. 233.

IX

To insist upon the negotiation of a convention creating a judicial union of the nations along the lines of the Universal Postal Union of 1908, to which all civilized nations and self-governing dominions are parties, pledging the good faith of the contracting parties to submit their justiciable disputes, that is to say, their differences involving law or equity, to a permanent court of this union, whose decisions will bind not only the litigating nations, but also all parties to its creation.

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

1. The Supreme Court determines for itself the question of jurisdiction, receiving the case if it finds that States are parties and if, as presented, it involves questions of law or of equity. (Rhode Island *vs.* Massachusetts, 12 Peters, 655, decided by Mr. Justice Baldwin.

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

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

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

5. In the exercise of its jurisdiction the Supreme Court does not compel the presence of the defendant State (Massachustts *vs.* Rhode Island, 12 Peters, 755, decided by Mr. Justice Thompson), nor does

it execute by force its judgment against a defendant State (Kentucky *vs.* Dennison, 24 Howard, 66, decided by Mr. Chief Justice Taney).

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

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

In the Universal Postal Union, which has been mentioned as the prototype of a judicial union, all the civilized nations of the world and self-governing dominions have bound themselves to submit to arbitration their disputes concerning the interpretation of the Convention as well as their disputes arising under it, by a commission of three arbiters, of whom one is to be appointed by each of the disputants and the third in case of need by the arbiters themselves. What the nations have agreed to do *after* they can do *before* the outbreak of a dispute, for the appointment in this case is a matter of time, not of principle. Should they create a judicial union, and at the time of its formation install a permanent tribunal composed of a limited number of judges, the society of nations would find itself possessed of a court of justice composed in advance of the disputes, ready to assume jurisdiction of them whenever they should arise, without the necessity of creating the court, appointing its members, agreeing upon the question to be litigated, and in many, if not in most, instances upon the procedure to be followed. As in the case of the Supreme Court, which has been suggested as the prototype of an international tribunal, there would be no need of a treaty of arbitration or of a special agreement in addition to the Convention creating the court and authorizing it to receive and decide justiciable disputes submitted by the contracting parties. The plaintiff State could set the court in motion upon its own initiative, without calling to its aid the members of the Union, just as each member

of the American Union can file its bill in the Supreme Court without the aid, and indeed without the knowledge, of the other States of the American judicial Union.

I would especially dwell upon the fact that sovereignty is not necessarily involved in the formation of a judicial union, in the appointment of the judges, or in the operation of the judicial tribunal, because in the Universal Postal Union self-governing dominions are parties, which could not be the case if sovereignty were requisite as they are not, although they may one day be sovereign. The experience of the Supreme Court of the United States shows that justice and its administration are the bulwarks of the States against aggression from without as well as from within.

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

If the sheriff is needed, or if some form of compulsion is found advisable in order to procure the presence of the defendant State before the international tribunal, and to execute the judgment thereof when rendered, it is, as it seems to me, the part of wisdom to allow the experience of nations to determine when and how the force shall be created and under what circumstances and conditions it is to be applied. If we unduly complicate the problem by insisting that the international court shall be, in its beginning, more perfect than is the Supreme Court of the United States after a century and more of successful operation, we run the risk of sacrificing the bone

to the shadow, to use the very familiar illustration as old as Æsop, whose day as a prophet is not yet run.

The advocates of an International Court have for the most part laid undue and unbecoming stress, as it seems to me, upon the appearance before the court of the defendant State and upon the execution of the judgment of the court, which they would have us think can only be reached and rendered in the presence and with the co-operation of the defendant.

Perhaps the clearest and fullest statement of this view which, if not the earliest in point of time, is assuredly the most altruistic in conception, the most balanced in detail, and the most thorough in operation, and as superior to its meagre predecessors and to its numerous progeny as its author was and is to the generality of mankind, is to be found in Penn's Essay toward the Present and Future Peace of Europe. In this project, published as long ago as 1693, the good Quaker advocated a diet or parliament to meet annually, or every second or third year, in which the sovereign princes of Europe were to be represented in proportion to their property, and "before which sovereign assembly should be brought all differences depending between one sovereign and another, that cannot be made up by private embassies, before the sessions begin." The assembly is thus, as Penn properly says, sovereign, and it was to decide as a sovereign differences between and among the sovereign princes of Europe who, in the language of the present day, would be called the contracting parties. As sovereign the assembly was to hale before it the parties in controversy and to adjudge the dispute; if they refused to submit the difference, or delayed to do so beyond the day fixed by the assembly, the submission was to be enforced by the mailed fist; or if they submitted the difference, but failed to comply with the judgment of the assembly, the signatory sovereigns were to secure compliance by physical force.

If, notwithstanding the agreement to abide by the judgment of the assembly, the disputants preferred to "seek their remedy by arms," the other sovereign princes making common cause against the peace breakers, were to bring them to reason by physical force.

But to quote Penn, instead of paraphrasing his language:

"If any of the Sovereignties that constitute these imperial States, shall refuse to submit their claim or pretensions to them, or to abide

and perform the judgment thereof, and seek their remedy by arms, or delay their compliance beyond the time prefixed in their resolutions, all the other Sovereignties, united as one strength, shall compel the submission and performance of the sentence, with damages to the suffering party, and charges to the Sovereignties that obligated their submission."

Two centuries and more have passed since the publication of Penn's Essay, and the plan is still a project. In the meantime the founders of the American Republic have approached the problem of International Justice and its administration from the standpoint of the possible, and have realized in practice the ideal of the high-minded and generous theorist. The statesmen of the American Revolution knew that their States would not agree to the use of physical force against themselves, even if they should propose it. They had seen negotiations fail, and between the breakdown of diplomacy on the one hand and the resort to arms on the other, these same statesmen inserted the resort to a court of justice for the trial of justiciable disputes between their States. They created a Supreme Court for the thirteen States and such others as should be added to the judicial union, and invested it with the jurisdiction of all cases in law or equity between the States, which considered themselves as sovereign for the purposes of justice. They felt that, if there were an agency at hand and of their own creation to pass upon the question of right and wrong, justice would in the end prevail, whether the defendant State appeared to litigate the case, or whether the judgment rendered in its presence or absence were executed by the losing State. They appreciated rightly the influence of public opinion, they recognized that public opinion often succeeds where force would fail, and the appeal to "a decent respect to the opinions of mankind," proclaimed in their Declaration of Independence, has not been in vain.

The founders of the Republic and the Fathers of the Constitution knew also that everybody's business is nobody's concern, and instead of pledging the States "united as one strength," to use the language of Penn, to proceed against a non-appearing defendant State, they authorized and empowered the State with a grievance sounding in law or in equity to file its bill in the Supreme Court against the defendant State, and in its absence, if it failed to appear, to proceed to

trial. The case was thus brought to judgment notwithstanding the default of the defendant. Force is thus not needed to obtain a judgment based upon justice, and the experience of the Supreme Court in threescore suits and more between the States shows that compliance with a judgment based upon justice follows without a resort to force. Nay more, the Government of the United States, "united as one strength," does not consider itself above justice; it has filed its bill in the Supreme Court against a State of the judicial Union, and it has both sought and obtained justice at the hands of the Supreme Court against a State of the Union, which was once in all respects and considers itself for the purposes of justice still to be a sovereign State. In this interesting case, the United States claimed ownership of a portion of territory likewise claimed by Texas, and which figured as Greer county on maps of that State. Availing itself of the clause of the Constitution extending the judicial power "to controversies between two or more States," and vesting the Supreme Court with original jurisdiction "in all cases * * * in which a State shall be a party," the United States filed its bill asking "a decree determining the true line between the United States and the State of Texas;" asking "whether the land constituting what is called 'Greer County' is within the boundary and jurisdiction of the United States or of the State of Texas;" and asking finally that "its rights, as asserted in the bill, be established, and that it have such other relief as the nature of the case may require" (United States *vs.* Texas, 1891, 143 U. S. Reports, 621).

The framers of the Articles of Confederation gave the Congress the power to fix the quotas of revenue needed for general purposes; the individual States failed to honor the requisitions, and the Confederacy was on the verge of bankruptcy. In the Constitutional Convention of 1787, called to amend the Articles of Confederation and to make them adequate to the needs of the States, it was proposed to grant the general Government the right and the power to coerce the States in such cases. The proposal was indignantly rejected, but by a very simple device the end was attained by peaceable means. The general Government was given the right to levy the tax on the people and to collect it, if necessary, by suit in court without a resort to the State or its good offices with the citizen. In like manner, without the power of coercion, justice is done be-

tween the plaintiff and defendant State by authorizing the plaintiff State to set the Supreme Court in motion without the aid of the other States, indeed, as I have said, without their knowledge, and a judgment is rendered in due course in the presence or absence of the defendant State.

In the plan of the Virginia delegation, laid before the Constitutional Convention by Edmund Randolph of Virginia on May 29th, the last clause of the sixth resolution authorized the national legislature "to call forth the force of the Union agst. any member of the Union failing to fulfill its duty under the articles thereof," * a proposition likewise contained in the New Jersey plan, introduced on June 15th by William Patterson of New Jersey, authorizing the Federal Executive "to call forth ye power of the Confederated States, or so much thereof as may be necessary to enforce and compel an obedience to such acts, or an observance of such treaties." †

A very little experience of the temper of the Convention convinced Madison of the impracticability of this provision, author though he was of the Virginian plan, so that on May 31st, but two days after the introduction of the resolutions, he changed his mind, as appears from the following extract from the debates:

"The last clause of Resolution 6 authorizing the exertion of the force of the whole agst. a delinquent State came next into consideration.

"Mr. Madison observed that the more he reflected on the use of force, the more he doubted the practicability, the justice and efficacy of it when applied to people collectively and not individually,—a Union of the States containing such an ingredient seemed to provide for its own destruction. The use of force agst. a State, would look more like a declaration of war, than an infliction of punishment, and would probably be considered by the party attacked as a dissolution of all previous compacts by which it might be bound. He hoped that such a system would be framed as might render this recourse unnecessary, and moved that the clause be postponed." ‡

* Hunt's edition of *Madison's Journal of Debates in the Constitutional Convention of 1787*, vol. 1, p. 16; Farrand's *Records of the Federal Convention of 1787*, vol. 1, p. 21.

† Hunt, vol. 1, p. 142; Farrand, vol. 1, p. 245.

‡ Hunt, vol. 1, pp. 47-8; Farrand, vol. 1, p. 54.

Mr. Madison informs us that "this motion was agreed to nem. con." It does not figure in the Constitution for the reasons disclosed and set forth in the debates.

A few days later, to be specific, on June 8th, Mr. Madison recurred to the subject and confirmed his recantation of the use of force against a State. Thus:

"Could the national resources, if exerted to the utmost enforce a national decree agst. Massts. abetted perhaps by several of her neighbours? It wd. not be possible. A small proportion of the Community in a compact situation, acting on the defensive, and at one of its extremities might at any time bid defiance to the National authority. Any Govt. for the U. States formed on the supposed practicability of using force agst. the unconstitutional proceedings of the States, wd. prove as visionary and fallacious as the Govt. of Congs." *

The views thus expressed by Madison survived the Convention in which they were formed and stated, as appears from the following extract from a letter dated October 24, 1787, written after its adjournment to his friend Jefferson:

"A *voluntary* observance of the Federal law by all the members could never be hoped for. A *compulsive* one could evidently never be reduced to practice, and if it could, involved equal calamities to the innocent & the guilty, the necessity of a military force both obnoxious & dangerous, and in general a scene resembling much more a civil war than the administration of a regular Government.

"Hence was embraced the alternative of a Government which instead of operating, on the States, should operate without their intervention on the individuals composing them; and hence the change in the principle and proportion of representation." †

So much for the Father of the Constitution. Next as to its classic expounder. In introducing on June 18th his plan of a national and highly centralized form of government, Alexander Hamilton enumerated "the great and essential principles necessary for the support of Government." Among these "great and essential principles" he mentioned force, of which he said: ‡

* Hunt, vol. 1, p. 102; Farrand, vol. 1, pp. 164-5.

† Hunt's *Writings of James Madison,* vol. 5, p. 19; Farrand, vol. 3, pp. 131-2.

‡ There is no doubt that Madison accurately reported Hamilton's views and language, for as Mr. Hunt says in a note to his edition of *Madison's Journal:*

"*Force* by which may be undestood a *coertion of laws* or *coertion of arms.* Congs. have not the former except in few cases. In particular States, this coercion is nearly sufficient; tho' he held it in most cases, not entirely so. A certain portion of military force is absolutely necessary in large communities. Massts. is now feeling this necessity & making provision for it. But how can this force be exerted on the States collectively. It is impossible. It amounts to a war between the parties. Foreign powers also will not be idle spectators. They will interpose, the confusion will increase, and a dissolution of the Union ensue." *

Hamilton, as in the case of Madison, clung to the views which he had expressed in Convention, and expressed them with peculiar and convincing force in the *Federalist*, written to justify the Constitution, which is, as is well known, the joint product of the minds and hands of Hamilton, Madison and Jay. In the following passage from the *Federalist*, Hamilton thus pays his respects to force:

"Whoever considers the populousness and strength of several of these States singly at the present juncture, and looks forward to what they will become, even at the distance of half a century, will at once dismiss as idle and visionary any scheme which aims at regulating their movements by laws to operate upon them in their collective capacities, and to be executed by a coercion applicable to them in the same capacities. A project of this kind is little less romantic than the monster-taming spirit which is attributed to the fabulous heroes and demi-gods of antiquity.

"Hamilton happened to call upon Madison while the latter was putting the last touches to this speech and 'acknowledged its fidelity, without suggesting more than a few verbal alterations, which were made' (Cf. *Madison's Writings,* vol. 2)"; Hunt, vol. 1, note 1, p. 152.

In the notes for his speech (I Farrand, p. 306), are the following headings under section 5:

Force of two kinds:
Coertion of laws; *coertion* of arms.
First does *not exist,* and the last *useless.*
Attempt to *use it* a war between the States.
Foreign aid.

Madison's account of Hamilton's speech on the question of coercion is also borne out by the notes of Rufus King, like Madison and Hamilton, a member of the Convention. Under the caption "Force," Mr. King makes Hamilton say:

"The Force of law or the strength of Arms—the former is inefficient unless the people have the habits of obedience—in this case you must have Arms—if this doctrine is applied to States—the system is Utopian—you could not coerce Virginia" (I Farrand, p. 302).

* Hunt's edition of *Madison's Journal,* vol. 1, pp. 154-5; Farrand's *Records of the Federal Convention,* vol. 1, pp. 284-5.

"Even in those confederacies which have been composed of members smaller than many of our counties, the principle of legislation for sovereign States, supported by military coercion, has never been found effectual. It has rarely been attempted to be employed but against the weaker members; and in most instances attempts to coerce the refractory and disobedient have been the signals of bloody wars, in which one half of the confederacy has displayed its banners against the other half." *

And on a third occasion, when converting to the proposed Constitution a hostile majority of the New York Convention by force of argument, not by force of arms, Hamilton restated his views on this interesting subject. In the first place, he declared it impossible to coerce States. Thus:

"If you make requisitions, and they are not complied with, what is to be done? It has been observed, to coerce the States is one of the maddest projects that was ever devised. A failure of compliance will never be confined to a single State. This being the case, can we suppose it wise to hazard a civil war?" †

In the next place, he expressed the opinion that the States themselves would not agree to coerce others. Thus:

"But can we believe that one State will ever suffer itself to be used as an instrument of coercion? The thing is a dream. It is impossible." ‡

To the same effect is the language of George Mason, the bitterest opponent of the Constitution, as Messrs. Madison and Hamilton were its strongest advocates. On the matter of force, the opponents and the advocate agreed. Thus, Mr. Mason said on June 20th:

"It was acknowledged by Mr. Patterson that his plan could not be enforced without military coercion. Does he consider the force of this concession? The most jarring elements of nature; fire & water themselves are not more incompatible that [than] such a mixture of civil liberty and military execution. Will the militia march from one State to another, in order to collect the arrears of taxes from the delinquent members of the Republic? Will they maintain an army for this purpose? Will not the citizens of the invaded State

* *The Federalist*, Ford's edition, 1898, pp. 99-100.

† Elliot's *Debates in the State Conventions on the Adoption of the Federal Constitution*, vol. 2, pp. 232-3.

‡ Ibid., p. 233.

assist one another till they rise as one Man, and shake off the Union altogether? Rebellion is the only case in which the military force of the State can be properly exerted agst. its Citizens." *

Finally, lest the views of the statesmen of the Revolution, the founders of the Republic, and the framers of the Constitution, become wearisome, I make but one further quotation. In advocating the ratification of the Constitution by the Connecticut Convention, Oliver Ellsworth, with that fine poise and balance of mind characteristic of the Senator and of the Chief Justice of the Supreme Court of the United States, pointed out that nothing would prevent the States from falling out if they so desired, saying on this point:

"If the United States and the individual States will quarrel, if they want to fight, they may do it, and no frame of government can possibly prevent it." †

In advocating the need of a coercive principle, he said:

"We all see and feel this necessity. The only question is, Shall it be a coercion of law, or a coercion of arms? There is no other possible alternative. Where will those who oppose a coercion of law come out? Where will they end? A necessary consequence of their principles is a war of the States one against the other. I am for coercion by law—that coercion which acts only upon delinquent individuals. This Constitution does not attempt to coerce sovereign bodies, States, in their political capacity. No coercion is applicable to such bodies, but that of an armed force. If we should attempt to execute the laws of the Union by sending an armed force against a delinquent State, it would involve the good and bad, the innocent and guilty, in the same calamity."

In these various extracts it is to be observed that the issue is drawn by our ancestors between the coercion of law and the coercion of armed force, and today, as then, the issue is still between law and armed force. They chose, and wisely, a Supreme Court, in which law should be administered, and they left the appearance

* Hunt, vol. 1, pp. 194-5; Farrand, vol. 1, pp. 339-40. Madison's account of Mr. Mason's views on coercing a State is confirmed by the following note of Rufus King:

"The Genl. from N. Jersey proposed a military force to carry Requisitions into Execution. This never can be accomplished. You can no more unite opposite Elements, than you can mingle Fire with Water—military coercion wd. punish the innocent with the guilty; therefore unjust" (Farrand, vol. 1, p. 349).

† Elliot's *Debates,* vol. 2, pp. 196-7; Farrand's *Records of the Federal Convention,* vol. 3, p. 241.

of the defendant State and the execution of the judgment to an enlightened and irresistible public opinion, or, as they expressed it in the Declaration of Independence, to " a decent respect to the opinions of mankind."

Nothing truer has ever been said than Oliver Ellsworth's simple observation, confirmed by the experience of independent or federated States of the Old as well as of the New World, that if they want to quarrel and if they want to fight " they may do it, and no form of government," and may I add no form of treaty creating a league, alliance or coalition, " can possibly prevent it." A wise and far-seeing statesman of our own day, fit company for Ellsworth and his associates, has stated this simple truth in a more elaborate and analytical form.

" There are," as Secretary of State Root said in laying the corner-stone of the building for the International Bureau of the American Republics, " no international controversies so serious that they cannot be settled peacefully if both parties really desire peaceable settlement, while there are few causes of dispute so trifling that they cannot be made the occasion of war if either party really desires war. The matters in dispute between nations are nothing; the spirit which deals with them is everything." *

We must endeavor to put the new spirit into the old institutions, even although in so doing the new wine may destroy some of the bottles. We must rear our international structure upon the good faith of nations, for, if they do not keep the given word, treaties and conventions are but worthless things. We must offer every inducement to good faith and, as an indication of good faith on our part, we should not ask nations to enter into treaties which we ourselves may not keep and which we should know cannot be kept by them; because the failure to observe a solemn compact not only questions the good faith of the contracting parties at the moment of undertaking the obligation, but weakens the force even of those treaties which we can reasonably expect to be observed. We should not in this matter take counsel of despair and refuse to enter into treaties, but of experience, and knowing the temper of sovereign States, seek only at any given time to conclude agreements which past experience leads us to believe will be observed, and we must seriously set about

* *American Journal of International Law*, vol. 2, p. 624 (1908).

the delicate, difficult, and time-consuming task of transferring the standard of conduct from individuals to States, in order that agreements which today seem to be impossible may on some distant morrow become possible of observance. We must remember, as President Roosevelt has, both in and out of office, repeatedly pointed out, that there is not and that there cannot be a difference between public and private morality, and just as he bent the corporation to the standard of conduct of the individual, so must we manfully endeavor to create an irresistible public opinion, which will compel the conduct of nations to square with their professions and to test both by the standard of conduct of the individual. As a step to this goal, which we should always have in view, I would suggest that we conclude treaties of a novel or far-reaching kind for a short period—five years, for example—in order that, as the result of experience, nations can refuse to continue an obligation which they find burdensome or unacceptable, without sacrificing the foundation of good faith upon which all must in the end depend. In the light of experience nations can then determine whether it is consistent with their interests, of which they must be the judges, that the treaty be continued or that it be discontinued. We should not, however, refuse to contract because sometimes good faith is not kept, but growing wiser by the experience of the past, not to speak of the present day, we should be more solicitous in the future to conclude only agreements which experience has shown or shows can be and which therefore will be observed.

We must act as men of affairs in basing our actions upon the probable, not upon the possible, for a public opinion can rarely be created for the latter, and it can only be developed for the former as the result of much wisdom, prudence, and well-directed effort.

The action of the Senate, in the exercise of its constitutional treaty-making power, upon the treaties of 1911 between the United States on the one hand, and France and Great Britain on the other, providing for unlimited arbitration, is an example of an unsuccessful attempt to commit the Government to a course of conduct which lacked the support of public opinion and in behalf of which course of conduct public opinion could not be created.

If States claiming to be sovereign spurned coercion, nations actually sovereign are not likely to accept coercion. Personally, I prefer

the Supreme Court of the Fathers of the Constitution, with all its imperfections, to the project of Penn armed with force from head to foot, and I believe that the statesmen of the future, like the statesmen of the past, will prefer to proceed from the known to the unknown just as the patriots of the Revolution proceeded from the Privy Council of the Colonies to the Supreme Court of the States.

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

We should not forget in our eagerness to have justice as administered by the Supreme Court enter into and control the practice of nations, that the principle with which we are so familiar is unknown in other countries where courts of justice pass only upon suits between private suitors, and do not pass upon the sovereign powers of States. We must not ask too much at once. We should rather endeavor to inform public opinion in foreign countries and to enlist it in behalf of the judicial settlement of disputes between States. We ourselves should not interpose requirements of a kind to delay the acceptance of the principle which we advocate and the practice for which we contend. This has never been more clearly pointed out than by Mr. Root in the following passage:

"I assume that you are going to urge that disputes between nations shall be settled by judges acting under the judicial sense of honorable obligation, with a judicial idea of impartiality, rather than by diplomats acting under the diplomatic ideas of honorable obligation and feeling bound to negotiate a settlement rather than to pass without fear or favor upon questions of fact and law.

"It seems to me that such a change in the fundamental idea of what an arbitration should be is essential to any very great further extension of the idea of arbitration. I have been much surprised, however, to see how many people there are of ability and force who do not agree with this idea at all, particularly people on the other side of the Atlantic. The extraordinary scope of judicial power in this country has accustomed us to see the operations of government and questions arising between sovereign States submitted to judges who apply the test of conformity to established principles and rules of conduct embodied in our constitutions.

"It seems natural and proper to us that the conduct of government affecting substantial rights, and not depending upon questions of policy, should be passed upon by the courts when occasion arises. It is easy, therefore, for Americans to grasp the idea that the same method of settlement should be applied to questions growing out of the conduct of nations and not involving questions of policy.

"In countries, however, where the courts exercise no such power, the idea is quite a new one to most people, and if it is to prevail, there must be a process of education." *

X

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

If for physical force we would substitute justice, we must create a public opinion in favor of justice, as we must create a public opinion in behalf of any and every reform which we hope to see triumph. The more difficult the problem, the greater the need that we set about it, and the sooner we begin the better it will be for the cause which we champion. There are many who advocate short-cuts to international justice, and therefore to international peace, just as there are many who advocate short-cuts to knowledge; but the pithy reply of Pythagoras to his royal but backward pupil is as true today as it was when uttered centuries ago, that there is no royal road to learning. To change the standard of conduct, and as a preliminary to this to change the standard of thought, is indeed a difficult task; but if mankind is to prefer the test of justice to the test of force, we must educate mankind to a belief in justice. If we succeed, justice will prevail between nations as between men; if we fail, justice may partially prevail between men, as it largely does today, but not between and among the nations. The problem before us is therefore one of education from a false to a true and ennobling standard. If public opinion can be educated in one country, as, for instance, in the United States, it can be educated in other countries, and we can

* Root's *Addresses on International Subjects*, pp. 151-2.

confidently look forward to a public opinion in all countries—universal, international, and as insistent as it is universal and international. A mere statute, we know by a sad experience, will not make men virtuous, and a mere treaty—for a treaty is an international statute—will not make the nations virtuous. We have failed in the one, and we are doomed to failure in the other attempt, for nations, composed of these very men and women, are not to be reformed by statute any more than the men and women composing them. Without public opinion the statute—national or international—is a dead letter; with public opinion the statute—national or international—is a living force. With public opinion all things are possible; without public opinion we may hope to do nothing. Were Archimedes living today, and if he were speaking of things international, he would declare public opinion the lever that moves the world.

In speaking of public opinion, Mr. Root, whom I have so often quoted, has said:

"There is but one power on earth that can preserve the law for the protection of the poor, the weak, and the humble; there is but one power on earth that can preserve the law for the maintenance of civilization and humanity, and that is the power, the mighty power, of the public opinion of mankind.

"Without it your leagues to enforce peace, your societies for a world's court, your peace conventions, your peace endowments are all powerless, because no force moves in this world until it ultimately has a public opinion behind it.

"The thing that men fear more than they do the sheriff or the policeman or the State's prison is the condemnation of the community in which they live.

"The thing that among nations is the most potent force is the universal condemnation of mankind. And even during this terrible struggle we have seen the nations appealing from day to day, appealing by speech and by pen and by press, for the favorable judgment of mankind, the public opinion of the world. That establishes standards of conduct."

Conclusion.

I have endeavored briefly to lay before you a constructive program upon which we may concentrate our efforts, in the hope that we may

produce some effect upon public opinion, which is today the master of us all. I have confined myself to plans with which you are familiar, and which are familiar to all those interested in international peace. In outlining these measures I have not gone into detail, but have contented myself with a statement of the general principles, in the belief that, if we can catch the eye or the ear of authority, we can safely trust to the wit and wisdom of nations to take the steps necessary to put the project, based upon the general principles, into effect. And we have, in my opinion, a better chance of reaching responsible leaders of thought if we stop with the general principles upon which we can all agree, leaving to them the task, or rather, I should say, the privilege, of working out the details.

But I have said enough on these matters, and I have already trespassed too long upon your indulgence. Let me hold you, however, yet a little while, that I may return to The Hague Conferences with which I started. I am the more inclined further to trespass upon your time, as it is in the interest of a great cause, and because the words which I wish to lay before you are not mine, although I would make them mine if I could by quoting them.

In submitting The Hague Conventions and Declarations of 1907 to the Senate, Mr. Root, then Secretary of State, said:

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

And, still further developing the same thought, the same great statesman said, in an introduction to a collection of the texts of the Peace Conferences at The Hague:

"The question about each international conference is not merely what it has accomplished, but also what it has begun, and what it has moved forward. Not only the conventions signed and ratified, but the steps taken toward conclusions, which may not reach practical and effective form for many years to come, are of value. Some of the resolutions adopted by the last conference do not seem to

* Senate Document No. 444, 60th Congress, 1st session, p. 63.

amount to very much by themselves, but each one marks on some line of progress the farthest point to which the world is yet willing to go. They are like cable ends buoyed in mid-ocean, to be picked up hereafter by some other steamer, spliced, and continued to shore. The greater the reform proposed, the longer must be the process required to bring many nations differing widely in their laws, customs, traditions, interests, prejudices, into agreement. Each necessary step in the process is as useful as the final act which crowns the work and is received with public celebration." *

And, finally, in the following passages, pronounced by the most distinguished of international lawyers to be wisdom incarnate (*la sagesse elle-même*), Mr. Root said in his instructions to the American delegation to the Second Conference:

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

"The immediate results of such a Conference must always be limited to a small part of the field which the more sanguine have hoped to see covered; but each successive Conference will make the

* Scott's *Texts of the Peace Conferences at The Hague*, p. iv.

positions reached in the preceding Conference its point of departure, and will bring to the consideration of further advances toward international agreements opinions affected by the acceptance and application of the previous agreements. Each Conference will inevitably make further progress and, by successive steps, results may be accomplished which have formerly appeared impossible.

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

The irreducible minimum may well be the maximum of achievement at any given time, and in all our meetings, and in all our discussions, we should bear in mind the wise counsel of a great French statesman at the First and Second Hague Peace Conferences that:

"We are here to unite, not to divide."

* *Foreign Relations,* 1907, pt. 2, pp. 1129-30; *Instructions to the American Delegates,* pp. 71-2.

APPENDIX

DECLARATION OF THE RIGHTS AND DUTIES OF NATIONS

Adopted by the American Institute of International Law at its first session in the City of Washington, January 6, 1916

WHEREAS the municipal law of civilized nations recognizes and protects the right to life, the right to liberty, the right to the pursuit of happiness, as added by the Declaration of Independence of the United States of America, the right to legal equality, the right to property, and the right to the enjoyment of the aforesaid rights; and

WHEREAS these fundamental rights, thus universally recognized, create a duty on the part of the peoples of all nations to observe them; and

WHEREAS according to the political philosophy of the Declaration of Independence of the United States, and the universal practice of the American Republics, nations or governments are regarded as created by the people, deriving their just powers from the consent of the governed, and are instituted among men to promote their safety and happiness and to secure to the people the enjoyment of their fundamental rights; and

WHEREAS the nation is a moral or juristic person, the creature of law, and subordinated to law as is the natural person in political society; and

WHEREAS we deem that these fundamental rights can be stated in terms of international law and applied to the relations of the members of the society of nations, one with another, just as they have been applied in the relations of the citizens or subjects of the states forming the society of nations; and

WHEREAS these fundamental rights of national jurisprudence, namely, the right to life, the right to liberty, the right to the pursuit of happiness, the right to equality before the law, the right to property, and the right to the observance thereof are, when stated in terms of international law, the right of the nation to exist and to protect and to conserve its existence; the right of independence and the freedom to develop itself without interference or control from other nations; the right of equality in law and before law; the right to territory within defined boundaries and to exclusive jurisdiction therein; and the right to the observance of these fundamental rights; and

WHEREAS the rights and the duties of nations are, by virtue of membership in the society thereof, to be exercised and performed in accordance with the exigencies of their mutual Interdependence expressed in the preamble to the Convention for the Pacific Settlement of International Disputes of the First and Second Hague Peace Conferences, recognizing the solidarity which unites the members of the society of civilized nations;

THEREFORE, The American Institute of International Law, at its first session, held in the City of Washington, in the United States of America, on the sixth day of January, 1916, adopts the following six articles together with the commentary thereon, to be known as its

Declaration of the Rights and Duties of Nations.

I. Every nation has the right to exist, and to protect and to conserve its existence; but this right neither implies the right nor justifies the act of the state to protect itself or to conserve its existence by the commission of unlawful acts against innocent and unoffending states.

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

III. Every nation is in law and before law the equal of every other nation belonging to the society of nations, and all nations have the right to claim and, according to the Declaration of Independence of the United States, "to assume, among the powers of the earth, the separate and equal station to which the laws of nature and of nature's God entitle them."

IV. Every nation has the right to territory within defined boundaries and to exercise exclusive jurisdiction over its territory, and all persons whether native or foreign found therein.

V. Every nation entitled to a right by the law of nations is entitled to have that right respected and protected by all other nations, for right and duty are correlative, and the right of one is the duty of all to observe.

VI. International law is at one and the same time both national and international: national in the sense that it is the law of the land and applicable as such to the decision of all questions involving its principles; international in the sense that it is the law of the society of nations and applicable as such to all questions between and among the members of the society of nations involving its principles.

Official Commentary upon the Declaration of the Rights and Duties of Nations, adopted January 6, 1916.

I. Every nation has the right to exist, and to protect and to conserve its existence; but this right neither implies the right nor justifies the act of the state to protect itself or to conserve its existence by the commission of unlawful acts against innocent and unoffending states.

This right is to be understood in the sense in which the right to life is understood in national law, according to which it is unlawful for a human being to take human life, unless it be necessary so to do in self-defense against an unlawful attack threatening the life of the party unlawfully attacked.

In the Chinese Exclusion Case (reported in 130 United States Reports, pp. 581, 606), decided by the Supreme Court of the United States in 1888, Mr. Justice Field said for the Court:

> To preserve its independence, and give security against foreign aggression and encroachment, is the highest duty of every nation, and to attain these ends nearly all other considerations are to be subordinated. It matters not in what form such aggression and encroachment come, whether from the foreign nation acting in its national character or from vast hordes of its people crowding in upon us. The government, possessing the powers which are to be exercised for protection and security, is clothed with authority to determine the occasion on which the powers shall be called forth; and its determination, so far as the subjects affected are concerned, are necessarily conclusive upon all its departments and officers.

The right of a state to exist and to protect and to conserve its existence is to be understood in the sense in which the right of an individual to his life was defined, interpreted and applied in terms applicable alike to nations and individuals in the well-known English case of *Regina vs. Dudley* (reported in 15 Cox's Criminal Cases, p. 624; 14 Queen's Bench Division, p. 273), decided by the Queen's Bench Division of the High Court of Justice in 1884, to the effect that it was unlawful for shipwrecked sailors to take the life of one of their number, in order to preserve their own lives, because it was unlawful according to the common law of England for an English subject to take human life, unless to defend himself against an unlawful attack of the assailant threatening the life of the party unlawfully attacked.

The right of a State to exist and to protect and to conserve its existence, as laid down by the Supreme Court of the United States, is

recognized not merely in the United States but in Latin America, as appears from the views of the well-known publicists, Messrs. Bello and Calvo, who may be considered representative of Latin American thought and practice.

Thus Bello, writing in 1832, said:

> There is no doubt that every nation has the right of self-preservation and is entitled to take protective measures against any danger whatsoever; but this danger must be great, manifest and imminent, in order to make it lawful for us to exact by force that another nation alter its institutions for our benefit. (Andrés Bello, *Principios de Derecho de Jentes,* part 1, chap. 1, VII.)

And Calvo, half a century later, said:

> One of the essential rights inherent in the sovereignty and the independence of states is that of self-preservation. This right is the first of all absolute or permanent rights and is the fundamental basis of a great number of accessory, secondary, or occasional rights. We may say that it constitutes the supreme law of nations, as well as the most imperative duty of citizens, and a society that fails to repel aggression from without neglects its moral duties toward its members and fails to live up to the very purpose of its institution. Carlos Calvo, *Le Droit International Théorique et Pratique,* 5th ed., Vol. 1, § 208.)

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

III. Every nation is in law and before law the equal of every other state composing the society of nations, and all nations have the right to claim and, according to the Declaration of Independence of the United States, "to assume, among the powers of the earth, the separate and equal station to which the laws of nature and of nature's God entitle them."

The right to independence and its necessary corollary, equality, is to be understood in the sense in which it was defined in the following passage quoted from the decision of the great English admiralty judge, Sir William Scott, later Lord Stowell, in the case of *The Louis* (reported in 2 Dodson's Reports, pp. 210, 243-44), decided in 1817:

> Two principles of public law are generally recognized as fundamental. One is the perfect equality and entire independence of all

distinct states. Relative magnitude creates no distinction of right; relative imbecility, whether permanent or casual, gives no additional right to the more powerful neighbor; and any advantage seized upon that ground is mere usurpation. This is the great foundation of public law, which it mainly concerns the peace of mankind, both in their politic and private capacities, to preserve inviolate. The second is, that all nations being equal, all have an equal right to the uninterrupted use of the unappropriated parts of the ocean for their navigation. In places where no local authority exists, where the subjects of all states meet upon a footing of entire equality and independence, no one state, or any of its subjects, has a right to assume or exercise authority over the subjects of another.

The right of equality is also to be understood in the sense in which it was stated and illustrated by John Marshall, Chief Justice of the Supreme Court of the United States, who said, in deciding the case of *The Antelope* in 1825 (reported in 10 Wheaton's Reports, pp. 66, 122):

> In this commerce thus sanctioned by universal assent, every nation had an equal right to engage. How is this right to be lost? Each may renounce it for its own people; but can this renunciation affect others?
>
> No principle of general law is more universally acknowledged, than the perfect equality of nations. Russia and Geneva have equal rights. It results from this equality, that no one can rightfully impose a rule on another. Each legislates for itself, but its legislation can operate on itself alone. A right, then, which is vested in all, by the consent of all, can be divested only by consent; and this [slave] trade, in which all have participated, must remain lawful to those who can not be induced to relinquish it. As no nation can prescribe a rule for others, none can make a law of nations; and this traffic remains lawful to those whose governments have not forbidden it.

The right of equality is further to be understood in the sense in which it was expressed and illustrated by Mr. Elihu Root, in the following passage from the address which he delivered, when Secretary of State of the United States, and in the presence of the official delegates of the American Republics accredited to the Third Pan-American Conference held at Rio de Janeiro on July 31, 1906:

> We wish for no victories but those of peace; for no territory except our own; for no sovereignty except the sovereignty over our-

selves. We deem the independence and equal rights of the smallest and weakest member of the family of nations entitled to as much respect as those of the greatest empire, and we deem the observance of that respect the chief guaranty of the weak against the oppression of the strong. We neither claim nor desire any rights, or privileges, or powers that we do not freely concede to every American Republic. We wish to increase our prosperity, to expand our trade, to grow in wealth, in wisdom, and in spirit, but our conception of the true way to accomplish this is not to pull down others and profit by their ruin, but to help all friends to a common prosperity and a common growth, that we may all become greater and stronger together.

It would seem that the measured judgments of Lord Stowell and of Chief Justice Marshall, not to speak of Mr. Root's opinion, given as Secretary of State, are sufficient to establish a principle of international law, and that it is unnecessary to cite other authorities, if the ones already quoted fail to produce conviction. In order to show, however, that independence and equality are the law of the American Continent, the authority of the two great Latin-American publicists may be again invoked.

Thus, Bello says:

> From the independence and the sovereignty of nations it follows that no one nation is permitted to dictate to any other nation the form of government, of religion, or of administration that it must adopt, or to hold it accountable for the relations between its citizens or those between the government and its subjects. (Bello, *Principios de Derecho de Jentes,* part 1, chap. 1, VII.)

> All men being equal, the groups of men composing universal society are equal. The weakest republic enjoys the same rights and is subject to the same duties as the mightiest empire. (Bello, *Principios de Derecho de Jentes,* part 1, chap. 1, II.)

And to the same effect, but more at length, Calvo says:

> States possess, by virtue of the law of their organization and of their sovereignty, their own exclusive and particular sphere of action. In this respect, they depend upon no one and are bound to provide for the maintenance of those rights and for the observance of those duties alone which are the fundamental and necessary basis of every free society. Absolute sovereignty necessarily implies complete independence. Hence States, in so far as they are moral

persons, have a fundamental right: the right of freely carrying out their destinies; and a duty that is no less imperative: the duty of recognizing and of respecting the sovereign rights and the absolute independence of other States. (Calvo, *Le Droit International Théorique et Pratique,* 5th ed., Vol. I, § 107.)

The equality of sovereign States is a generally recognized principle of public law. It has the twofold consequence of giving all States the same rights and of imposing upon them the same mutual duties. The relative size of their territories cannot justify, in this regard, the slightest difference or the slightest distinction between nations considered as moral persons, and, from the point of view of international law, as well as from that of equity, what is lawful or unjust for one State is likewise lawful or unjust for all others. "Nothing can be done to a small or weak nation," said Mr. Sumner in the United States Senate on March 23, 1871, "that would not be done to a large or powerful nation, or that we would not allow to be done to ourselves." (Calvo, *Le Droit International Théorique et Pratique,* 5th ed., Vol. I, § 210.)

IV. Every nation has the right to territory within defined boundaries and to exercise exclusive jurisdiction over its territory, and all persons whether native or foreign found therein.

This right is to be understood in the sense in which it was stated by Chief Justice Marshall in the following passage of his judgment in the case of the schooner *Exchange* (reported in 7 Cranch's Reports, pp. 116, 136-7), decided by the Supreme Court of the United States in the year 1812:

The jurisdiction of the nation, within its own territory, is necessarily exclusive and absolute; it is susceptible of no limitation, not imposed by itself. Any restriction upon it, deriving validity from an external source, would imply a diminution of its sovereignty, to the extent of the restriction, and an investment of that sovereignty, to the same extent, in that power which could impose such restriction. All exceptions, therefore, to the full and complete power of a nation, within its own territories, must be traced up to the consent of the nation itself. They can flow from no other legitimate source.

This consent may be either express or implied. In the latter case, it is less determinate, exposed more to the uncertainties of construction; but, if understood, not less obligatory. The world being

> composed of distinct sovereignties, possessing equal rights and equal independence, whose mutual benefit is promoted by intercourse with each other, and by an interchange of those good offices which humanity dictates and its wants require, all sovereignties have consented to a relaxation, in practice, in cases under certain peculiar circumstances, of that absolute and complete jurisdiction within their respective territories which sovereignty confers. This consent may, in some instances, be tested by common usage, and by common opinion, growing out of that usage. A nation would justly be considered as violating its faith, although that faith might not be expressly plighted, which should suddenly and without previous notice, exercise its territorial powers in a manner not consonant to the usages and received obligations of the civilized world. * * *
>
> This perfect equality and absolute independence of sovereigns, and this common interest impelling them to mutual intercourse, and an interchange of good offices with each other, have given rise to a class of cases in which every sovereign is understood to waive the exercise of a part of that complete exclusive territorial jurisdiction, which has been stated to be the attribute of every nation.

In view of the fullness of Chief Justice Marshall's exposition of this right and its consequences, and in view also of the acceptance of *The Exchange* as an authority in every civilized country, both as to the right and its limitation, it does not seem necessary to quote statements of Latin-American publicists, in order to sustain what may be called the obvious, and which is deeply imbedded in the legislation of the American Republics.

In lieu of many illustrations that might be drawn from the civil codes of the Latin-American States, one will suffice, namely, Article 14 of the civil code of Chile, which declares that,

> the law is binding upon all the inhabitants of the Republic, including foreigners.

V. Every nation entitled to a right by the law of nations is entitled to have that right respected and protected by all other nations, for right and duty are correlative, and the right of one is the duty of all to observe.

This right is to be understood in the sense in which it was stated in the following passage from the judgment of Chief Justice Waite in the case of *United States vs. Arjona* (reported in 120 United States Reports, pp. 479, 487), decided by the Supreme Court of the United States in 1886, holding that as each nation had by international law the exclusive right to fix its standard of money, it was the duty of the United States as

a member of the society of nations to protect the money of a foreign country, in this case Colombia, from forgery:

> But if the United States can require this of another, that other may require it of them, because international obligations are of necessity reciprocal in their nature. The right, if it exists at all, is given by the law of nations, and what is law for one is, under the same circumstances, law for the other. A right secured by the law of nations to a nation, or its people, is one the United States as the representatives of this nation are bound to protect.

VI. International law is at one and the same time both national and international: national in the sense that it is the law of the land and applicable as such to the decision of all questions involving its principles; international in the sense that it is the law of the society of nations and applicable as such to all questions between and among the members of the society of nations involving its principles.

International law, then called the law of nations, was declared by judges and commentators before the Declaration of Independence of the United States to form an integral part of the common law of England, and by judges and commentators of the United States as adopted at one and the same time with the adoption of the common law of which it formed an integral part. Thus, in the case of *Buvot vs. Barbuit* (reported in Cases Tempore Talbot, p. 281), decided by Lord Chancellor Talbot in 1733, that distinguished judge and upright man is reported by Lord Mansfield, who was then the ornament of the bar and was counsel in the case, to have said:

> That the law of nations, in its full extent, was part of the law of England. That the act of Parliament was declaratory, and occasioned by a particular incident. That the law of nations was to be collected from the practice of different nations, and the authority of writers.

In the case of *Triquet vs. Bath* (reported in 3 Burrow, p. 1478), decided by the Court of King's Bench in 1764, Lord Chief Justice Mansfield held, quoting the judgment of Lord Talbot in *Buvot vs. Barbuit*, that the law of nations was part of the law of England; and three years later, in the leading case of *Heathfield vs. Chilton* (reported in 4 Burrow, p. 2015), Lord Chief Justice Mansfield reiterated his opinion, stating that,

> the privileges of public ministers and their retinue depend upon the law of nations; which is part of the common law of England. And

the act of Parliament of 7 Ann. c. 12 did not intend to alter, nor can alter the law of nations.

The distinguished commentator, Sir William Blackstone, who had been counsel in both these cases tried before Lord Mansfield, wrote in the first edition of the fourth volume of his *Commentaries upon the Laws of England,* published in 1769, that:

> The law of nations (wherever any question arises which is properly the object of its jurisdiction) is here adopted in its full extent by the common law, and is held to be a part of the law of the land. And those acts of Parliament, which have from time to time been made to enforce this universal law, or to facilitate the execution of its decisions, are not to be considered as introductive of any new rule, but merely as declaratory of the old fundamental constitutions of the Kingdom; without which it must cease to be a part of the civilized world.

In accordance with the views of English judges interpreting and applying the common law and in reliance upon the express language of the illustrious English commentator from whom they had learned their law, the Revolutionary statesmen of North America understood and stated that international law was a part of the law of the United States. Thus, Thomas Jefferson, Secretary of State under Washington's Administration, referred in the year 1793 to "the laws of the land, of which the law of nations makes an integral part." (*American State Papers, Foreign Relations,* Vol. 1, p. 150.) His great opponent, Alexander Hamilton, differing in most respects from Thomas Jefferson, nevertheless concurred in the view that international law was a part of the law of the land, and explained it more elaborately than Mr. Jefferson in the following passage quoted from the essays which Hamilton, under the pseudonym of Camillus, wrote for the Press in 1795 in defense of the Jay Treaty:

> A question may be raised—Does this customary law of nations, as established in Europe, bind the United States? An affirmative answer to this is warranted by conclusive reasons.
>
> 1. The United States, when a member of the British Empire, were, in this capacity, a party to that law, and not having dissented from it, when they became independent, they are to be considered as having continued a party to it.
>
> 2. The common law of England, which was and is in force in

each of these States, adopts the law of nations, the positive equally with the natural, as a part of itself.

3. Ever since we have been an independent nation, we have appealed to and acted upon the *modern* law of nations, as understood in Europe—various resolutions of Congress during our Revolution, the correspondence of executive offices, the decisions of our courts of admiralty, all recognize this standard.

4. Executive and legislative acts, and the proceedings of our courts, under the present government, speak a similar language. The President's proclamation of neutrality refers expressly to the *modern* law of nations, which must necessarily be understood as that prevailing in Europe, and acceded to by this country; and the general voice of our nation, together with the very arguments used against the treaty, accord in the same point. It is undubitable, that the customary law of European nations is as a part of the common law, and, by adoption, that of the United States. (Lodge's "Works of Alexander Hamilton," 1885, Vol. V, pp. 89-90.)

A recent decision of the Supreme Court of the United States defines the relation of international law to the law of the land as it was stated by Sir William Blackstone in his *Commentaries* published before the American Revolution. Thus, in the case of *The Paquete Habana* (reported in 175 United States Reports, pp. 677, 700), decided in 1899, Mr. Justice Gray, delivering the opinion of the Court, said:

> International law is part of our law, and must be ascertained and administered by the courts of justice of appropriate jurisdiction, as often as questions of right depending upon it are duly presented for their determination. For this purpose, where there is no treaty, and no controlling executive or legislative act or judicial decision, resort must be had to the customs and usages of civilized nations; and, as evidence of these, to the works of jurists and commentators, who, by years of labor, research, and experience, have made themselves peculiarly well acquainted with the subjects of which they treat. Such works are resorted to by judicial tribunals, not for the speculations of their authors concerning what the law ought to be but for trustworthy evidence of what the law really is.

It may be said in summing up the relation of international law to the common law of England and to the municipal law of the United States, that international law is part of the English common law; that as such

it passed with the English colonies to America; that when, in consequence of successful rebellion, they were admitted to the society of nations, the new Republic recognized international law as completely as international law recognized the new Republic. Municipal law it was in England; municipal law it remained and is in the United States. Without expressing an opinion upon the vexed question whether it is law in the abstract, the courts, State and Federal, take judicial cognizance of its existence, and in appropriate cases enforce it, so that for the American student or practitioner international is domestic or municipal law.

The constitutions of certain Latin-American States expressly lay down the principle of Anglo-American law that international law is part of the law of the land. Thus, Article 106 of the constitution of the Dominican Republic and Article 125 of the constitution of Venezuela, which admits the principle with certain limitations. The constitution of Colombia of 1863 expressly declared that "The law of nations forms part of the national legislation," and an eminent American publicist specially versed in such matters states that "the authorities of the country are understood, in their treatment of neutrality and other questions, to have acknowledged the continuing force of the principle." In other constitutions of the American Republics the principle is not stated in express terms. It is, however, recognized implicitly or for specific cases; for example, Articles 31, 100, and 101 of the constitution of Argentina; Articles 59, 60, and 61 of the constitution of Brazil; Article 73 of the constitution of Chile; Article 107 of the constitution of Honduras; Article 96 of the constitution of Uruguay, etc., etc.

The laws of Latin-American countries—notably those relating to judicial procedure or to the organization of judicial authority—recognize, expressly or implicitly, the principle in question. In all the American countries the rules of international law have been treated as in force in their proclamations of neutrality in the great European war.

In future it must be expressly admitted as the basis of the public law of the New World that international law is part of the national legislation of every country. This is not only a principle of justice but one that is necessary to facilitate and to strengthen the friendly relations of all States.

The following impressive language of an eminent citizen of the American continent, Daniel Webster, to be found in an official instruction written when he was Secretary of State of the United States of America,

may be quoted as a statement in summary form of the rights and duties of nations, especially of the American Republics:

> Every nation, on being received, at her own request, into the circle of civilized governments, must understand that she not only attains rights of sovereignty and the dignity of national character, but that she binds herself to the strict and faithful observance of all those principles, laws, and usages which have obtained currency among civilized states, and which have for their object the mitigation of the miseries of war.

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