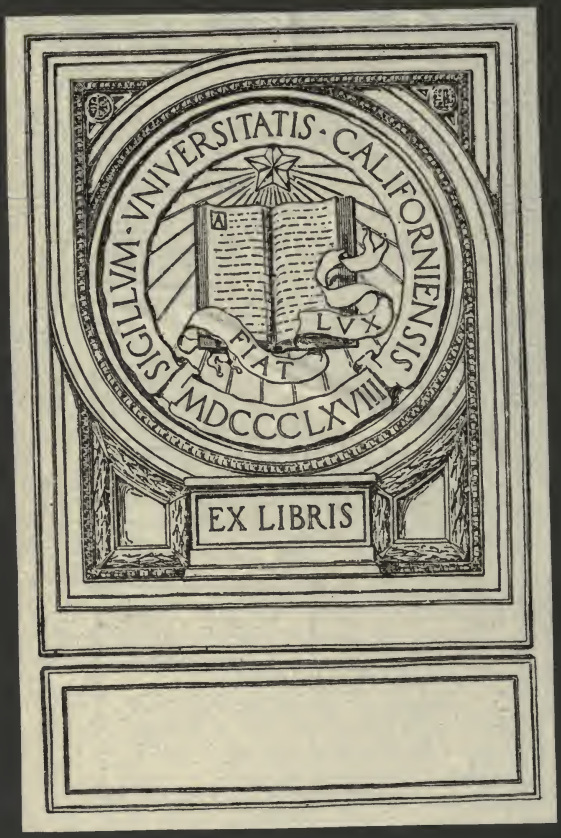
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THE PROGRESS OF INTERNATIONAL LAW AND ARBITRATION

AN INAUGURAL LECTURE
DELIVERED BEFORE THE UNIVERSITY OF OXFORD
IN THE HALL OF ALL SOULS COLLEGE
ON OCTOBER 21, 1911

BY

SIR H. ERLE RICHARDS

K.C., K.C.S.I., B.C.L., M.A.

Chichele Professor of International Law and Diplomacy and Fellow of All Souls College

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HENRY FROWDE, M.A.
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THE
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THE Chair of International Law and Diplomacy, from which I have the honour to address you for the first time to-day, takes its name from Archbishop Chichele, the founder of this College, from whose benefactions it has been endowed. Chichele was himself both a lawyer and a diplomatist. In his earlier days he practised as an advocate; and later, when he had risen to high position, he was called on to take a leading part in the foreign affairs of his country. He was more than once appointed Commissioner to negotiate a Treaty of peace; he was accredited Ambassador to France; he was sent on a special mission to Gregory XII and was the British representative at the Council of Pisa in 1409. In his time there was but little usage to regulate the intercourse or the hostilities of Nations, but one cannot doubt that had he lived in a later age, he would have taken the most active interest in the development of International Law, and that the purpose to which his benefactions have been put in the establishment of this Chair is one which would have elicited his warmest approval.

The first holder was Mountague Bernard, appointed in 1859. He was equipped for the discharge of his duties by an exceptional learning not only in law but also in the history of diplomacy, of which his published lectures remain a standing proof. Bernard did much good service for the State and for this University, in addition to

his work as Professor. He was a member of the Commission on neutrality and allegiance which resulted in substantial amendments of the law of England on these subjects; he was appointed to investigate the position of fugitive slaves, a matter of acute controversy at the time; and as all here know he took a leading part in the proceedings of the University Commission of 1877. But perhaps he is best remembered by the public in connexion with the Alabama arbitration. He was one of the Commissioners who negotiated the Treaty of Washington, and on his return received the high distinction of being appointed a Privy Councillor and a member of the Judicial Committee of the Council. The following year he was sent to Geneva to assist Sir R. Palmer in the presentation of the British case before the Court of Arbitration appointed under the Treaty. Bernard resigned the Chair in 1874 and was succeeded by Professor Holland, of whom, as he is happily still with us, I will only permit myself to say that he occupied the Chair from that time until the close of 1910, that is for no less than thirty-six years, with signal advantage to this University and to the cause of International Law.

The fifty years that have elapsed since the Chair was founded correspond, more or less exactly, with a period of development in International Law which is remarkable, both as regards the character of the law itself, and as regards the part it has come to play in the controversies of Nations. If we compare the state of things in the middle of the last century with that which exists to-day, we cannot fail in the first place to be impressed by the extent of the advance which has been made towards greater precision. The principles on which the law proceeds have become more definite and more exact; they rest less on the dicta or conjectures of

Jurists, and more on the surer foundations of established usage, of Conventions, or of the judgments of arbitral tribunals. There is more of reality and less of theory. The subject has moved on from the realms of speculation into the domain of practising lawyers. Another and perhaps even more striking change, is the increased importance which the law has assumed in international disputes. Before the middle of the last century the determination of an international dispute by a Judicial Tribunal was a rare event; differences which could not be adjusted by diplomacy were settled, as a matter of course, by resort to arms; and arbitration was only thought of as possible in exceptional cases. But to-day this position is reversed. Arbitration has taken the place of war as the normal method of settling some kinds of disputes, and in other cases is resorted to, with a frequency which increases year by year.

I propose to speak of the progress which International Law has made in these two respects, and in particular of the progress which has been made since the subject was first taught from this Chair. I will then ask you to consider the limits, if any, which must be imposed on the further development of arbitration.

The history of International Law is no long one. For all practical purposes it may be taken to date from the seventeenth century, and was brought into being by that change in the constitution and conditions of Europe which was finally ratified at the Peace of Westphalia.

I will not pause to elaborate this point to-day. It is enough to say that the relations of States were from that time forward on a new basis; the claims of the Popes or of the Emperors to control the Nations of Christendom were at an end, and it had become recognized that States must be treated as independent and as equal. International intercourse had increased as the

result of the Thirty Years' War and the diplomatic negotiations which accompanied it; and was increasing. And there was an urgent public outcry for some check on the excesses and horrors of the warfare of the time. All these were reasons which made it a matter of necessity to have some regulations by which States would agree to be bound whether in peace or war.

And the chief purpose of Grotius and of the jurists who in earlier days had laboured in the same field, was to convince the world that there were certain natural principles already in existence on which those regulations could be based. It was not possible to go further at the time and to formulate the regulations with any degree of exactness. To establish the existence of some principles binding upon Nations, was task enough; to build on that foundation with any certain plan was not feasible until usage and discussion had shown the extent to which Nations were prepared to go. As Bernard has pointed out in a lecture delivered from this Chair, the law had to be constructed in the first instance upon a basis which was mainly speculative, and was treated scientifically before it had any real existence except in its rudest elements. The contrast between the conjectures of the early jurists and the concise statement of principles and precedents which modern text writers are able to present, is proof enough on this point; it shows how great the advance has been in certainty and precision.

The law was developed in the century that followed, by writers whose names are household words to all of us: Zouch, Professor of Civil Law in this University, Puffendorf, the first Professor of International Law in any country (he held the Chair created at Heidelburg), Bynkershoek, Wolff, and Vattel who wrote in 1758. M. Rivier has observed that the jurists of that age were apt to lose sight of reality in their search for absolute

truth. That no doubt is so; at any rate we are not concerned for any practical purpose to follow them into the controversies which occupy so much of their pages as to the exact force and effect in International Law of a Law of Nature. We have to deal nowadays with a system of law which has become well established and rests on the proved assent of Nations and not on abstract notions of justice and equity. But they did much more than enter into controversies on abstract conceptions. The discussion which they provoked on particular rules of law had the important result of calling public attention to them and of bringing them before those who had influence in public affairs. Rules which at first were hardly more than suggestions gradually became confirmed by usage or accepted by implication, and by the time we reach the earlier years of the nineteenth century we find that several doubtful questions are becoming settled by general consent. For instance in 1805 it was laid down in the English Prize Court that the extent of territorial water off the open coasts had become usually recognized to be about three miles from the shore, and that is borne out by the fact that the three miles distance was agreed to for the first time in any treaty in that between Great Britain and the United States of 1818. In the same way the large claims over tracts of the open seas which had been insisted upon at an earlier period were giving way as the result of discussion. And other instances might be cited to the same effect. But still progress was slow.

In the important subject of the Laws of War there was but limited development; it had been the first subject to be systematically discussed: and was one of urgent importance. But though on some points usage had gradually become crystallized, there was still much divergence on the main principles. This was the more

marked in regard to the Laws of War at sea. The armed neutralities; the controversies with France; the war of 1812; all recall points on which the law remained unsettled.

The Convention of Vienna in 1815 has been sometimes called the first of the class of law-making treaties, that is of treaties which embody agreements among the Powers on questions of International Law. The final act of that Congress settled questions as to the right of navigation on certain International Rivers; and established the perpetual neutrality of Switzerland. But provisions such as these are strictly speaking in the nature of Treaty arrangements, applying in particular cases, rather than agreements as to any general rule of law, and it is, I think, true that for the first two hundred years after the Treaty of Westphalia there is no instance in which any principle of general application was settled by a Convention or Treaty.

The period which commences from the middle of the last century—that is about the date at which this Chair was founded—has been one of much more rapid advance. The improvement in the means of communication, both by land and sea, which began about that time, and the outburst of economic activity which ensued, have resulted in an increase of intercourse between States and in an extension of International Commerce and of International Finance, which would have been incredible to an earlier generation. There has followed a demand for greater certainty in the law both in peace and war: for it is impossible to transact business on any considerable scale whether between States or individuals unless the law that is to govern those transactions is fixed and ascertainable. And as to war there has grown up an universal feeling, due to the spread of education and civilization as well as to these increased economic

interests, that belligerent operations, if they be inevitable, should be restricted within defined limits.

The development of the Laws of War in recent years is indeed remarkable. The first Convention on this subject was entered into in 1856: it has been followed by a series of others, and it is not too much to hope that there will soon be in existence a complete Code of the Laws of War both by land and sea. Let me deal with this matter first.

There are reasons why the law of war must be settled by agreement.

Private law knows no state of war, and can lend no analogies, such as it does to other branches of International Law. And there are many questions arising on the Laws of War which are controlled by considerations not of law but of policy, considerations which vary according to the situation of particular States. For instance, an Island Power is more affected by the laws as to the seizure of foodstuffs on neutral vessels than a Continental Nation which can procure supplies by land: or again a Power which has a great carrying trade to protect, has different interests from one which owns but a small mercantile marine. In matters such as these the interests of Nations are in conflict and, whatever lawyers may say, there is hardly likely to be uniformity in practice except as the result of agreement. Moreover, new points are constantly arising which cannot be determined on known principles; submarine mines, the use of airships and aeroplanes in war, are instances. And in these matters, too, uniformity can only be secured by agreement. The first Convention on the Laws of War was the Declaration of Paris made in 1856; an agreement as to the law of war at sea on four points of high importance. There had been earlier Codes among particular communities, the Consolate del

Mare for instance was compiled in the fourteenth century; but the Declaration of Paris was the first of what may be called the General Law making Treaties of the Great Powers on this or indeed on any subject. It has been observed in naval warfare even by those Powers who did not accede to it in the first instance and may now be considered, for all practical purposes, as part of the Law of Nations. It was followed in 1864 by the Geneva Convention regarding the care of the sick and wounded, amended and re-enacted by the Convention of 1906, in the framing and negotiation of which my distinguished predecessor, Professor Holland, took a leading part. In 1868 there was the Declaration of St. Petersburg forbidding the use of expanding bullets. These were followed by the Hague Conventions of 1899, amended and re-enacted in 1907, which is a more or less complete Code of the law of warfare on land and in some matters on sea. Finally in 1909 there came the Declaration of London which is not yet ratified. It is a Code of the Laws of War at Sea in respect of the matters not dealt with by the Hague Convention and a complete Code except upon three points.

I do not stop to-day to inquire whether the objections which have been urged against the ratification of this Declaration should prevail; since these objections are based more on the policy and interests of the particular countries affected, than on general grounds of law. I content myself with recording my regret, that it has been found necessary to give effect to the claim to sink neutral prizes before their liability to condemnation has been determined by a Prize Court. There are, I know, some limitations on the exercise of that right. But the agreement on this point is a step in the wrong direction; it should be our aim to increase and not to diminish the power of judicial tribunals.

Turning back now to sum up the progress that has been made from 1856 in regard to the Laws of War we find that the record is remarkable. We have now got a written Code which gives us, more or less completely, the law in regard to warfare on land: and as to warfare on sea we have a Code on some parts of that subject, and even if the Declaration of London be not ratified we are at least able to say that it has shown the Nations of the world to be in agreement on the greater number of the matters to which it relates. That some Code of the sort will become law sooner or later seems therefore to be certain.

In other branches of International Law we are not able to point to any general codification of this kind. But there have been conventions dealing with particular territories which are of importance. For instance the General Act of the Berlin Conference of 1885 which neutralized the Congo territories and contained provisions as to free commerce and navigation there; the Treaty of Constantinople of 1888 regulating the legal status of the Suez Canal; the Treaty of Washington of 1901 between Great Britain and the United States providing for the neutralization of the Panama Canal and for free navigation on it. These conventions all settled disputed points of law.

And apart from convention there has been a marked advance in the general development of the law as the result of usage and of discussion and of the judgments of arbitral tribunal on the various points that have from time to time been submitted for decision. For instance in the recent Fisheries Arbitration the Tribunal have expounded the law in regard to those Treaty rights which have been commonly known as International servitudes, and also in regard to the extent of territorial jurisdiction over enclosed waters: and their

decision must form a precedent in other cases. There are of course many points on which the law is still undetermined: and as time goes on new questions must arise for consideration: but the experience of past years has shown us that they can be solved by the same processes of discussion, negotiation, judicial decision, and usage. In my judgment therefore the assertion is well founded that we have now got a system of law sufficiently definite to be practical and to be administered practically by judicial tribunals. And beyond that there has been a marked strengthening of public opinion in favour of the observance of the law. The outcry which has been aroused by recent events, whether it be justified or not, is a result of that feeling; although the question as to the action taken by Italy is not one of law, but of morals. The law is concerned only with the validity of claims made by one State against another: but assuming some right to redress to exist, then States can enforce that right by any recognized means, and the question whether resort to war is justified or not in the circumstances of the particular case is one of morals or of International conduct: it is not a legal question.

I pass now to the other subject, in which the law has made rapid progress in recent years, that is in the settlement of International disputes.

International arbitration is no new invention, indeed among the communities of Ancient Greece, recourse to it was not infrequent. We read of disputes referred for settlement to other Greek States: the winner at the Olympic Games was sometimes appointed arbitrator: sometimes a successful poet was chosen: and there are instances in which the parties agreed to abide by the decision of the Delphic Oracle. But the practice was never extended to differences with barbarian races. In the Roman Policy there was no room for any arbitrament

but that of the sword; and the duties of the feciales were in fact confined to carrying out the formalities thought necessary on the Declaration of War. In later times the Pope and the Emperor, each claimed authority over the States of Europe, but these claims had ceased to be of any importance by the seventeenth century.

As an instance of the wide claim made by the Popes there is the award of Alex. VI in 1493, dividing the territory of the new world, between Spain and Portugal, by a line drawn from pole to pole, a claim of jurisdiction which certainly justified the inquiry of Francis I as to the exact terms of the clause in Adams's will under which such a vast inheritance had been held to pass to those countries. I remind you of this, in passing, because it is an interesting fact that the award in this case was seriously relied on by Venezuela as a source of title in the British Guiana boundary arbitration in 1899. It was argued that the Pope was the recognized arbitrator of the civilized world at the time and that his decision was binding on all other Nations: an argument which did not prevail. There are instances also in mediaeval history of the submission of disputes at various times to kings, to cities, and to universities. But these cases are exceptional, the practice of arbitrating never became general at any time; and from the sixteenth to the end of the eighteenth century it had fallen into almost complete disuse.

It was not until after the general pacification of 1815 that ideas began to change and that statesmen began to think seriously of arbitration; and it is to the credit of this country and of the United States that they led the way. Under the Treaty of Ghent of 1814, arbitration commissions had been appointed to settle disputed questions of boundary, and in the succeeding years other controversies between the two countries were set at rest

in the same way. This example was followed by other nations, and the records show a small but steadily increasing number of cases referred for settlement in this way. It is true that some of them arose out of matters which cannot be described in any sense as of first importance; pecuniary claims by citizens of one country against a foreign state and claims for compensation for injuries committed during wars, figure not infrequently; but, trivial though they seem to read of, it is clear, that even in some of these disputes, war must have broken out, had arbitration not been possible.

In the year 1871 there happened an event of first importance in the history of International arbitration. It was the making of the Treaty of Washington between this country and the United States by which the two Powers agreed to arbitrate on the various matters of difference then outstanding between them. One of those differences was a matter of the most acute controversy; a matter on which national feelings ran high, and national relations were strained to the very point of rupture. I allude of course, to the question which is generally known as that of the Alabama Claims. The reference of that dispute to a Judicial Tribunal, established in the most emphatic way, that International Law could determine a quarrel involving considerations of national pride and national sentiment by legal procedure, if the parties were willing to go to arbitration. It was a signal triumph for law, and it is not too much to say that the precedent created by it did more than any other event up to that time to promote the peaceful settlement of International disputes. Indeed, the effect seems to have been immediate and remarkable. The figures of the number of International arbitrations from 1820 to 1900 have been collected by M. La Fontaine and compared by periods of twenty years. They show

that between 1820 and 1840 there were eight cases only in which resort was had to arbitration; that between 1841 and 1860 there were twenty; that in the next period ending in 1880 (the Alabama arbitration as I have said, took place in 1871) the number increased to forty-four; and that in the twenty years between 1880 and 1900 there were no less than ninety cases: more than the whole total for the preceding years covered by this table.

In 1899 a second event of great importance occurred. In that year the first Peace Conference was held at the Hague, and there resulted the Convention for the pacific settlement of International disputes. The ratification of that Convention was in itself a striking proof of the increased desire of the Powers to refer their differences to arbitration, and equally striking are the facts that after the ratification more than a hundred treaties of arbitration were signed between the Powers, and that since that time such treaties have become almost a matter of course. I need not remind you that this Convention was re-enacted, with some amendments, in 1907 and is still in force. Under it there was constituted the Permanent Tribunal at the Hague. Provision was made for a panel of judges to be nominated by the respective Powers and from that panel arbitrators are selected in each particular case either by the respective litigants or by some impartial third party nominated by them for that purpose. The first case was heard and determined under these provisions in 1902: altogether some eleven cases have been disposed of and there are others waiting for hearing. The importance of the questions referred have varied. Among the more interesting have been that of the Venezuelan claims, in which eleven different nations from the old world and the new appeared by their counsel before the Tribunal. This case gave rise to what is generally known as the

Drago doctrine and resulted in the Convention for the limitation of the employment of force for the recovery of contract debts signed at the Hague in 1907. There followed arbitrations on the questions of the Japanese house tax, the Muscat dhows, and the Casablanca incident; all involving points of some importance and complexity. Finally, in the course of last year there was decided the case of the North Atlantic Fisheries—a dispute as to the meaning of the treaty of 1818 between Great Britain and the United States, which was described by the President in his opening address, I quote his words, as 'perhaps the most grave and complex question that has ever been trusted to an arbitral tribunal. For more than ninety years the questions at issue have been the subject of almost uninterrupted diplomatic correspondence and more than once they have brought the two great sea-faring nations of Europe and America to the verge of the extremities of war.' The fact that a dispute of this character has been definitely laid at rest by means of arbitration is a remarkable success for the cause of peace, and the more so because the award has been accepted by the parties concerned as a settlement that is fair in its result to all of them. Since then the Savarkar case has been determined; it raised questions of some difficulty as to the position of a prisoner in transit in a foreign ship escaping in territorial waters. The decision turned mainly on the facts of the particular case, but the proceedings are notable because the whole matter was disposed of in the short space of some two months.

The existence of a Tribunal which can be called into action by any nations which desire to arbitrate, is of itself an inducement to adopt that means of settling controversies; but one may go further and say that the Tribunal has succeeded, even in the few years that it

has been at work, in securing in a peculiar degree the confidence and trust of the Powers. The duties of the Arbitrators have been discharged with admirable dignity and absolute impartiality, and their decisions have been marked by a statesmanlike breadth of view and a freedom from those technicalities which too often embarrass judgment. It is thought by some that a Court permanently in session at the Hague would offer greater inducements to litigants. The existence of a fixed tribunal of this kind would make, it is contended, for greater continuity in the exposition of the law, and would be more readily accessible. It was therefore proposed at the Hague Conference that a new Court should be constituted and that three judges should be nominated for a fixed period from the members of that Court to act in all cases brought before the Court during that time. But the difficulty of agreeing upon any system of nomination acceptable to all the Powers was found insuperable, and the project obtained no greater success than the expression of an opinion in its favour by the majority of the delegates. In my judgment the power of selection of judges is one that is of first importance, and I do not anticipate that litigant States will be willing to leave that selection to others.

The International Prize Court which it is now proposed to establish is to be constituted on a still different plan: the Great Powers are each to have one nominee on the Court in every case; the lesser Powers are to have nominees by rotation. The effect is that the Court partakes somewhat of the nature of a representative assembly or of a congress; and perhaps that is a necessary consequence of the fact that it will be called on to determine some questions which depend on political rather than on legal consideration. The questions left undetermined by the Declaration of London, for instance,

must be settled by a process which will in fact amount to legislation. But for arbitration which involves questions of law only, there can be no reason for insisting on any representative element, and the introduction of it, beyond doubt, gravely detracts from the judicial character of the Tribunal.

The precedent of the Hague Court has been followed in South America. A permanent Court of Arbitration was established in 1907 with jurisdiction in disputes between the five Central American republics of Costa Rica, Guatemala, Honduras, Nicaragua, and Salvador. It disposed of the first case referred to it in 1908.

It is a significant fact, and one that goes to show the hold that arbitration has obtained over public opinion, that there has been no case in modern history in which an unsuccessful party has refused to give effect to a valid award. Objections have been taken in a few instances to the validity of awards on grounds which are open to litigants in all systems of procedure. For instance, the award of the King of the Netherlands in the Boundary Dispute between Great Britain and the United States in 1831 was rejected on the ground that the arbitrator had exceeded his jurisdiction. The award made by Sir E. Thornton in 1875 in the dispute between the United States and Mexico as to the responsibility for damage caused by Indians, was objected to on the ground that it had been given on evidence which had since been proved to be false. But excepting cases such as these, the judgments of International Tribunals have been satisfied by the unsuccessful parties without fail. It is an old story that there is no sanction for International Law. That is so in a sense, and there is no power to enforce the awards of International Tribunals. There are no sheriffs, no bailiffs to execute judgments. But the honour of the Nations concerned

and public opinion provide a sanction which has proved effective in the past, and is not likely to grow less as years go by.

I have said enough, I hope, to satisfy you, that the number of International disputes referred to arbitration has increased to a remarkable extent during the past fifty years, and that it is increasing year by year. But so far, the disputes that have been settled in this way have either turned on points of law, or have been matters of account such as the assessment of compensation and the like. The important question remains whether disputes of all kinds can be settled by arbitral procedure, and it is a question which is one of general interest to-day. The carnage and devastation of modern hostilities have increased to such a point that every civilized human being revolts from the prospect of war; and there is not one of us who does not desire to see arbitration take the place of resort to arms. But we have to deal with facts as they are, and there are difficulties in the way of an agreement to submit all differences to arbitration in all cases, which so far have proved insurmountable in practice.

It is clear from the experience of the past that in what may be called lesser disputes there need be no limitation, and the number of Treaties already in force by which nations are bound to arbitrate in all such cases, is proof that the view has become generally accepted. But subject to a few exceptions to which I will refer in a moment, in all Arbitration Treaties, hitherto, the agreement to arbitrate has been limited to questions of a legal nature or to questions arising on the construction of Treaties, and there has been added a clause excepting from arbitration, disputes involving matters of vital interest or the independence or honour of the contracting parties; exceptions which can, obviously, be so con-

strued as to exclude from the operation of the Treaty the greater number of the controversies which are likely to become acute. The question is whether it is possible to dispense with any qualification in future Treaties, and to refer all questions of whatever kind to the decision of a Court.

There are a few exceptional cases in which this has been done, but they are cases in which the parties concerned are in such a position as regards each other that no vital controversies can conceivably arise. There are Treaties of this kind between Italy and Argentine; France and Ecuador; Switzerland and Salvador; Switzerland and Ecuador. It is hardly possible to imagine any cause of dispute between the respective parties to these Treaties which could not be referred to arbitration with advantage to both sides.

But the position is different in the case of Nations whose interests may unhappily come in conflict on matters of vital moment to them. There may be a dispute involving the very existence as an Independent Nation, or so nearly touching the honour and the self-respect, of one of the parties, that it is impossible for that party to accept the judgment of any third person in the matter. In such a case mediation, or the good offices of a friendly power may smooth matters over, or an inquiry into the facts—such as the Commission which investigated the Dogger Bank incident—may give an opportunity for passions to cool. But one may well doubt whether the time has yet come when Nations will bind themselves to submit to arbitration cases such as these. Again, there are disputes which turn on questions of policy alone and involve no law; and these are not proper subjects for any Judicial Tribunal. Let me suggest to you some instances of the sort of cases which I have in mind. Suppose that between the territory of

one State, we may call it State A, and that of another, State B, there lies a third small State which has positions of great strategical importance in any war against A. The latter State is content that these positions should be in the hands of the small State, but believes that the possession of them by her powerful rival B, would be a serious menace and danger to her existence. Suppose in that condition of affairs, that B obtains a cession from the small State, of the territory in question. That is a matter A cannot suffer because in her view it would constitute a standing menace to her security and to her peace; but International Law could afford no relief, since the only answer that could be given by an Arbitral Tribunal would be that in law the transfer by the small State to B was good. Or take an actual case which has been the subject of some discussion of late in connexion with this very matter. Suppose that some European Power obtains a title to territory in South America by conquest or cession and that the United States take objection. The Munroe doctrine is a rule of policy which the United States have declared to be vital to them: it was first adopted at the instance of an English statesman, and is not likely to be ever challenged by Great Britain, but it is not binding on other Powers; it is not a rule of International Law and would not itself be a ground on which a Judicial Tribunal could decide that the title of a European Power was void in law. We could hardly expect the United States to arbitrate on such a matter as this. The old question of the balance of power in Europe is another instance of a controversy which lies outside the domain of law. The fact is, as I have already said, that matters such as these are matters of policy, not of law at all, and Judicial Tribunals are not fitted to deal with them. Proposals have been made from time to time for the creation of an

International Body to decide questions of policy and to enforce peace. You will remember the grand design of Henry IV, which Sully has handed down to us, and the more elaborate project of the Abbe St. Pierre, and there were the later proposals of Bentham and of Kant. We know, too, that Napoleon himself at one time contemplated a Council of the Powers of Europe, modelled to some extent on the Amphictyonic Council. All of these projects involved the creation of some body to decide differences arising on questions of policy as well as other questions. Some of them included the creation and maintenance of an International army to enforce the decrees of the Body. But none have proved practical or can ever be practical in existing conditions. One question that will always arise will be as to the composition of any Council of this kind. The equality of States is a principle to which the law gives effect: but in matters of policy the Great Powers are not willing to allow the smaller Nations an equal voice. The Concert of Europe is not a form of Arbitral Tribunal: it imposes its will on the smaller Powers by an influence which depends ultimately on force.

It is impossible therefore, in my judgment, to hope that Nations will bind themselves by Treaty to refer all classes of disputes to arbitration in all conditions; without any qualifications at all. But, short of that, there is still room for progress: the qualifications which are now generally insisted on can be minimized if both parties are willing, and greater use may be made of commissions of inquiry. The Treaty proposed between this country and the United States is a step forward in these two respects. It does not bind the parties to submit all disputes to arbitration, but it does oblige them to refer all differences which turn on questions of law and can therefore properly be determined by a Judicial

Tribunal. But the Treaty goes further. It provides for the appointment, on the request of either party and in any dispute, of a joint Commission of Inquiry, composed of three representatives of either side. This Commission will have no power to decide on the merits of any controversy: that will be done, at a later stage by a Court of Arbitration, if the case is one suitable for arbitration; but it is empowered to make a preliminary report on the facts and to define the issues that arise. There is power to postpone the appointment of the Commission for a period of one year. The reference to this Commission is of value: it will give time for passions to cool: the facts in dispute will emerge from the obscurity of controversy into the true light: and there will be opportunity for deliberate consideration of the arguments on either side. A Treaty on these lines is certainly an advance on the form of Treaty hitherto in general use.

The extent to which Treaties of Arbitration are applied in practice must ultimately depend on the goodwill of the parties concerned, rather than on the exact terms in which they are framed; and the growth of public opinion in favour of arbitration will be a more important factor in determining the methods by which the controversies of the future are to be settled than any paper obligations. It is open to nations to arbitrate, if they so please, even if there be no Treaty at all in existence between them. But the ratification of a Treaty in wider form is, at least, a declaration by the parties to it of their desire to arbitrate, wherever it be possible, and the acclamation with which the project has been received throughout the British Empire and throughout the United States, testifies to the strength of public opinion there, in favour of an increased resort to legal procedure.

I have now come to an end of the arguments which it has been my privilege to present to you to-day. I trust you are convinced that the power of International Law has increased and is increasing to the benefit of mankind.

In his inaugural lecture in 1859, Bernard observed that the subject of International Law was then new at Oxford. 'I have to introduce a subject,' he said, 'which is new in this place, wholly unknown it is not, since it has for several years been admitted unto the schools as an alternative subject of examination for the first University degree. It demands, I think, nevertheless to be treated as substantially new. It has been read, but not taught, at least publicly; read, but not studied.' The years that have passed since these words were uttered have seen a striking change in the public attitude, not only in Oxford, but in every seat of learning. International Law has now become recognized as a topic of the first importance. It has ceased to be the study of publicists alone; it has become a subject with which practical lawyers can deal in practical ways. It is not only a necessary equipment of Statesmen and Diplomatists, but it has come to play so large a part in the affairs of Nations that it deserves the attention of all intelligent citizens of this and of every other country. It is in that confident belief that I enter upon the duties of this Chair.

Oxford: Horace Hart, M.A., Printer to the University