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# Carnegie Endowment for International Peace

DIVISION OF INTERNATIONAL LAW

RECOMMENDATIONS ON INTERNATIONAL LAW

AND

OFFICIAL COMMENTARY THEREON

OF THE

SECOND PAN AMERICAN SCIENTIFIC CONGRESS

HELD IN WASHINGTON

DECEMBER 27, 1915 - JANUARY 8, 1916

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EDITED, WITH INTRODUCTORY MATTER

BY

JAMES BROWN SCOTT

DIRECTOR

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WASHINGTON, D. C.

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PREFATORY NOTE

The present little volume contains recommendations of the Second Pan American Scientific Congress relating to international law, as they appear in the Final Act of the Congress, and they are accompanied by that part of the official report, prepared by the undersigned, explaining, interpreting, and justifying them, if perchance they need justification. The last three resolutions can not in strictness be said to relate to international law, and yet, as they are law and deal with legal matters, they have been retained.

The introduction to this portion of the official report states that the articles are based upon the resolutions adopted by the Conference of American Teachers of International Law, held at Washington, April 23-25, 1914, upon the invitation of the American Society of International Law, and it has been thought well to include these resolutions in the little volume in order that the relation between them may be noted. The Conference of Teachers directed that Mr. Root's article on the need of popular understanding of international law, contributed to the first number of the *American Journal of International Law*, which appeared in 1907, and his address on opening the Conference as its president, should be published with the resolutions. They are therefore prefixed to them and, together with the resolutions of the Conference, form the introduction to the recommendations of the Pan American Scientific Congress.

The preface to the proceedings of the Conference of American Teachers of International Law states the aims and purposes of its promoters to be

To consider what measures, if any, could properly be taken to arouse a greater interest in international law where taught in American institutions of learning; to secure its introduction in American institutions of learning where it is not taught; to call attention to its importance to lawyers in the practice of their profession; and to suggest the advisability of a knowledge of its principles for admission to the bar; and to show, finally, the necessity of an understanding of the subject by the public at large, which in a democracy such as ours determines in the ultimate resort the foreign policy of the United States.

It was felt that none were more competent than the teachers of international law to consider these various questions and to reach wise conclusions upon them, and that any suggestions concerning



the teaching of international law in American institutions of learning should properly come from the teachers themselves rather than from those not engaged in the teaching of international law. It was believed—and the proceedings of the conference show that the belief was justified—that a conference of teachers of our leading colleges and universities, in which these subjects could be carefully discussed and considered, would result in fruitful recommendations, and that the teaching profession generally would be able in conference to agree upon recommendations acceptable to the teachers, because the recommendations in question were formulated by the teachers themselves, and acceptable to the public, because of the confidence which the public must necessarily have in the results reached by experts.

The statements contained in the above extracts are believed to apply to the American republics generally as well as to the particular one of them in which the conference was held, and it was thought advisable to include in Section VI of the program of the Pan American Scientific Congress, devoted to international law, public law, and jurisprudence, topics which necessarily involve a consideration of increased efficiency in the teaching of international law and the means whereby its principles could be popularized in each of the American countries. The following are the most important of these topics :

The study of international law in American countries and the means by which it may be made more effective.

How can the people of the American countries best be impressed with the duties and responsibilities of the state in international law?

Are there specific American problems of international law?

The proceedings of the Conference of American Teachers of International Law were translated into Spanish and laid before the members of the section, with the result that these resolutions, of a general nature and applicable to the American republics as a whole, were adopted by the Congress with the recommendation that they be carried into effect. These recommendations will not, it is believed, fall upon deaf ears, because the American Society of International Law approved in their entirety the resolutions of the Conference of Teachers, agreed to comply with some of them, and recommended others to the Division of International Law of the Carnegie Endowment, in the hope that means



would be found to render the resolutions effective. The action taken by the American Society of International Law and by the Executive Committee of the Carnegie Endowment to give effect to the resolutions are thus stated by the Director of the Division of International Law in the report of his Division for 1915:

The Society called a special meeting of its Executive Committee to consider and take action upon the recommendations, and the Committee met on November 7, 1914. The recommendations were divided by the Executive Committee of the Society into four classes: First, those which the Society was able and willing to carry out upon its own account. This class included Resolutions Nos. 2-c, 8, 9 and 11. Secondly, those which required detailed consideration before action could be taken upon them. They included Resolutions Nos. 3, 4, 6, 7, 10, 12, 13, 14 and 15. Thirdly, those which the Executive Committee of the Society did not regard as coming within its sphere as a purely scientific and professional organization. This referred especially to Resolution No. 2-d. Lastly, those which the Society approved, but which it was not able, on account of the expense and labor involved, to undertake with the limited means at its disposal. These included Resolutions Nos. 2-a, 2-b, 2-e and 5.

In compliance with the suggestion contained in Resolution No. 1 of the Conference, the Executive Committee of the Society appointed the following members as a Standing Committee on the Study and Teaching of International Law and Related Subjects:

*Chairman*, Professor George G. Wilson of Harvard University  
 Professor Philip Brown of Princeton University  
 Professor Amos S. Hershey of Indiana University  
 Professor Charles Cheney Hyde of Northwestern University  
 Professor Harry Pratt Judson of the University of Chicago  
 Honorable Robert Lansing, Counselor for the Department of State  
 Professor Jesse S. Reeves of the University of Michigan  
 Mr. Alpheus H. Snow of Washington, D. C.  
*Secretary ex officio*, Mr. James Brown Scott, recording secretary of the Society

To this Committee were referred for detailed consideration the resolutions and recommendations mentioned in the second class above referred to. As to the recommendations contained in the first class, which the Society was able and willing to carry out on its own account, the following action was taken: Resolution No. 2-c to be carried out by printing the documents referred to as far as possible in the Supplement to the *American Journal of International Law*. Resolution No. 8 was directed to be carried

out by the recording secretary of the Society, and he has since carried out the direction by transmitting the opinion of the Conference expressed in the resolution referred to every teacher of political science, law, history, political economy and sociology in the United States, accompanied by the remarks of the Honorable Elihu Root on opening the Conference and a reprint of his article entitled, "The need of popular understanding of international law," which appeared in volume 1 of the *American Journal of International Law*. As to Resolution No. 9, the recording secretary of the Society was further directed to transmit a copy of the said resolution to all law schools of the United States, and he has since carried out the direction. The recording secretary was further directed to transmit to the American Bar Association the request of the Conference that that Association take appropriate action toward including international law among the subjects taught in law schools and required for admission to the bar. This direction has also been complied with.

The foregoing action of the executive committee of the Society was reported by the Director to the Executive Committee of the Endowment at its meeting on January 9, 1915, and the Committee, after carefully considering the resolutions of the Conference and the recommendations of the Society thereon, took the following action:

As to the recommendations which the Society approved, but which it did not feel able, on account of the expense and labor involved, to undertake itself, the Committee directed that these projects be included in the work of the Division of International Law of the Endowment and authorized the Director to report to the Committee from time to time any sums which might be necessary to carry out the said projects, which include the publication of a bibliography of international law, an index-digest of international law, and a law reporter of international cases, referred to in Resolution 2, sections a, b, and e. The time which has elapsed since this action of the Executive Committee has been so limited that it has not been practicable to work out the details of these projects, and it is therefore impracticable to submit estimates for carrying them out. If the sums included in the estimates are appropriated by the Board, however, the Division will have sufficient funds at its disposal at least to start these projects during the next fiscal year should such action meet with the approval of the Executive Committee. The Director's report for last year (*Year Book*, 1913-14, p. 167) contained a paragraph devoted to the proposition of the publication of a bibliography of international law, showing its great usefulness and the care with which it must be prepared. The proposition of establishing an international reporter containing decisions of national courts involving principles of international law was also dealt with in the

same report (*Year Book*, 1913-14, pp. 136-138) and the necessity pointed out of devoting very great consideration to the details of the project. The action of the Conference of Teachers in making an independent recommendation on these two subjects is very gratifying, as confirming the Director's previous recommendations, and it is hoped that it will be possible in the next report to show considerable progress in the realization of the projects.

As to Resolution No. 5, which the Society also approved, but which it was unable to carry out, namely, the recommendation for the establishment of fellowships at the Academy of International Law at The Hague, the Committee requested the Director of the Division of International Law to present at an opportune time a practicable plan for the realization of the project, and this will be done when conditions in Europe permit the opening and operation of the Academy.

The recommendation of the Conference included in paragraph d of Resolution No. 2, for the publication from time to time of reliable information upon international questions, which the Society thought did not properly come within its sphere as a purely scientific and professional organization, the Committee directed be referred to the American Association for International Conciliation, which is more immediately engaged in the work of propaganda, to be carried out by that Association so far as may be practicable.

The Committee further approved the recommendations contained in Resolutions Nos. 3, 4, 6, 7, 10, 12, 13, 14 and 15, which have been referred to the Standing Committee of the Society on the Study and Teaching of International Law and Related Subjects for detailed consideration, and expressed its willingness to cooperate in carrying them into effect.

The Executive Committee at the same time expressed on behalf of the Trustees, its cordial appreciation of and sincere thanks for the cooperation of the Society in this matter, and, further, approved as a whole the work of the Conference of Teachers and the full set of resolutions and recommendations adopted by it.

The Standing Committee on the Study and Teaching of International Law and Related Subjects, of which Dr. George G. Wilson, professor of international law at Harvard University, is chairman, has during the past year carefully considered the steps to be taken to carry into effect the resolutions of the Conference of Teachers and will report its recommendations to the tenth annual meeting of the American Society of International Law, to be held in Washington in April, 1916; and it is both hoped and expected that a serious beginning will be made during the course of the present year to carry into effect



the resolutions of the Teachers' Conference. It is also believed that the recommendations of the Standing Committee will be of value to American countries other than the United States, inasmuch as the recommendations of the Congress are for the most part identical in substance, if slightly differing in form, with the resolutions of the Conference of Teachers; and, just as the American Society of International Law, under whose auspices the Conference of Teachers of International Law was held, stands ready to coöperate with the Carnegie Endowment in such measures as may seem calculated to render these resolutions effective, so the American Institute of International Law, composed of five publicists of each of the twenty-one American republics and the national societies of international law founded and already existing in the twenty republics to the south of us, stands ready to coöperate and to carry into effect the resolutions of the Conference of Teachers and the recommendations of the Congress as far as it may be possible in their respective countries.

The need of a knowledge of international law and its application in the affairs of nations was never greater than now, and the language of a recent report presented to the American Institute of International Law, although addressed by the new to the old Institute, appeals with even greater force, to the Old World. Thus it is said:

When, at a tragic moment in the history of the world, the *Institut de Droit International*, largely composed of those who are at present belligerents, is silent, it is for our Institute, composed of neutrals, in the name of neutrals, to make the voice of the Law heard, not with that prestige perhaps which will come to it later with age and experience, but with all the authority that springs from the impartial inspiration of science and of the universal juridical conscience.

The present volume will be issued in Spanish, Portuguese, and French, as well as English, and will be widely circulated in the American republics where these different languages are spoken, so that the recommendations relating to international law contained in the Final Act of the Second Pan American Scientific Congress will be brought within the reach of all who may care to read them and who, having read, may, in the interest of our common humanity, be minded to put them into effect.

JAMES BROWN SCOTT,

*Director of the Division of International Law.*

WASHINGTON, D. C.,  
February 28, 1916.

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## THE NEED OF POPULAR UNDERSTANDING OF INTERNATIONAL LAW<sup>1</sup>

BY  
ELIHU ROOT

The increase of popular control over national conduct, which marks the political development of our time, makes it constantly more important that the great body of the people in each country should have a just conception of their international rights and duties.

Governments do not make war nowadays unless assured of general and hearty support among their people; and it sometimes happens that governments are driven into war against their will by the pressure of strong popular feeling. It is not uncommon to see two governments striving in the most conciliatory and patient way to settle some matter of difference peaceably, while a large part of the people in both countries maintain an uncompromising and belligerent attitude, insisting upon the extreme and uttermost view of their own rights in a way which, if it were to control national action, would render peaceable settlement impossible.

One of the chief obstacles to the peaceable adjustment of international controversies is the fact that the negotiator or arbitrator who yields any part of the extreme claims of his own country and concedes the reasonableness of any argument of the other side is quite likely to be violently condemned by great numbers of his own countrymen who have never taken the pains to make themselves familiar with the merits of the controversy or have considered only the arguments on their own side. Sixty-four years have passed since the northeastern boundary between the United States and Canada was settled by the Webster-Ashburton treaty of 1842; yet to this day there are many people on our side of the line who condemn Mr. Webster for sacrificing our rights, and many people on the Canadian side of the line who blame Lord Ashburton for sacrificing their rights, in that treaty. Both sets of objectors can not be right; it seems a fair inference that neither of them is right; yet both Mr. Webster and Lord Ashburton had to endure reproach and obloquy as the price of agreeing upon a settle-

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<sup>1</sup>Reprinted from the *American Journal of International Law*, vol. 1, 1907, p. 1.

ment which has been worth to the peace and prosperity of each country a thousand times as much as the value of all the territory that was in dispute.

In the great business of settling international controversies without war, whether it be by negotiation or arbitration, essential conditions are reasonableness and good temper, a willingness to recognize facts and to weigh arguments which make against one's own country as well as those which make for one's own country; and it is very important that in every country the people whom negotiators represent and to whom arbitrators must return, shall be able to consider the controversy and judge the action of their representatives in this instructed and reasonable way.

One means to bring about this desirable condition is to increase the general public knowledge of international rights and duties and to promote a popular habit of reading and thinking about international affairs. The more clearly the people of a country understand their own international rights the less likely they are to take extreme and extravagant views of their rights and the less likely they are to be ready to fight for something to which they are not really entitled. The more clearly and universally the people of a country realize the international obligations and duties of their country, the less likely they will be to resent the just demands of other countries that those obligations and duties be observed. The more familiar the people of a country are with the rules and customs of self-restraint and courtesy between nations which long experience has shown to be indispensable for preserving the peace of the world, the greater will be the tendency to refrain from publicly discussing controversies with other countries in such a way as to hinder peaceful settlement by wounding sensibilities or arousing anger and prejudice on the other side.

In every civil community it is necessary to have courts to determine rights and officers to compel observance of the law; yet the true basis of the peace and order in which we live is not fear of the policeman; it is the self-restraint of the thousands of people who make up the community and their willingness to obey the law and regard the rights of others. The true basis of business is not the sheriff with a writ of execution; it is the voluntary observance of the rules and obligations of business life which are universally recognized as essential to business success. Just so while it is highly important to have controversies between nations settled by arbitration rather than by war, and the

growth of sentiment in favor of that peaceable method of settlement is one of the great advances in civilization to the credit of this generation; yet the true basis of peace among men is to be found in a just and considerate spirit among the people who rule our modern democracies, in their regard for the rights of other countries, and in their desire to be fair and kindly in the treatment of the subjects which give rise to international controversies.

Of course it can not be expected that the whole body of any people will study international law; but a sufficient number can readily become sufficiently familiar with it to lead and form public opinion in every community in our country upon all important international questions as they arise.

OPENING ADDRESS OF THE HONORABLE ELIHU ROOT  
AT THE  
CONFERENCE OF TEACHERS OF INTERNATIONAL LAW  
AND RELATED SUBJECTS<sup>1</sup>

Gentlemen: It gives me very great pleasure to welcome you to participation in this, the Conference of Teachers of International Law and Related Subjects, held in connection with the Eighth Annual Meeting of the American Society of International Law, and to express the grateful appreciation of the officers and members of the Society to the instructors in international law who have left their customary duties, to come here for the purpose of taking part in this conference.

The invitation which led to this meeting had its origin in a resolution which was offered by that honored and admired leader in American education, Mr. Andrew D. White, at a meeting of the Trustees of the Carnegie Endowment for International Peace. One of the divisions of work established under that trust is the Division of International Law, of which Dr. James Brown Scott is the head; and Mr. White, responding to the double impulse of his old enthusiasm as a teacher and organizer of education and as a diplomatist, as the representative of his country at the court of Germany, and as the first delegate of his country to the First Hague Conference, offered this resolution:

*Resolved*, That the Executive Committee be directed to propose and carry out, subject to the approval of this Board, a plan for the propagation, development, maintenance and increase of sound, progressive and fruitful ideas on the subject of arbitration and international law and history as connected with arbitration, especially through addresses or courses of lectures delivered before the leading universities, colleges and law schools of the United States, and to report on the same at the next regular meeting of the Board, or, should the Committee think best, at a special meeting to be called for that purpose.

In taking the first steps in compliance with this resolution, the Executive Committee found it desirable to ascertain, as a basis of action,

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<sup>1</sup>The Conference of Teachers was held under the auspices of the American Society of International Law, and the above address is reprinted from the *Proceedings* of the Society for 1914, p. 250.



what was already being done in the United States along the lines indicated by the resolution; and, accordingly, an inquiry was set on foot and prosecuted, in which was developed the state of education upon this subject in all the leading colleges and universities and law schools of the country, and a very full report was made upon that subject.

The consideration of the facts developed by that report led to the conclusion that the program, the method of procedure, the scope of enterprise and activity in the spirit of Mr. White's resolution, were something that no individual and no committee organized for any other purpose, as was the Executive Committee of the Peace Endowment, could properly handle, could adequately deal with; and, accordingly, the suggestion was made that the American Society of International Law, which deals specifically with the subject-matter of the resolution, should take it up, and that the men who know best what is needed and how that shall be done and can be done, should come together and confer upon the subject. So you see that the initial impulse which brings you here is a source which must be respected by every American educator, and has a purpose which is certified to by the highest ability and the broadest experience.

I will detain you from the practical work which lies before you in organizing the conference, by only a single suggestion. The putting of instruction in international law in American educational institutions on a broader basis, giving it a wider scope and greater efficiency, is not a mere matter of book learning. It is not a mere matter of science. It is a matter of patriotic duty.

More and more, as the years follow one another with the swiftness of our modern life, democracy is coming to its own. More and more the people, the men on the farms and in the shops, the men with the pick and shovel in their hands, are assuming the direction of the operations of government, both internal and external. More and more they are directly responsible for the operations of government. Presidents and Congresses more and more look for immediate response from constituencies upon the most difficult and intricate questions in the foreign relations of the country, questions the right solution of which requires broad knowledge, which can not be solved by the impressions of the moment, which can not be solved by emotional response to oratory.

I think no one can study the movement of the times without realizing that the democracy of the world—for it is not alone in this country—is realizing its rights in advance of its realization of its duties. And that way lies disaster. That way lies hideous wrong.

That way lies the exercise of the mighty powers of modern democracies to destroy themselves, to destroy the vitality of the principles upon which they depend. And there is no duty more incumbent to-day upon the men whose good fortune has made it possible for them to acquire a broader knowledge upon the subjects with which democracy deals, than to become themselves leaders of opinion and teachers of their people. Unless the popular will responds to the instructed and competent leadership of opinion upon the vital questions of our foreign relations, the worst impulses of democracy will control. At the bottom of wise and just action lies an understanding of national rights and national duties. Half the wars of history have come because of mistaken opinions as to national rights and national obligations, have come from the unthinking assumption that all the right is on the side of one's own country, all the duty on the side of some other country. Now I say the thing most necessary for the good of our country in the foreign relations which are growing every year more and more intricate and critical, is that there shall be intelligent leadership of opinion as to national rights and national obligations; and nobody can bring that about as the educators of America can bring it about. It is in the hope that you will be able to organize, to give direction and wise guidance to a systematic movement to accomplish this good service for our country, that I take the deepest interest in this conference, and bid you God-speed in your labors.



## RESOLUTIONS AND RECOMMENDATIONS

OF THE

### CONFERENCE OF TEACHERS OF INTERNATIONAL LAW AND RELATED SUBJECTS<sup>1</sup>

WHEREAS, The American Society of International Law, founded for the purpose of fostering the study of international law and of promoting the establishment of international relations upon the basis of law and justice, desiring the more effectually to further these objects, decided to call a Conference of Teachers of International Law and Related Subjects, to consider the present position and steps for the future development of that study, and, to that end, invited leading educational institutions of the United States to send delegates to take part in such conference; and

WHEREAS, Forty-one colleges and universities accepted the aforesaid invitation and sent representatives to take part in the conference as follows:

Boston University:	JAMES F. COLBY
Brown University:	JAMES C. DUNNING
University of California:	ORRIN K. McMURRAY
University of Chicago:	ERNST FREUND
Clark University:	GEORGE H. BLAKESLEE
Cornell University:	SAMUEL P. ORTH
Dartmouth College:	{ JAMES F. COLBY
Dickinson College:	{ FRANK A. UPDYKE
George Washington University:	{ EUGENE A. NOBLE
University of Georgia:	{ CHARLES NOBLE GREGORY
Hamilton College:	{ C. H. STOCKTON
Harvard University:	{ H. A. NIX
University of Illinois:	{ FRANK H. WOOD
John Hopkins University:	{ EUGENE WAMBAUGH
University of Kansas:	{ GEORGE G. WILSON
Lafayette College:	{ JAMES W. GARNER
Lehigh University:	{ JAMES BROWN SCOTT
	{ F. H. HODDER
	{ E. D. WARFIELD
	{ JOHN L. STEWART

<sup>1</sup>Reprinted from the *Proceedings of the American Society of International Law*, 1914, pp. 315 *et seq.*

Louisiana State University:	ARTHUR T. PRESCOTT
University of Michigan:	JESSE S. REEVES
University of Minnesota:	WILLIAM A. SCHAPER
University of Missouri:	JOHN D. LAWSON
University of Nebraska:	EDWIN MAXEY
College of the City of New York:	WALTER E. CLARK
New York University:	F. W. AYMAR
Northwestern University:	CHARLES CHENEY HYDE
University of Notre Dame:	WILLIAM HOYNES
Oberlin College:	KARL F. GEISER
University of Pennsylvania:	LEO S. ROWE
University of Pittsburgh:	FRANCIS N. THORPE
Princeton University:	PHILIP BROWN
Swarthmore College:	WILLIAM I. HULL
Syracuse University:	EARL E. SPERRY
University of Texas:	WILLIAM R. MANNING
Tufts College:	ARTHUR I. ANDREWS
Union College:	CHARLES J. HERRICK
University of Virginia:	RALEIGH C. MINOR
Washington University:	EDWARD C. ELIOT
Western Reserve University:	FRANCIS W. DICKEY
University of West Virginia:	JAMES M. CALLAHAN
University of Wisconsin:	STANLEY K. HORNBECK
Yale University:	GORDON E. SHERMAN;

and

WHEREAS, The said representatives, duly accredited, convened in the city of Washington, District of Columbia, and at a series of meetings held on Thursday, April 23, 1914, Friday, April 24, 1914, and Saturday, April 25, 1914, considered the following questions:

1. Plans for increasing the facilities for the study of international law; for placing the instruction on a more uniform and scientific basis; and for drawing the line between undergraduate and graduate instruction.
2. The question of requiring a knowledge of the elements of international law for candidates for advanced degrees.
3. The advisability of urging all institutions with graduate courses in law to add a course in international law where not already given.
4. The advisability of calling the attention of the State bar examiners to the importance of requiring some knowledge of the elements of international law in examinations for admission to the bar.
5. The advisability of requesting the American Bar Association, through its appropriate committee, to consider the

question of including the study of international law in its recommendations for a deeper and wider training for admission to the bar.

6. The desirability and feasibility of plans for securing the services of professors or of lecturers on international law to whom can be assigned definite lecture periods in institutions where international law is not now taught or is inadequately taught—the services to rotate between institutions where they will be acceptable.
7. The advisability of requesting universities which now have summer schools to include among the subjects offered courses on the elements of international law, and, if there be occasion for it, to offer advanced courses of interest and profit for advanced students and instructors.

NOW THEREFORE, The Conference of Teachers of International Law and Related Subjects, after careful consideration and detailed examination in committee and thorough discussion in the full sessions of the Conference, unanimously adopts the following resolutions, in the belief that the recommendations contained therein, if carried into effect, will maintain, develop, and increase sound, progressive and fruitful ideas on international law and related subjects:

#### RESOLUTION No. 1

*Resolved*, That the Conference of Teachers of International Law and Related Subjects hereby recommends to the American Society of International Law the appointment of a Standing Committee of the Society on the Study and Teaching of International Law and Related Subjects, upon lines suggested by the recommendations of the Conference.

#### RESOLUTION No. 2 [ARTICLE 23<sup>1</sup>]

*Resolved*, That, in order to increase the facilities for the study of international law, the Conference hereby recommends that the following steps be taken to improve and enlarge library and reference facilities:

(a) That a carefully prepared bibliography of international law and related subjects be published, with the names of publishers and prices so far as these may be obtainable, with especial reference to the needs of poorly endowed libraries.

<sup>1</sup>Articles on the same subject adopted by the Second Pan American Scientific Congress are indicated in brackets.

(b) That there be published likewise a carefully prepared index or digest of the various heads and sub-heads in international law, with references to all standard sources of authority upon each head.

(c) That there be published in a cheap and convenient form all documents of state, both foreign and domestic, especially Latin American, bearing upon international law, including treaties, documents relating to arbitration, announcements of state policy, and diplomatic correspondence, and that the aid of the Department of State be solicited in securing copies of such documents for publication.

(d) That at short intervals a bulletin be published, containing excerpts from the Congressional Record and other current sources, giving reliable information upon international questions arising from time to time and the final disposition of such questions.

(e) That a law reporter of international cases be issued.

#### RESOLUTION No. 3 [ARTICLE 24]

*Resolved*, That, in order further to increase the facilities for the study of international law, the Conference recommends that steps be taken to extend the study of that subject by increasing the number of schools at which courses in international law are given, by increasing the number of students in attendance upon the courses, and by diffusing a knowledge of its principles in the community at large, and, more particularly:

(a) That, as the idea of direct government by the people grows, it becomes increasingly essential to the well-being of the world that the leaders of opinion in each community be familiar with the rights and obligations of states, with respect to one another, as recognized in international law. Hence, it has become a patriotic duty, resting upon our educational institutions, to give as thorough and as extensive courses as possible in this subject.

(b) That a course in international law, where possible, should consist of systematic instruction extending over at least a full academic year, divided between international law and diplomacy.

(c) That prominent experts in international law be invited from time to time to lecture upon the subject at the several institutions.

#### RESOLUTION No. 4 [ARTICLE 25]

*Resolved*, That, with a view of placing instruction in international law upon a more uniform and scientific basis, the Conference makes the following recommendations:



(a) In the teaching of international law emphasis should be laid on the positive nature of the subject and the definiteness of the rules.

Whether we regard the teaching of value as a disciplinary subject or from the standpoint of its importance in giving to the student a grasp of the rules that govern the relations between nations, it is important that he have impressed upon his mind the definiteness and positive character of the rules of international law. The teaching of international law should not be made the occasion for a universal peace propaganda. The interest of students and their enthusiasm for the subject can best be aroused by impressing upon them the evolutionary character of the rules of international law. Through such a presentation of the subject the student will not fail to see how the development of positive rules of law governing the relations between states has contributed towards the maintenance of peace.

(b) In order to emphasize the positive character of international law, the widest possible use should be made of cases and concrete facts in international experience.

The interest of students can best be aroused when they are convinced that they are dealing with the concrete facts of international experience. The marshaling of such facts in such a way as to develop or illustrate general principles lends a dignity to the subject which can not help but have a stimulating influence.

Hence, international law should be constantly illustrated from those sources which are recognized as ultimate authority, such as: (a) cases, both of judicial and arbitral determination; (b) treaties, protocols, acts, and declarations of epoch-making congresses, such as Westphalia (1648), Vienna (1815), Paris (1856), The Hague (1899 and 1907), and London (1909); (c) diplomatic incidents ranking as precedents for action of an international character; (d) the great classics of international law.

(c) In the teaching of international law care should be exercised to distinguish the accepted rules of international law from questions of international policy.

This is particularly true of the teaching of international law in American institutions. There is a tendency to treat as rules of international law certain principles of American foreign policy. It is important that the line of division be clearly appreciated by the student. Courses in the foreign policy of the United States should therefore be

distinctly separated from the courses in international law, and the principles of American foreign policy, when discussed in courses of international law, should always be tested by the rules which have received acceptance amongst civilized nations.

(d) In a general course on international law the experience of no one country should be allowed to assume a consequence out of proportion to the strictly international principles it may illustrate.

RESOLUTION No. 5 [ARTICLE 26]

*Resolved*, That the Conference recommends that a major in international law in a university course leading to the degree of doctor of philosophy be followed, if possible, by residence at The Hague and attendance upon the Academy of International Law which is to be established in that city; that it is the sense of the Conference that no better means could possibly be devised for affording a just appreciation of the diverse national views of the system of international law or for developing that "international mind" which is so essential in a teacher of that subject; and that therefore as many fellowships as possible should be established in the Academy at The Hague, especially for the benefit of American teachers and practitioners of international law.

RESOLUTION No. 6 [ARTICLE 27]

*Resolved*, That it is the conviction of this Conference that the present development of higher education in the United States and the place which the United States has now assumed in the affairs of the Society of Nations justify and demand that the study of the science and historic applications of international law take its place on a plane of equality with other subjects in the curriculum of colleges and universities and that professorships or departments devoted to its study should be established in every institution of higher learning.

RESOLUTION No. 7

*Resolved*, That, in order adequately to draw the line between undergraduate and graduate instruction in international law, the Conference makes the following recommendations:

Assuming that the undergraduate curriculum includes a course in international law, as recommended in Resolution No. 6, the Conference suggests that graduate instruction in international law concerns three groups of students:



- (a) Graduate students in law;
- (b) Graduate students in international law and political science;
- (c) Graduate students whose major subjects for an advanced degree are in other fields, for example, history or economics.

The first two groups of students have a professional interest in international law, many having in view the teaching of the subject, its practice, or the public service. Therefore, as to them, the Conference recommends that the graduate work offered be distinctively of original and research character, somewhat as outlined in Resolution No. 4, following a preliminary training in the fundamental principles of the subject, as pursued in the undergraduate course or courses.

As to those of the third group, having less professional interest in international law, a broad general course in the subject is recommended.

#### RESOLUTION No. 8

*Resolved*, That this Conference directs that a letter be sent to teachers of political science, law, history, political economy and sociology throughout the country calling attention to and emphasizing the essential and fundamental importance of a knowledge of international law on the part of students in those branches, which letter shall state the opinion of this Conference that every college of liberal arts, every graduate school and every law school, should have or make provision for courses in international law and urge that all graduate students working in the above mentioned fields be advised to include this subject in their courses of study.

*Resolved*, That, in accordance with the preceding resolution, there be prepared and sent out with this letter reprints of Senator Root's article entitled "The need of popular understanding of international law," which appeared in vol. 1 of the *American Journal of International Law*, and of his address delivered at the opening of this Conference.

*Resolved*, That the Recording Secretary of the American Society of International Law attend to the drafting, printing and distribution of the above specified letter and reprints and that he is hereby authorized, if he sees fit, to send out additional literature therewith.

#### RESOLUTION No. 9 [ARTICLE 28]

*Resolved*, That, in recognition of the growing importance of a knowledge of international law to all persons who plan to devote

themselves to the administration of justice, and who, through their professional occupation, may contribute largely to the formation of public opinion and who often will be vested with the highest offices in the State and nation, this Conference earnestly requests all law schools which now offer no instruction in international law to add to their curriculum a thorough course in that subject.

*Resolved further*, That a copy of this resolution be sent to all law schools in the United States.

#### RESOLUTION No. 10

*Resolved*, That the Conference hereby calls the attention of the State bar examiners and of the bodies whose duty it is to prescribe the subjects of examination, to the importance of requiring some knowledge of the elements of international law in examinations for admission to the bar, and urges them to make international law one of the prescribed subjects.

#### RESOLUTION No. 11

*Resolved*, That the Conference hereby requests the American Bar Association to take appropriate action toward including international law among the subjects taught in law schools and required for admission to the bar.

#### RESOLUTION No. 12 [ARTICLE 29]

*Resolved*, That the Conference hereby adopts the following recommendations:

(a) That it is desirable, upon the initiative of institutions where instruction in international law is lacking, to take steps toward providing such instruction by visiting professors or lecturers, this instruction to be given in courses, and not in single lectures, upon substantive principles, not upon popular questions of momentary interest, and in a scientific spirit, not in the interest of any propaganda;

(b) That members of the American Society of International Law, qualified by professional training, be invited by the Executive Council or the Executive Committee of the Society to give such courses, and that provision be made, through the establishment of lectureships or otherwise, to bear the necessary expenses of the undertaking;

(c) That the Standing Committee on the Study and Teaching of International Law and Related Subjects of the American Society of

International Law, the appointment of which was recommended in Resolution No. 1, be requested to ascertain what institutions are in need of additional instruction in international law and endeavor to find means of affording such assistance as may be necessary to the teaching staff of the said institutions or of supplying this additional instruction by lecturers chosen by the said Committee and approved by the Executive Council or Executive Committee;

(d) That steps be taken to bring to the attention of every college at present not offering instruction in international law the importance of this subject and the readiness of the American Society of International Law, through its Standing Committee on the Study and Teaching of International Law and Related Subjects, to coöperate with such institutions in introducing or stimulating instruction.

#### RESOLUTION No. 13

*Resolved*, That this Conference hereby requests and recommends that universities having summer schools offer summer courses in international law.

*Resolved further*, That the American Society of International Law, through its Standing Committee on the Study and Teaching of International Law and Related Subjects, is hereby requested to endeavor to stimulate a demand for courses in international law in summer schools.

#### RESOLUTION No. 14 [ARTICLE 30]

*Resolved*, That the Conference recommends the establishment and encouragement in collegiate institutions of specialized courses in preparation for the diplomatic and consular services.

#### RESOLUTION No. 15 [ARTICLE 31]

*Resolved*, That the Conference recommends that the study of international law be required in specialized courses in preparation for business.

#### RESOLUTION No. 16

*Resolved*, That a Committee of Revision, consisting of ten members, of which Mr. James Brown Scott shall be chairman *ex officio*, be appointed by the Chair for the revision in matters of form of the various resolutions and recommendations made to this Conference by the different committees and subcommittees and adopted by it.

the said Committee of Revision to send a copy of the said resolutions and recommendations to every law school, college and university in the United States and to the American Society of International Law, through its Executive Council or Executive Committee, for such action as will serve to effectuate the recommendations of the Conference.

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The undersigned, members of the Committee of Revision, duly appointed in accordance with Resolution No. 16, having carefully considered the resolutions and recommendations referred to them by the Conference, have prepared them in the foregoing form, and direct that they be transmitted by the Chairman of the Committee to the institutions and Society mentioned in Resolution No. 16.

JAMES BROWN SCOTT, *Chairman*,  
ROBERT BACON,  
GEORGE H. BLAKESLEE,  
PHILIP BROWN,  
JAMES F. COLBY,  
EDWARD C. ELIOT,  
JOHN W. FOSTER,  
WILLIAM I. HULL,  
JOHN D. LAWSON,  
WILLIAM R. MANNING  
ELIHU ROOT.

WASHINGTON, D. C., *April 25, 1914.*



RECOMMENDATIONS ON INTERNATIONAL LAW  
ADOPTED BY THE SECOND PAN AMERICAN SCIENTIFIC  
CONGRESS<sup>1</sup>

ARTICLE 23 [RESOLUTION No. 2<sup>2</sup>]

The Second Pan American Scientific Congress recommends, in order to increase the study of international law, to popularize its just principles, and to secure its observance and application in the mutual relations of the Americas, that steps be taken to improve and to enlarge library and reference facilities:

(a) By preparing and publishing a bibliography of international law and related subjects, furnishing the names of publishers and prices so far as these are obtainable, with special reference to the needs of poorly endowed libraries;

(b) By preparing and publishing a carefully prepared index or digest of the various heads and subheads of international law, with references to standard sources of authority under each head and sub-head thereof;

(c) By collecting with the aid wherever possible of ministries of foreign affairs and publishing from official copies thus secured, in cheap and convenient form, all official documents, both foreign and domestic, bearing upon international law, including therein treaties, information relating to arbitration, announcements of national policy, and diplomatic correspondence;

(d) By issuing in the form of law reports judgments of national courts involving questions of international law, the sentences of arbitral tribunals and the awards of mixed commissions.

ARTICLE 24 [RESOLUTION No. 3]

The Second Pan American Scientific Congress is of the firm conviction that, as the idea of direct government by the people grows, it becomes increasingly essential to the well-being of the world that the leaders of opinion in each community be familiar with the duties and obligations as well as with the rights of states, as recognized in inter-

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<sup>1</sup>Held at Washington, December 27, 1915-January 8, 1916.

<sup>2</sup>Resolutions on the same subject adopted by the Conference of Teachers are indicated in brackets.

national law, and that it has become a patriotic duty resting upon our educational institutions to give as thorough and as extensive courses as possible in international law and related subjects. The Congress therefore recommends:

I. That steps be taken to extend the study of the subject:

(a) By increasing the number of schools and institutions in which international law and related subjects are taught;

(b) By increasing the number of students in attendance upon the courses; and

(c) By diffusing a knowledge of its principles in each American republic.

II. That a course in international law, where possible, should consist of systematic instruction during at least a full academic year, divided between international law and diplomacy; and

III. That prominent experts in international law and diplomacy be invited from time to time to lecture upon these subjects in the institutions of learning of the American republics.

#### ARTICLE 25 [RESOLUTION No. 4]

The Second Pan American Scientific Congress, in order to place instruction in international law upon a more uniform and scientific basis, recommends that:

(a) In the teaching of international law emphasis be laid upon the positive nature of the subject and the definiteness of the rules, for whether the teaching of international law be regarded as of value as a disciplinary subject or from the standpoint of its importance in giving to the student a grasp of the rules that govern the relations of nations, it is equally important that he have impressed upon his mind the definiteness and positive character of the rules of international law; that the teaching of international law be not made the occasion for a universal peace propaganda; that the interests of the students in and their enthusiasm for the subject can best be aroused by impressing upon them the evolutionary character of the rules of international law, for through such a presentation of the subject the student will not fail to see that the development of positive rules of law governing the relations of states has contributed toward the maintenance of peace.

(b) In order to emphasize the positive character of international law the widest possible use be made of cases and the concrete facts of international experience, for the interest of students can best be



aroused when they are convinced that they are dealing with such concrete facts, and that the marshaling of such facts in such a way as to develop or illustrate general principles lends dignity to the subject, which can not help but have a stimulating influence; that international law should be constantly illustrated from the sources recognized as ultimate authority, such as cases both of judicial and arbitral determination; treaties, protocols, acts, and declarations of epoch-making congresses, such as Westphalia (1648), Vienna (1815), Paris (1856), The Hague (1899 and 1907), and London (1909); diplomatic incidents ranking as precedents for action of an international character; and the great classics of international law.

(c) In the teaching of international law care be exercised to distinguish the accepted rules of international law from questions of international policy.

(d) In a general course on international law the experience of no one country be allowed to assume a consequence out of proportion to the strictly international principles it may illustrate.

#### ARTICLE 26 [RESOLUTION No. 5]

The Second Pan American Scientific Congress, in order still further to advance the cause of international law and the development of international justice, recommends that a major in international law in a university course, leading to the degree of doctor of philosophy, be followed if possible by residence at The Hague in attendance upon the Academy of International Law, installed in 1914 in the Peace Palace in that city; and that, as no better means has been devised for affording a just appreciation of the diverse and conflicting national views concerning international law or for developing that "international mind" which is so essential in a teacher of that subject, as many fellowships as possible should be established in the Academy at The Hague and put at the disposition of advanced students of international law in the different American republics.

#### ARTICLE 27 [RESOLUTION No. 6]

The Second Pan American Scientific Congress expresses the opinion that the present development of higher education in the American republics and the place which they have now assumed in the affairs of the society of nations justify and demand that the study of the science and historic applications of international law be treated on a

plane of equality with other subjects in the curriculum of colleges and universities, and that professorships or departments devoted to its study be established where they do not exist in every institution of higher learning.

ARTICLE 28 [RESOLUTION No. 9]

The Second Pan American Scientific Congress, recognizing the growing importance of a knowledge of international law to all persons who intend to devote themselves to the administration of justice, and who, through their professional occupation, may contribute largely to the formation of public opinion and who may often be vested with the highest offices in the state and nation, earnestly requests all law schools which now offer no instruction in international law to add to their curriculum a thorough course in that subject.

ARTICLE 29 [RESOLUTION No. 12]

The Second Pan American Scientific Congress regards it as highly desirable, upon the initiative of institutions where instruction in international law is lacking, to take steps toward providing such instruction by visiting professors or lecturers, this instruction to be given in courses, and not in single lectures, upon substantive principles, not upon popular questions of momentary interest, and in a scientific spirit, not in the interest of any propaganda.

ARTICLE 30 [RESOLUTION No. 14]

The Second Pan American Scientific Congress recommends the establishment and encouragement in institutions of specialized courses in preparation for the diplomatic and consular services.

ARTICLE 31 [RESOLUTION No. 15]

The Second Pan American Scientific Congress advises that the study of international law be required in specialized courses in preparation for business.

ARTICLE 32

The Second Pan American Scientific Congress urges that in the study and teaching of international law in American institutions of learning special stress be laid upon problems affecting the American republics and upon doctrines of American origin.

## ARTICLE 33

The Second Pan American Scientific Congress extends to the American Institute of International Law a cordial welcome into the circles of scientific organizations of Pan America, and records a sincere wish for its successful career and the achievement of the highest aims of its important labors.

## ARTICLE 34

The Second Pan American Scientific Congress recommends to all educational establishments of America the special study of the constitutions, laws, and institutions of the republics of this continent.

## ARTICLE 35

The Second Pan American Scientific Congress recommends to the various universities of the American republics that a comparative study of judicial institutions be undertaken in order—

- (a) To create special interest therein in the several countries of the continent;
- (b) To facilitate the knowledge and solution of problems of private international law in the American countries; and
- (c) To bring about as far as possible uniformity in jurisprudence and legislation.

## ARTICLE 36

The Second Pan American Scientific Congress, in order to broaden the outlook and to bring into closer contact the members of the legal profession, urges that the bar association exchange among themselves:

- (a) Law books and publications affecting the legal professions and the practice of law.
- (b) New codes of law and rules of procedure as they are hereafter published.

OFFICIAL COMMENTARY ON THE RECOMMENDATIONS  
ON INTERNATIONAL LAW OF THE SECOND  
PAN AMERICAN SCIENTIFIC CONGRESS<sup>1</sup>

*Article 23 [Resolution No. 2<sup>2</sup>]*

*The Second Pan American Scientific Congress recommends, in order to increase the study of international law, to popularize its just principles, and to secure its observance and application in the mutual relations of the Americas, that steps be taken to improve and to enlarge library and reference facilities:*

*(a) By preparing and publishing a bibliography of international law and related subjects, furnishing the names of publishers and prices so far as these are obtainable, with special reference to the needs of poorly endowed libraries;*

*(b) By preparing and publishing a carefully prepared index or digest of the various heads and subheads of international law, with references to standard sources of authority under each head and subhead thereof;*

*(c) By collecting with the aid wherever possible of ministries of foreign affairs and publishing from official copies thus secured, in cheap and convenient form, all official documents, both foreign and domestic, bearing upon international law, including therein treaties, information relating to arbitration, announcements of national policy, and diplomatic correspondence;*

*(d) By issuing in the form of law reports judgments of national courts involving questions of international law, the sentences of arbitral tribunals and the awards of mixed commissions.*

The subject of the study of international law was considered in very great detail at a conference of American teachers of international law, held at the City of Washington in the month of April, 1914, under the auspices of the American Society of International Law. Forty-one institutions of learning of the United States accepted the invitation to be present and sent accredited representatives to take part in the proceedings.

The result was a series of recommendations, unanimously adopted by the conference, which form the basis of the present articles relating to the study of the law of nations, with omissions and other modifications in order to make the recommendations apply to the republics of

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<sup>1</sup>Held in Washington, December 27, 1915-January 8, 1916.

<sup>2</sup>Resolutions on the same subject adopted by the Conference of Teachers are indicated in brackets.



the American continent instead of applying solely to the republic of the North in which the conference of teachers was held.

In an article written by the Honorable Elihu Root when Secretary of State, and published as the introduction to the first number of the *American Journal of International Law* in 1907, he called attention to the conditions required for the settlement of international disputes without resort to war, stating that the people of the countries involved should be able to weigh the controversy and to appreciate the action of their representatives in an instructed and reasonable way, stating also that one means of bringing about this instructed and reasonable way was by means of a wider and broader knowledge of the principles of international law and by the creation of an international habit on the part of the people of reading and thinking about international matters. The language of Mr. Root on this point is, if possible, the more important, as when uttering it he was speaking under the responsibility of office, shortly after his return from his visit to Latin America. It therefore seems advisable to quote two paragraphs from the article as a general introduction to this section of the report:

In the great business of settling international controversies without war, whether it be by negotiation or arbitration, essential conditions are reasonableness and good temper, a willingness to recognize facts and to weigh arguments which make against one's own country as well as those which make for one's own country; and it is very important that in every country the people whom negotiators represent and to whom arbitrators must return, shall be able to consider the controversy and judge the action of their representatives in this instructed and reasonable way.

One means to bring about this desirable condition is to increase the general public knowledge of international rights and duties and to promote a popular habit of reading and thinking about international affairs. The more clearly the people of a country understand their own international rights the less likely they are to take extreme and extravagant views of their rights and the less likely they are to be ready to fight for something to which they are not really entitled. The more clearly and universally the people of a country realize the international obligations and duties of their country, the less likely they will be to resent the just demands of other countries that those obligations and duties be observed. The more familiar the people of a country are with the rules and customs of self-restraint and courtesy between nations which long experience has shown to be indispensable for preserving the peace of the world, the greater will be the tendency to refrain from publicly discussing controversies with other countries



in such a way as to hinder peaceful settlement by wounding sensibilities or arousing anger and prejudice on the other side.

At the Conference of Teachers of International Law, under the presidency of Mr. Root, he delivered an address in which, while dwelling upon the importance of international law, he called attention to the fact that more and more democracy was coming to its own and that unless democracy were educated in its duties as well as in its rights it would not render the services which could properly be expected of it and which would justify its existence. On this particular point he said:

I think no one can study the movement of the times without realizing that the democracy of the world—for it is not alone in this country—is realizing its rights in advance of its realization of its duties. And that way lies disaster. That way lies hideous wrong. That way lies the exercise of the mighty powers of modern democracies to destroy themselves, to destroy the vitality of the principles upon which they depend. And there is no duty more incumbent to-day upon the men whose good fortune has made it possible for them to acquire a broader knowledge upon the subjects with which democracy deals, than to become themselves leaders of opinion and teachers of their people. Unless the popular will responds to the instructed and competent leadership of opinion upon the vital questions of our foreign relations, the worst impulses of democracy will control. At the bottom of wise and just action lies an understanding of national rights and national duties. Half the wars of history have come because of mistaken opinions as to national rights and national obligations, have come from the unthinking assumption that all the right is on the side of one's own country, all the duty on the side of some other country. Now I say the thing most necessary for the good of our country in the foreign relations which are growing every year more and more intricate and critical, is that there shall be intelligent leadership of opinion as to national rights and national obligations.

These quotations have been made, both from the article and the address of Mr. Root because they justify of themselves the recommendations made by the Congress in regard to international law. The recommendations are twofold; first, to broaden and deepen instruction in international law in American seats of learning; and second, to reach the peoples of the American continent, impressing them with their duties in matters international and instructing them in their international rights.

The four headings of Article 23, numbered respectively (a), (b), (c), and (d), are meant to furnish teacher and student with necessary information concerning the books and treatises dealing with international law; to supply the references to standard sources of authority on the different headings of international law; to secure the official documents, both foreign and domestic, issued by the various governments bearing upon international law, relating to treaties, arbitrations, and the international policy of the different governments; and to place at the disposal of teacher and student decisions of national and of international courts involving questions of international law. Experience shows that it is difficult to keep abreast of treatises and monographs dealing with international law, issued from time to time in different countries and in various languages, and that it is no easy matter to obtain these books and monographs unless the prospective purchaser has relations with the libraries or publishers of the different foreign countries in which they appear. The Congress felt that the publication of a carefully prepared bibliography of international law and related subjects, giving the names of publishers and prices, would tend greatly to popularize international law and bring the items contained in the bibliography not only to the notice of the libraries where the books in question were not to be found, but also exert indirect but substantial pressure upon these libraries to procure the publications for the benefit of their readers.

It often happens that the reader of a newspaper becomes so interested in the subject of which he is reading that he would like to obtain additional information if he had at hand a ready-reference manual. This is particularly the case at the present day, when questions of international law are uppermost in the minds and thoughts of men and when they occupy such a prominent place in the daily press. A manual or treatise of international law is not always at hand, and in the changing conditions of international life and experience many topics which were unknown a decade ago and which are unmentioned in recent works of authority are of the utmost importance at the present day. An index or digest, brought up-to-date and kept up-to-date of the various heads and subheads in international law, with references to standard sources of authority upon each head, would be of no little service in enabling journalists to create a correct public opinion and in enabling the readers to follow up a subject which interested them, and

by so doing to take part in creating the enlightened public opinion upon which the administration of justice is so largely founded.

The importance placed upon public opinion by countries which are unfortunately at war is evidenced by the fact that each of them has published the telegrams and other documents, either in whole or in part, exchanged by them before the outbreak of the great war in the summer of 1914, and it is a fact that these documents are issued by the belligerent governments not only in their own but in foreign languages, which can only mean that the appeal is made not merely to their citizens or subjects but also to enlightened and instructed opinion in foreign countries in the hope of winning its support.

The Congress recognized the importance of a knowledge of the diplomatic correspondence bearing upon international law, of treaties and of the authoritative statements of national policy issued by governments, by recommending that copies of such documents be secured from ministries of foreign affairs, and that they be published in cheap and convenient form, so that they may not only reach the hands of professional students but that they may also fall under the eye of the general, and indeed of the casual, reader. Knowledge of this kind is especially valuable to democracies where in last resort the people pass upon the acts of the government and where the issues of war and of peace depend upon the enlightenment or ignorance of the public. It is not enough that documents of this kind be made public; they must be circulated if the actions of the government are to be weighed with intelligence; and unless they are issued in cheap and convenient form they will not be circulated and will be little better than secret documents preserved in archives beyond the reach of the public.

It is common knowledge that international law has a preferred position in the jurisprudence of the American republics; that, whether by constitution, statute or custom, it is regarded as a part of the law of each country and is administered as national law in cases depending upon its application. This is believed to be the case in varying degrees in other civilized countries. This being so, it is natural that many and important principles of international law are to be found in domestic judgments, and as an illustration of this it may be said that upon calculation, there are some twenty-eight hundred cases, decided by the Supreme Court of the United States since the organization of the Supreme Court in 1789, which involve in a larger or lesser degree



principles of international law. It is therefore of very great importance for the future of international relations to understand clearly that international law is thus susceptible of judicial interpretation (because it has been interpreted and applied judicially not only in one country but in the countries generally) and that there already exists a large body of judicial precedent, not merely in prize cases but in all justiciable cases involving questions of international law, for the guidance of that international court which will one day administer justice between the nations, as national courts administer justice between man and man in every country making a pretense to civilization.

These judgments, although not gathered together in any one place, are nevertheless to be found in the reports of judicial proceedings, and it would be a very great service if these decisions were collected in appropriate volumes and placed at the disposal of professed students of international law. But it is of equal if not of greater importance that the sentences of arbitral tribunals and the awards of international commissions be collected and published, in addition to the judgments of national courts involving questions of international law, in order that the students of any one country may have before them the adjudged cases dealing with international law, whether they be decided by national courts, arbitral tribunals, or mixed commissions.

The Congress therefore recommended that a law reporter of international cases be issued. To explain exactly the meaning of this recommendation, it should be borne in mind that the judgments of the Supreme Court of the United States are issued in official reports and that the decisions of the Federal and the State courts are likewise published serially in permanent form. It is proposed that an international reporter should do for the decisions of international and national courts turning upon questions of international law what the various reports issued in the United States have done for the decisions of Federal and State courts. It is difficult to overestimate the service which collections of the older decisions and of the future holdings of national and international courts would render to the cause of international justice, and the very great impetus which such collections would give to the establishment of an international court of justice, by showing that international law can be interpreted and applied judicially in the future because it has been so interpreted and applied in times past as well as in the immediate present.

*Article 24 [Resolution No. 3]*

*The Second Pan American Scientific Congress is of the firm conviction that, as the idea of direct government by the people grows, it becomes increasingly essential to the well-being of the world that the leaders of opinion in each community be familiar with the duties and obligations as well as with the rights of states, as recognized in international law, and that it has become a patriotic duty resting upon our educational institutions to give as thorough and as extensive courses as possible in international law and related subjects. The Congress therefore recommends:*

*I. That steps be taken to extend the study of the subject:*

*(a) By increasing the number of schools and institutions in which international law and related subjects are taught;*

*(b) By increasing the number of students in attendance upon the courses; and*

*(c) By diffusing a knowledge of its principles in each American republic.*

*II. That a course in international law, where possible, should consist of systematic instruction during at least a full academic year, divided between international law and diplomacy; and*

*III. That prominent experts in international law and diplomacy be invited from time to time to lecture upon these subjects in the institutions of learning of the American republics.*

The recommendation in Article 24 is general in its nature and is aimed to supply not only professional students but the general public with information useful to both in forming what Dr. Nicholas Murray Butler has aptly termed "the international mind." The recommendations under this article are specific in their nature and aim to increase instruction in American institutions of learning where courses of international law are given, and to secure the introduction of courses on international law and diplomacy in institutions where they unfortunately are not given at present. The purpose of this section is not so much to scatter the principles of international law broadcast among the people as to impress students at American institutions of learning with the importance of international law and its principles, so that the leaders of opinion, who may have studied in American institutions of learning, may, while they are still open to conviction, be impressed with the necessity of a knowledge of international law and of international relations.

The Congress regarded knowledge of international law as not merely useful but as essential, and declared it to have become, by reason of



the democratic control everywhere existing in the western continent, a patriotic duty.

In prescribing that systematic instruction which should be offered during a full academic year and that the course should include international law and diplomacy, the Congress did not mean that only one year should be devoted to international law and that the course should be devoted only to international law, in the technical sense of the term, and to diplomacy. The Congress had in mind the minimum, not the maximum, of instruction, and declared its opinion that, to be effective, the course of instruction should not be confined merely to the principles of international law in the abstract but that instruction should be given in diplomacy and in the fundamental principles of foreign policy, so that the student might understand the agency by which the principles of international law are applied in the relations between countries and the policies which nations pursue among themselves. No maximum of instruction is stated, as that must necessarily depend upon the universities and upon the students, but it is clear from the recommendations already cited, and to be referred to later, that the Congress fully appreciated the importance of careful and thorough training in the principles of international law and of an adequate understanding of the workings of diplomacy, both by the public generally and especially by those whose good fortune it may be to create and to guide public opinion.

The Congress recognized the fact, familiar to all who have had to do with the class room, that students like to hear those who have had experience in international law discourse upon its principles and its application. The professor without experience in the actual conduct of affairs may be more deeply versed in what is called book learning than the international lawyer or the professional diplomatist, and yet the latter create an interest and an enthusiasm by virtue of their experience and the confidence which they create beyond the reach of the academician. The Congress therefore recommended that international lawyers, termed experts in international law, and that preferred diplomats to be invited from time to time to lecture upon the subject at the several institutions.

*Article 25 [Resolution No. 4]*

*The Second Pan American Scientific Congress, in order to place instruction in international law upon a more uniform and scientific basis, recommends that:*

(a) *In the teaching of international law emphasis be laid upon the positive nature of the subject and the definiteness of the rules, for whether the teaching of international law be regarded as of value as a disciplinary subject or from the standpoint of its importance in giving to the student a grasp of the rules that govern the relations of nations, it is equally important that he have impressed upon his mind the definiteness and positive character of the rules of international law; that the teaching of international law be not made the occasion for a universal peace propaganda; that the interests of the students in and their enthusiasm for the subject can best be aroused by impressing upon them the evolutionary character of the rules of international law, for through such a presentation of the subject the student will not fail to see that the development of positive rules of law governing the relations of states has contributed toward the maintenance of peace.*

(b) *In order to emphasize the positive character of international law the widest possible use be made of cases and the concrete facts of international experience, for the interest of students can best be aroused when they are convinced that they are dealing with such concrete facts, and that the marshaling of such facts in such a way as to develop or illustrate general principles lends dignity to the subject, which can not help but have a stimulating influence; that international law should be constantly illustrated from the sources recognized as ultimate authority, such as cases both of judicial and arbitral determination; treaties, protocols, acts, and declarations of epoch-making congresses, such as Westphalia (1648), Vienna (1815), Paris (1856), The Hague (1899 and 1907), and London (1909); diplomatic incidents ranking as precedents for action of an international character; and the great classics of international law.*

(c) *In the teaching of international law care be exercised to distinguish the accepted rules of international law from questions of international policy.*

(d) *In a general course on international law the experience of no one country be allowed to assume a consequence out of proportion to the strictly international principles it may illustrate.*

Just as Article 24 urged an increase of the instruction in international law and diplomacy, so Article 25 urges that the instruction itself be more thorough, be more detailed, and be more efficient than heretofore.

Section (a) recommends that the positive nature of international law and the definiteness of its rules be emphasized—and wisely, because if international law is not law but a system of morality, of ethics, of philosophy or of history, it has no place in positive juris-

prudence, and it can make no claim to a standard of conduct by which the rights and duties of nations are to be measured. If the definiteness of the rule be not impressed upon the student, he is left with the erroneous conception that international law is a loose and disjointed system, if system it is to be called, instead of a system of law whose rules are definite as far as they go, and whose imperfections are due to the fact that it is a growing not a completed system as is the case with municipal law.

In stating that the teaching of international law should not be made the occasion for a universal peace propaganda, the Congress meant to convey the idea that through the application of the principles of justice to the relations of nations, peace necessarily results, just as the peace of the community depends upon the existence of principles of justice and their application to the disputes that arise among the people composing the community. International law should, in the opinion of the Congress, be taught as a system of jurisprudence, as a means of realizing justice, and not perverted to the advocacy of peace as such, although the highway to peace does undoubtedly run through justice.

That the Congress had in mind the services which international law could render to the cause of peace is seen in the recommendation that the evolutionary character of the rules of international law should be impressed upon the student, showing how, with the development of rules of law, order and equilibrium have resulted. The Congress, however, felt that the influence of rules of law, governing the relations of equal but interdependent nations, would best be seen by a study of the development of the rules and their consequences; and it therefore stated that such a presentation was best calculated to show how "the development of positive rules of law governing the relations between states has contributed toward the maintenance of peace." In a word, the study of international law should be scientific, it should not be propagandistic.

The Congress was exceedingly anxious that international law should not be studied as an abstract system of rights and duties, but that it should take note of the concrete facts of international experience. It therefore recommended in Section (b) that the widest possible use be made of actual cases and incidents, in order that the positive character of international law be demonstrated, and that it be held up as the measure of international right and of international duty. It appre-



ciated that the enthusiasm of the students should be aroused and that their interest could best be sustained if they dealt with actual not with hypothetical cases, and if they saw that they were dealing with a practical not with a theoretical science. It was felt that such a point of approach was calculated to lend dignity to the subject and to stimulate and to maintain the interest of the student.

The Congress, advocating the concrete, dealt in the concrete, and specified the sources which should be used in order to create and to stimulate interest, and which it ventured to call the ultimate sources of authority. In the first place, it called attention to the judgments of courts and to sentences of arbitral tribunals, and although judgments of courts and arbitral awards are not usually given the first place among the sources of international law, it is believed that the Congress was right in assigning them this unusual rank, because the judgment of a court is decided by professional judges without interest in the subject in dispute and according to principles of law which have stood the test of time; and in the same way, although perhaps in a lesser degree, the award of arbitral tribunals and of mixed commissions are the holdings of persons of different countries, and the decision is reached at least by a majority of disinterested persons, bringing to the performance of their task an international outlook. The same can not be said of diplomatic incidents, which figure so prominently among the sources and which are often the concessions of the weak to the strong, rather than the passionless application of principles of justice. They can not, however, be ignored, for, right or wrong, they are milestones in the evolution of international law.

In the next place, treaties, protocols, acts and declarations of epoch-making congresses are recommended as a source of authority and as a means of illustration. Naturally the congresses mentioned are those of Westphalia, Vienna and Paris, and it is especially encouraging to observe that a Congress composed of American delegates ventured to proclaim the Hague Conferences as sources of international law and to confess their faith in them at a time when many partisans of international organization are discouraged at the present and despondent of the future.

Finally, the classics of international law are recommended, for the great writers on international law have not only expounded the law of nations but they have also made and enlarged the law which they professed to expound. By a study of their masterly productions, begin-



ning with the philosophers and canonists of the Middle Ages, including Francisco Victoria, Ayala, Gentilis, and Suarez, the predecessors of Grotius, the immortal three books on the right of war and peace by the illustrious Grotius himself, and the works of his successors, we see how the little stream, fed by many sources, has grown into a mighty torrent, colored it may be by the soil over which it flows but reaching with irresistible force the ocean.

The Supreme Court of the United States, declared in the case of the *Paquete Habana* (176 U. S., 677), decided in 1899, that "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." The opinion, delivered by a very learned judge, the late Mr. Justice Gray, then proceeded to enumerate the sources of authority as follows:

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.

Supplementing the enumeration of sources of authority which the Congress ventured to make by the decision of the learned justice of the Supreme Court in deciding the case of the *Paquete Habana* we have a firm and a sure measure of international right and of international duty, and of the means of ascertaining it in almost any case.

The Congress, it will be recalled, recommended that particular stress should be laid upon the positive nature of international law and the definiteness of its rules. This recommendation appears in a slightly different form in Section (c), where the Congress advises that the lines be clearly drawn between the accepted rules of international law on the one hand and questions of international policy on the other hand.

It is not difficult to illustrate what the Congress had in mind in this recommendation, and it is perhaps neither necessary to cite an illustration nor to enlarge upon the importance of the recommendation.

The distinction is between law and policy, a distinction which citizens of a particular country are apt to forget in their eagerness to justify the contentions put forward by their country on any and every occasion. The test of law is not policy, rather the test of policy is law. Much is lost by their confusion; everything is gained by separating them and, when separating them, by discussing them in their various elements and in all their bearings.

And finally, in dealing with this phase of instruction, the Congress advised that the experience of no one country should be dwelt upon to the exclusion of the experience of other countries. For if international law be in reality the law of nations it is universal and it should be studied in its universal applications, although it may often be most entertainingly if not best illustrated by examples taken from the experience of the home country. In so doing, however, great care should be exercised, in the present unsatisfactory state of affairs, because, while international law is universal, it is interpreted by each nation and is not infrequently perverted in the process. In any event, the precedents of no one country should be studied to the exclusion of precedents from other countries; otherwise a belief is likely to grow up in the mind of the student that his country is the favorite home of international law and the international is likely to yield to the national aspect.

*Article 26 [Resolution No. 5]*

*The Second Pan American Scientific Congress, in order still further to advance the cause of international law and the development of international justice, recommends that a major in international law in a university course, leading to the degree of doctor of philosophy, be followed if possible by residence at The Hague in attendance upon the Academy of International Law, installed in 1914 in the Peace Palace in that city; and that, as no better means has been devised for affording a just appreciation of the diverse and conflicting national views concerning international law or for developing that "international mind" which is so essential in a teacher of that subject, as many fellowships as possible should be established in the Academy at The Hague and put at the disposition of advanced students of international law in the different American republics.*

In addition to courses of international law in national institutions the Congress recommends the advantage of studying international law

in what may be called an international institution, in order that the conception of international law may, as it were, be internationalized.

A distinguished teacher of the law of nations has said:

It is to be deplored that many writers on the law of war and neutrality should take every opportunity of displaying their political sympathies and antipathies, and should confound their own ideas of justice, humanity, and morality with the universally recognized rules of warfare and neutrality. French books often contain denunciation of the Germans and the English; English books—Hall's classical treatise furnishes at once an illustration and a warning—frequently condemn the Germans and the Russians; and the Germans on many occasions retaliate by reproaching the French and the English.<sup>1</sup>

This tendency to defend the policy of one's own country is the more insidious because it is often unconscious, and the best way, it is believed, to overcome this tendency seems to be to come into contact with teachers of reputation of different countries in some international institution, where the bias of one, if it exist, may be offset by the views of another teacher of equal repute and of a different nationality.

On the 12th day of January, 1914, the Academy of International Law was founded at The Hague, and arrangements had been made for its formal opening on the 1st day of October, 1914. It was not opened on that date, for reasons which need not be mentioned in this connection. It should be said, however, that arrangements had already been made for courses of instruction by distinguished teachers and professors of international law drawn from different countries, as it is a fundamental rule of the Academy that no two instructors should be chosen during one and the same period from the same country. The student body was to be drawn from advanced students of different foreign countries, and it was believed by the most distinguished publicists that, by the presence of professors selected from different countries and by the intercourse of students, likewise coming from different countries, the horizon of the professors would be broadened and their views, as well as the views of the students, internationalized. The great experiment remains to be tried, as the Academy is to be opened in the Peace Palace at The Hague at no distant date, and the students will, it is to be hoped, press in increasing numbers to this Mecca of internationalism.

<sup>1</sup>Oppenheim, *International Law*, 1st ed., vol. ii, p. vii.



Arrangements were in contemplation and indeed well under way to establish one or more fellowships in all countries parties to the Hague Conventions, so that young men planning to engage in the practice of international law or to devote themselves to diplomacy might perfect their studies at this international center. For the time being the process is delayed and the doors of the Academy are closed, but it is not too much to hope that they will swing open on a happier morrow, and that in the Peace Palace at The Hague, where justice is administered by the Permanent Court of Arbitration between nation and nation, the principles of international law will be taught by accredited teachers thereof drawn from the various countries of the world to a student body, likewise coming from afar.

*Article 27 [Resolution No. 6]*

*The Second Pan American Scientific Congress expresses the opinion that the present development of higher education in the American republics and the place which they have now assumed in the affairs of the society of nations justify and demand that the study of the science and historic applications of international law be treated on a plane of equality with other subjects in the curriculum of colleges and universities, and that professorships or departments devoted to its study be established where they do not exist in every institution of higher learning.*

The Congress calls attention to the development of the higher education in the American republics and to the place which these republics assume in the affairs of the society of nations. It squarely states its measured judgment that international law is a science; that in its historic applications it should stand upon a plane of equality with other studies in the curriculum of American institutions of learning, and that professorships or departments devoted to the study of international law of international relations should be created in every higher institution of learning in the American continent where they do not already exist.

It has long been the habit of a certain type of mind to question the existence of such a thing as international law. This type of mind, however, does not appear to have been represented in the Congress, and it is authoritatively stated in this article by accredited representatives of the governments of the American republics that international law does in fact exist and that it should regulate their mutual intercourse; and in the passage previously quoted from the *Paquete*



*Habana*, the Supreme Court of the United States solemnly declared international law to be a part of the law of the United States and that it should be applied in the decision of cases properly involving it. The judges of this august tribunal are not ordinarily regarded as idealists but as men of affairs and leaders of the bar who have achieved distinction in their chosen profession.

For the western continent the law of nations therefore exists. As democracy comes to its own the knowledge of international law becomes more essential. The participation of the American republics in the Hague Conference is assured, and to render their influence effective their delegates must be versed in the principles of international law. The future leaders of opinion, here or elsewhere, should have opportunities in their university days of perfecting themselves in the knowledge of international law and of international relations which are based upon the law of nations, and international law should not be lowered in the opinion of the student by being placed upon a lower plane than any other branches of law or of political science. Professorships of international law should exist in every institution of higher learning in the American continent, and departments thereof should, in the opinion of the Congress, be created in every such institution.

*Article 28 [Resolution No. 9]*

*The Second Pan American Scientific Congress, recognizing the growing importance of a knowledge of international law to all persons who intend to devote themselves to the administration of justice, and who, through their professional occupation, may contribute largely to the formation of public opinion and who may often be vested with the highest offices in the state and nation, earnestly requests all law schools which now offer no instruction in international law to add to their curriculum a thorough course in that subject.*

Article 28 specifically considers the advisability of offering courses on international law in the law schools of the American countries and the necessity of having lawyers thoroughly grounded in the principles of international law. Given the fact that lawyers are members of the congresses of the different American countries, that they are very often members of the cabinets and presidents of the American republics; that in their various public offices they are called upon to interpret the principles of international law, and in many instances to apply them as interpreted to the foreign relations of their country, it needs no

argument that persons entering congress and the higher service of the governments require a knowledge of international law to enable them to perform successfully or even acceptably the duties of their offices. All members of the diplomatic service must needs be trained in international law and in a lesser, but nevertheless to a marked degree, journalists, whose business it is to guide and to mould public opinion, should be trained in the law of nations.

As the result of an elaborate investigation it has been ascertained that international law is not taught universally in law schools, and indeed that it is omitted from the courses of many of them. The Congress therefore supplements its general recommendations as to the value and advisability of an adequate knowledge of international law by earnestly recommending that courses of international law be offered in law schools which at present do not have thorough courses in that subject.

*Article 29 [Resolution No. 12]*

*The Second Pan American Scientific Congress regards it as highly desirable, upon the initiative of institutions where instruction in international law is lacking, to take steps toward providing such instruction by visiting professors or lecturers, this instruction to be given in courses, and not in single lectures, upon substantive principles, not upon popular questions of momentary interest, and in a scientific spirit, not in the interest of any propaganda.*

It is of course one thing to know the defect and another to provide the adequate remedy. In previous recommendations the Congress has urged that international law be taught in the universities of the Americas, and more especially in the law schools thereof, that international law be placed upon a plane of equality with other branches of law and of political science and that special departments be created for its teaching and study.

But it may be difficult or embarrassing to provide courses of instruction in the way previously recommended. Therefore the Congress, looking through the form to the substance, recommended it as particularly desirable that instruction should be given in international law by visiting professors or lecturers, when for one reason or another it should be found inconvenient or impossible to establish professorships and departments of international law. The Congress, however, recognizes the fact, patent to all persons interested in education, that single

lectures on isolated subjects upon matters of momentary interest are not calculated to impart a knowledge of or to create an interest in the law of nations. Therefore, the Congress urges that courses of lectures, instead of single lectures, be given and that these courses be devoted to the exposition of substantive principles of international law, not to the elucidation, however interesting, of popular questions of passing interest. Above and beyond all, the Congress urges that the courses of instruction be permeated with the scientific spirit and not conceived in the interest of any propaganda, which, it is feared, would be detrimental to a scientific method and would fail of its purpose to incline the minds and the hearts of the students to the propaganda even if it were attempted so to do.

*Article 30 [Resolution No. 14]*

*The Second Pan American Scientific Congress recommends the establishment and encouragement in institutions of specialized courses in preparation for the diplomatic and consular services.*

The need of international law for the diplomatic service has already been mentioned, although briefly and in passing, but the Congress felt that this subject was one of such grave importance that it should not be passed over in silence. Therefore, Article 30 deals with preparation for the diplomatic and consular services and urges the establishment and encouragement of specialized courses to render the services more valuable, both to those who make of them a career and to the countries to which they belong.

The place which international law occupies in the outfit of a diplomat and in the daily duties of a consul is evident upon the merest consideration of their functions, so evident indeed as not to require special mention. And yet, in view of the fact that international law is largely a thing of usage and custom, that diplomatic incidents have entered into and form such a large part of the system, and that the question of peace and of war has so often depended upon the mastery of international law by diplomats and ministers of foreign affairs, it seems necessary to enlarge upon the importance of the subject, even although it be unnecessary to enter into details. And what has been said of the diplomatic applies in no less a degree to the consular service; for as the diplomatist deals largely with what may be called political questions pending between the different countries, the consul



handles the great commercial questions which so intimately concern the prosperity of nations.

The Congress did not feel justified in recommending that training in international law should be a prerequisite to admission to the diplomatic and consular services, because this is a political question and one which each country must necessarily determine for itself. In recommending, however, specialized courses in preparation for the services in question, it expressed in no uncertain terms the advisability of a thorough knowledge of international law for any and all persons in the Americas who might think of making of the diplomatic or consular service a career.

*Article 31 [Resolution No. 15]*

*The Second Pan American Scientific Congress advises that the study of international law be required in specialized courses in preparation for business.*

Perhaps the Congress stated most unequivocally its appreciation and conviction of the advantages of a training in international law in the present paragraph, which is the shortest of the articles dealing with this topic, and which, looking away from the special uses which might be made of international law, declares that "the study of international law be required in specialized courses in preparation for business."

*Article 32*

*The Second Pan American Scientific Congress urges that in the study and teaching of international law in American institutions of learning special stress be laid upon problems affecting the American republics and upon doctrines of American origin.*

Heretofore the desirability of a training in international law has been stated in general and with reference to particular callings in terms applicable alike to Europe and Asia as well as to the Americas, but in Article 32 the Congress recognizes, without attempting to enter into detail or to specify them, that there are problems affecting the American republics which do not of necessity affect other countries, or which do not affect them in the same way or to the same extent. At the same time it recognizes, without stating or defining them, that there are what may be called doctrines of American origin.

Regarding these problems and these doctrines the Congress makes a very simple, a very specific and a very wise recommendation, namely, that, by reason of the effect which these problems have upon American



countries and by reason of the American origin of certain doctrines, special stress should be laid upon them in all courses of international law offered in American institutions.

The recommendation of the Congress accords with the views of American publicists as expressed in the Constitution of the American Institute of International Law, which is the object of the next article, and in the constitutions of the societies of international law which happily exist in every American republic. A single example will suffice. Thus, Article 2 of the Constitution of the American Institute of International Law states the purpose of this body to be "to study questions of international law, particularly questions of an American character, and to endeavor to solve them, either in conformity with generally accepted principles, or by extending and developing them, or by creating new principles adapted to the special needs of the American continent."

This article has the advantage of stating the point of approach to American problems and questions and proposes a method of solving them.

### *Article 33*

*The Second Pan American Scientific Congress extends to the American Institute of International Law a cordial welcome into the circles of scientific organizations of Pan America, and records a sincere wish for its successful career and the achievement of the highest aims of its important labors.*

The welcome extended by the Congress to the American Institute of International Law was the culmination of a remarkable series of resolutions adopted by legal, political, and scientific assemblies officially representing all of the American republics, because, as will be seen, the Pan American Union tendered a vote of commendation and encouragement shortly before the meeting of the Congress to the founders and members of the Institute, and the Commission of American Jurists, assembled at Rio de Janeiro to consider the codification of international law, adopted on July 16, 1912, a resolution, "commending the initiative taken to found an American Institute of International Law, as the Committee considers an institution of this kind of great usefulness to assist in the work of codification that the statesmen of the New World have in view."

It is difficult to explain the origin and development of the American Institute of International Law in briefer and more apt terms than

those employed by His Excellency, the Chilean Ambassador, Sr. Dr. Eduardo Suarez Mujica, the President of the Congress, who, at the meeting of the Governing Board of the Pan American Union, held on December 1, 1915, moved a resolution of encouragement to the founders of the Institute, and who, in the remarks upon his motion, unanimously carried by the Governing Board, spoke as follows:

As my colleagues are undoubtedly aware, in October, 1912, the foundations were laid in Washington for an organization of a most interesting character. Under the auspices of the prominent internationalists of the whole world, under the honorary presidency and the wise counsel of the ex-Secretary of State and distinguished North American statesman, Mr. Elihu Root, and through the unremitting and intelligent effort of two men of action and scholars, well known to the international world, Messrs. James Brown Scott and Alejandro Alvarez, there was born into the realm of scientific life the American Institute of International Law, the object of which is, briefly stated, to combine and utilize, through a central organization in Washington and the coöperation of affiliated or corresponding associations in all the other American nations, the intellectual efforts of jurists and thinkers of the continent, for the development of international law, the generalization of its principles, and the adoption of a common standard to ensure the enforcement of law and justice among the countries of the New World.

The corresponding or affiliated associations have already been organized in eighteen out of the twenty-one American republics, and steps are being taken to constitute the other three.

International law is not the patrimony of a single nation. It is the law of all nations, and must therefore be formed and assented to by all; and thus the coöperation of nations is essential to its enactment or amendment. Hence the enormous importance of an organization having a brain and a voice in every one of the nations of America, whose action must be the fruit of continental thought.

Such an organization embodies, I believe, one of the most powerful auxiliaries for progress and civilization in the Americas, and for the permanent maintenance of peace from one end to the other of their frontiers. Such an organization deserves, without doubt, the good will of the peoples and governments of the continent, which we represent here.

During the month commencing to-day the Second Pan American Scientific Congress is to meet in Washington, and one of the most important events that are to take place during its sessions is the official, solemn inauguration, under the auspices of the Congress, of the American Institute of International Law. I believe this is a fitting occasion on which to offer a vote of com-

mentation and encouragement for this work of common interest to our countries—a vote which I hope will be accepted by all—and therefore I have the honor to submit for the approval of the board the following resolution:

Considering that the official inauguration of the American Institute of International Law, founded in Washington October 12, 1912, is soon to take place under the auspices of the Second Pan American Scientific Congress; and

Considering that said Institute, consisting of representatives of every one of the American republics, recommended by the International Law Associations of their respective countries, will result in strengthening, through the active coöperation of jurists and thinkers of the whole continent, the bonds of friendship and union now existing between these republics, and will contribute to the development of a common sentiment of international justice among them, the Governing Board of the Pan American Union,

*Resolves*, To tender to the founders and members of the American Institute of International Law a vote of commendation and encouragement for the foundation of said organization, which represents a step of the highest importance in the moral advancement of the continent and in the strengthening of the sentiments of friendship and harmony among the republics.

Since the date of His Excellency's address and motion, which was warmly seconded by Honorable Robert Lansing, Secretary of State of the United States, and unanimously carried, societies of international law have been formed in the three American republics, where they were then lacking so that on the opening of the Congress a national society of international law existed in the capital of every American state. The Institute is composed of five members from each of the twenty-one national societies, recommended by the societies for membership in the Institute.

It is proper to say, before leaving this subject, that His Excellency, the President of the Congress, is himself a member of the Institute and that the members from the United States are: Honorable Robert Bacon, formerly Secretary of State of the United States and Ambassador to France; Honorable Robert Lansing, Secretary of State of the United States; Honorable Elihu Root, formerly Secretary of State of the United States and always a friend of the Americas; Dr. Leo S. Rowe, Professor of Political Science in the University of Pennsylvania and personally known and appreciated in Latin America through his repeated visits to all the American countries; and James Brown Scott, Esquire, Secretary of the Carnegie Endowment for Interna-



tional Peace and Chairman of the Joint State and Navy Neutrality Board of the United States.

It is proper also to add, in this connection, that the American Institute met in connection with and under the auspices of the Congress, that it was formally opened on December 29, 1915, and welcomed by the Honorable Robert Lansing, on behalf of the Government of the United States, by His Excellency, the Chilean Ambassador, on behalf of the Congress, of which he was President, and by the Honorable Elihu Root, on behalf of American publicists. It completed its organization by admitting the five members from each national society and selected the following officers: Honorary President, Elihu Root; President, James Brown Scott; Secretary General, Alejandro Alvarez; Treasurer, Luis Anderson.

On the 3d of January, 1916, the Honorable Robert Lansing, Secretary of State of the United States, addressed a letter to the President of the Institute, requesting it to consider the matter of neutrality, from which very important letter the following passage is quoted:

I would, therefore, suggest that a committee be appointed to study the problem of neutral rights and neutral duties seeking to formulate in terms the principle underlying the relations of belligerency to neutrality rather than the express rules governing the conduct of a nation at war to a nation at peace.

I would further suggest that the subject might be advantageously divided into two parts, namely, the rights of neutrals on the high seas, and the duties of neutrals dependent upon territorial jurisdiction.

In view of the past year and a half of war the present time seems particularly opportune to study this question and this Institute being composed of members from neutral nations is especially fitted to do this from the proper point of view and with the definite purpose of protecting the liberty of neutrals from unjustifiable restrictions on the high seas and from the imposition of needless burdens in preserving their neutrality on land.

Three days later the Institute adopted a Declaration of the Rights and Duties of Nations, based upon the political philosophy of the Declaration of Independence of the United States, and the practice of the American republics. Inasmuch as the Institute was formally welcomed by the President of the Congress, held its sessions in connection with and under the auspices of the Congress, and that the members of the Institute were likewise delegates to the Congress and



participated in its labors, it is advisable to include the text of the Declaration accompanied by a *résumé* of the elaborate commentary which explains it. The text of the Declaration therefore follows:

*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, created 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 rights and duties of nations are, by virtue of membership in the society of nations, exercised and performed conformably to the requirements of the solidarity uniting the members of the society of civilized nations, recognized by the First Hague Peace Conference in 1899, and reaffirmed by the Second Hague Peace Conference in 1907; 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 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 of 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.

**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.**

The official commentary states that this right and duty is to be understood as interpreted (a) by the Chinese Exclusion Case (reported in 130 United States Reports, pp. 581, 606), decided by the Supreme Court of the United States in 1888, holding that 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; (b) by the case of Regina v. 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; (c) by Bello in his *Principios de Derecho de Jentes*, pt. 1, chap. 1, § 7, edition of 1832, and by Calvo in his *Droit International Théorique et Pratique*, 5th ed., vol. i, § 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 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 rights and duties of independence and of equality stated in Articles 2 and 3 are, according to the official commentary, to be understood as interpreted—

(a) By Sir William Scott in the case of *The Louis* (reported in 2 Dodson's Reports, pp. 210, 243-44), decided in 1817, in which he said:



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

(b) By Chief Justice Marshall in the case of *The Antelope* (reported in 10 Wheaton's Reports, pp. 66, 122), decided by the Supreme Court of the United States in 1825, who said: “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.”

(c) By Honorable Elihu Root, in his address before the Third Pan American Conference held at Rio de Janeiro on July 31, 1906;

(d) By Bello in his *Principios de Derecho de Jentes*, pt. 1, chap. 1, § 7, and

(e) By Calvo in his *Droit International Théorique et Pratique*, 5th ed., vol. i, § 208.

**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 and duty are, according to the official commentary, to be understood in the sense in which they were interpreted by Chief Justice Marshall 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 1812, who said:

The jurisdiction of the nation, within its own territory, is necessarily exclusive and absolute; it is susceptible of no limitation, not imposed by itself. \* \* \*

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.

**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 and defined by Chief Justice Waite in the case of *United States v. Arjona* (reported in 120 *United States Reports*, pp. 479, 487), decided by the Supreme Court of the United States in 1886, who said:

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.**

The relation of international to national law is to be understood (1) in the sense in which the relationship is stated by Mr. Justice Gray in the case of the *Paquete Habana*, quoted on page 33 under Article 25 of this report; and (2) in the sense of the official commentary, according to which international law is to be regarded as a part of the law of the American countries and is to be applied as national law by their courts, and to be also applied by the respective republics in their relations one with another.

The spirit which should animate the American republics is, according to the official commentary, the following statement by Daniel Webster, written as Secretary of State:

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.

Before adjournment on the 8th day of January, 1916, the Institute was invited to hold its next session in Havana as the guest of the

Cuban Government, an invitation calculated to encourage its members to be worthy of the invitation which was so graciously and so unexpectedly tendered it.

*Article 34*

*The Second Pan American Scientific Congress recommends to all educational establishments of America the special study of the constitutions, laws, and institutions of the republics of this continent.*

It is difficult to comment upon the simple recommendation of the Congress that the constitutions, laws and institutions of the republics of this continent be made the subject of special study in all educational establishments of America. The importance of it is evident and, in the happy expression of a distinguished English judge, it can only be obscured by argument. And yet the advantages that would accrue from a knowledge of the constitutions, laws and institutions of the republics of this continent are so manifold that it would seem to be a sign of indifference if they were not dwelt upon.

The western world was an accidental discovery and the continent has been, without exception, the land of experiments. Starting without the traditions of the old world, it has been the laboratory of modern political thought. The experiment of republican, that is to say democratic, government has been tried in the western hemisphere upon a larger and broader scale than ever before in the world's history, and the experience had with democratic government has been such as to endear it to the hearts and to commend it to the intelligence, not merely of Americans as such but to the enlightened throughout the world. The specific advantage that would accrue to American peoples by the study of their respective constitutions and of their laws and of their institutions is that each would be able to profit by the experiments, and by the departures in political life and thought of each of the countries, and by appropriating the innovations which have proved successful and by modifying them to meet special conditions they would be able to add to their own happiness and to increase the heritage of their offspring.

*Article 35*

*The Second Pan American Scientific Congress recommends to the various universities of the American republics that a comparative study of judicial institutions be undertaken in order—*

*(a) To create special interest therein in the several countries of the continent;*

(b) *To facilitate the knowledge and solution of problems of private international law in the American countries; and*

(c) *To bring about as far as possible uniformity in jurisprudence and legislation.*

Articles 23-33 dealt with international law. Article 34 forsook international law and urged the desirability of a knowledge and study of the constitutions, laws and institutions of the western world. Article 35, without returning to international law, nevertheless narrows the field of its recommendation and commends the study not merely of institutions as such and of all institutions of the American countries but the comparative study of judicial institutions, in the hope if not in the belief that such a comparative study would create special interest therein in the several countries of the continent and redound to the benefits of each one thereof. A question of very great importance and of equal difficulty is that of the conflict of laws, very frequently called private international law. The great difficulty in this subject is that countries deriving their systems of law from England have adopted the principle of domicile, whereas the countries drawing their inspiration and their systems of law from the civil law of Rome are inclined to the principle of nationality. The conflict between the two is evident and as it is one of principle it is difficult of compromise. Nevertheless, the Congress recommends the solution of problems of this nature, and ventures a step further in the field of jurisprudence by recommending as far as possible uniformity in legislation as well as in jurisprudence. Whether it would be possible to reach a working compromise in the domain of international private law, and whether it would be possible to secure in any considerable degree uniformity of legislation and of jurisprudence in the various countries, it can not be gainsaid that it is the goal that we of the Americas should have before our eyes. If it be solved the triumph is greater, because of the difficulties, and perhaps a very desire to solve the problems may, with good will, much patience and infinite tact, overcome many if not all of the obstacles which stand in the way of the realization of this counsel of perfection which the Congress recommends.

#### *Article 36*

*The Second Pan American Scientific Congress, in order to broaden the outlook and to bring into closer contact the members of the legal profession, urges that the bar association exchange among themselves:*



(a) *Law books and publications affecting the legal profession and the practice of law.*

(b) *New codes of law and rules of procedure as they are hereafter published.*

It was natural that the recommendations in Section VI dealing with international law, public law and jurisprudence should cover a very broad field, and that some of them, going beyond the subject-matter, should not merely refer to subjects of international law, of public law, or of jurisprudence, but should suggest that the persons following these various callings regard themselves as bound by the ties of their profession and that, if they were unable to meet personally, there should nevertheless be an exchange of ideas, of ideals, and of the things of the spirit. Therefore, in order to raise the standard, if possible, of the legal profession in all parts of the Americas, the Congress urged that the bar associations made up of the votaries of law should exchange among themselves law books and publications affecting the legal profession and the practice of law; for it was recognized that, without this, they would stand as it were in isolation but that with this exchange there would be developed, little by little, a common knowledge, a common standard, a broader outlook and a feeling of mutual dependence and respect. This recommendation, seemingly broad, is in reality narrower than that contained in the final paragraphs of the article, because in the one lawyers as such are affected whereas in the other not only lawyers but men of affairs are included, because it is of advantage to men engaged in business extending beyond the confines of their country to have the codes of law in their hands and to be familiar with the rules of procedure, lest through ignorance and neglect their feet become entangled in the meshes of foreign law. Of course, neither codes nor rules of procedure can dispense with the lawyer, for we must needs have a professional class devoting itself to the interpretation and the application of laws; and yet the codes and rules of procedure would often prevent the commission of a mistake, and their very presence and their very difficulty would urge the taking of advice of the profession before it is too late.

The recommendations of Section VI as a whole aim to make international law a thing of flesh and blood, a living organism, as necessary to nations in their mutual intercourse as is national law to individuals in political society; to impart to the peoples of the Americas a knowledge



of the constitutions, laws and institutions of the republics of our beloved continent; to strive for uniformity both in the framing and in the interpretation of laws, in so far as this may be possible, and by broadening the legal profession and bringing its members into correspondence, if not into actual personal touch, to create a community of ideals, to raise the standard of the profession in all the Americas and to make it worthy of the trust and confidence which it has enjoyed and without which its members can not render effective service.







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