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## THE EVOLUTION OF INTERNATIONAL LAW<sup>1</sup>

In the Hebrew Bible and in other ancient records and inscriptions, there are evidences of the observance of certain usages as to international intercourse, such as embassies and rules of warfare. But in those remote ages it was the struggle of one warlike people to dominate all the rest, and consequently rights of nations were little respected. In ancient Greece the Amphictyonic Council represented a few petty States, in which there existed certain crude notions of international law, but all the world beyond were treated as barbarians and enemies. In the long sway of the Roman Republic and Empire no independent nation was tolerated within the reach of its warlike legions. It was not until the modern nations began to be evolved from the chaos resulting from the overthrow of the Roman Empire, and after they assumed some degree of stability and independence and recognized in each other an equality in their intercourse, that international law began to be a formative code of principles controlling the conduct of nations.

Two events in the first half of the seventeenth century had an important influence in promoting this condition of international relations. The first was the publication of the great work of Grotius, *De Jure Belli ac Pacis*, in 1625, and the second, the *Congress and Treaty of Westphalia*, in 1648. But back of these, in the preceding century, two opposing influences had been at work to bring about the events just noted, under the leadership of the two great men of that century, the Emperor Charles V and the reformer Luther.

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<sup>1</sup> Address delivered at Commencement Exercises of Yale Law School, 1908.

The Emperor was not only the greatest monarch of his day, but the autocratic ruler of territorial domains hardly equalled in extent by any sovereign of ancient or modern times—Emperor of Germany, King of Spain in the era of her greatest power, of the Netherlands, the greater part of Italy, various other principalities of Europe, and of the far-off dependencies of Mexico, Peru, and the other vast regions beyond the seas—the most magnificent empire on earth. Added to these unrivalled possessions, the Emperor cherished an ambition to be the arbiter, if not the actual ruler, of the entire civilized world. To accomplish those ends he had a powerful support in the Popes of Rome. During the dark ages that followed the dissolution of the Empire of the Caesars, the Popes had at times exercised a salutary influence in restraining the unbridled atrocities and warlike propensities of contending monarchs; but, as a devoted son of the Church and the champion of the faith, they gave a hearty support to Charles in his ambitious schemes.

But an unexpected obstacle arose in the person of the obscure Augustinian monk, whose preaching against the practices of the Roman Church had brought down upon him the fearful excommunication of the Pope. Yet, notwithstanding this malediction, the common people heard him gladly, and presently nobles and princes rallied to his crusade against the Mother Church. In time the mighty monarch, inspired by the Holy Father and disturbed by threatened political revolt against his authority, summoned the audacious monk to appear before him to recant his heresies, and cease to disturb the peace of Europe. In that great convocation in the Cathedral at Worms, as he stood before the Emperor, surrounded by the princes, nobles and hierarchy of his empire, Luther little foresaw the effect of his attitude. It was an appeal to reason and the conscience. His was intended as a religious reformation, but his preaching proved a most powerful political propaganda.

The closing declaration of his defense before the Emperor: "Here I stand, I cannot otherwise; God help me!" rang throughout Europe. It kindled the fires of the *autos de fe* in Spain. It brought to France the St. Bartholomew massacre and the struggle of the Huguenots. It divided Germany into two warring camps. It changed the faith and politics of all Scandinavia. It inspired the heroic revolt of the Netherlands. It made England, under Elizabeth, the bulwark of Protestantism. It drenched Europe in

blood for many years, but out of the long and bitter struggle was to come the triumph of reason and conscience upon the ruins of the mighty and dominating empire over which Charles V once reigned supreme.

In the early years of the seventeenth century, the warring elements, wearied of the strife, sought peace; and a truce was made. But it was destined soon to break out afresh, and the terrible Thirty Years' War began. I quote from Professor Lawrence, in his lectures on *International Law*, a few extracts descriptive of this war:

"It is impossible to imagine a more awful record of crime and misery. \* \* \* Famine and pestilence followed in the wake of the armies. There was no pity, no reverence, no devotion. Wolfish ferocity, blasphemous impiety, unbridled lust, bore sway over the words and deeds of men. Whole districts went out of cultivation, and were restored to forest and wilderness. Often the gibbets were deprived of their ghastly load to satisfy the pang of hunger; and the churchyards were rifled for the same horrible purpose. Cannibalism was frequently preceded by murder. Human beings, turned by misery into wild beasts, rivalled the beasts in ferocity and foulness. Men gloried in their wickedness. They chanted litanies of the devil, they sang songs in praise of lust and torture."

"In the remote country districts religion died; and learning perished from the universities. Only a few years after the war began there were only two students left at Heidelberg. The close of the struggle found Germany exhausted and ruined. Three-fourths of the population had perished. Three-fourths of the houses were destroyed, together with five-sixths of the cattle. \* \* \* Commerce had well-nigh disappeared. Some arts had perished entirely. Manufacturing skill had been forgotten amid the ravages of warfare. Science and literature had almost departed from the land."

This ghastly picture is sufficient to convey some idea of the horrors of this war. It was participated in by practically all the nations of Europe. Out of the darkness and the gloom of the conflict only one prominent figure appears with credit—Gustavus Adolphus, the King of Sweden. Among all the commanders he seems to be the only one who sought to restrain the lawlessness and ferocity of his soldiers, to ameliorate the severities of war, or to observe the ill-defined rules of international law.

During the Thirty Years' War and inspired by its terrible ravages came Grotius' great work in 1625, to which he had given twenty years of study and research. It was largely a compilation from the works of others who had essayed to advocate or establish certain rules for the conduct of nations, chief among whom were Suarez in Spain, and Gentilis at Oxford. The most potent writer on political affairs and the relations of States in Europe, who had preceded Grotius by a century,—Machiavelli—had instilled into the minds of rulers a devotion to war and a low standard of ethics. He taught that war was the only profession worthy of a prince; that it was neither wise nor required of him to keep his pledged faith, if the keeping of it was to his prejudice; and that there was no obligation upon him to observe neutrality between two neighboring nations at war. It was a common maxim of those who adopted Machiavelli's teaching, "For a King or a sovereign city nothing profitable is unjust."

It is not strange that such doctrines had brought about the disregard of law and justice which marked the wars of the sixteenth and seventeenth centuries. Such writers and professors as Suarez and Gentilis had sought to establish a higher standard of political ethics, but it was reserved to Grotius to combine all the wise and humane teaching of past ages in one great work, the result of his vast learning and his exalted ideas of right and justice. He made the teachings of the Bible and the law of nature the basis of his work. The spirit of Christianity tends to peace, and it is not difficult to show that modern international law owes its present high standard of equity and morality more to that spirit than any other influence. To the teachings of the Bible, Grotius added the precepts which he deduced from the law of nature, fortified as he made them by a great wealth of learning drawn from the Roman jurisprudence and the writers of antiquity.

To his appeals to reason and the conscience in behalf of peace and for a more humane method of conducting war, he joined an argument in behalf of the sovereignty of independent States. His argument was most effective and convincing against a common or universal superior exercising sovereign rights over other States, and it more than any other gave hope and courage to the smaller nations struggling for independence and complete sovereignty.

It was the first serious attempt at the codification of international law, or at putting forth well-defined and precise rules for the government of States in their international relations. Its

effect upon the age in which it appeared was surprising. Enlightened rulers like Gustavus Adolphus, at once accepted its principles and sought to put them into practice. Although the war went on to the limit of exhaustion of the combatants, when at last their representatives came together to consider terms of peace, they instinctively turned to Grotius' great work to guide them to a just conclusion. It has been well said that it is one of the few books that have changed the history of the world.

The Congress of Westphalia, convoked to bring the Thirty Years' War to an end, was one of the most memorable events in European history and marked the real beginning of international law. Grotius and the earlier publicists had done much to create a public sentiment in favor of a more rational and humane political system, but international doctrines only become laws when recognized and put in practice by the assent of sovereign States. After much time spent in determining the ceremonials attendant upon the meetings, a treaty of peace was at last signed in 1648.

Its important provisions were the recognition of the independent sovereignty of the States of Europe; their right to exercise exclusive jurisdiction within their own territory; the regulation of the intercourse of these States; the right of each State to negotiate its own treaties; and the establishment, nominally at least, of religious toleration.

Its results were that it broke down the power of the empire, which Charles V had so strongly held, and destroyed the hopes of a universal supremacy which he had so fondly cherished; and his ally, the Pope, was reduced in his political power to a petty principality, and left only his spiritual influence even in the Catholic countries of Europe.

The inauguration of a recognized system of international law was only made possible at that time because of the great change which had taken place in the political sentiments of Europe in the preceding century. The leaders in bringing about that great change were Luther in his appeal to reason and the conscience, and Grotius in showing that there was a better way to attain and preserve national and political rights than by war.

In the Treaty of Westphalia a general representation of the leading nations of Europe had united for the first time in settling their conflicting interests. The Congress of Westphalia in this treaty demonstrated the possibility of adjusting great disputes

among nations by means of mutual discussion and an appeal to reason. It was a long and weary road the nations of the earth had to travel to reach the First Peace Conference of The Hague in 1899, but the first step had been taken by the Congress of Westphalia.

Grotius had a number of learned disciples during the succeeding century, whose published treatises marked the growth or development of international law, and whose influence tended to bring the nations steadily to a higher standard of international ethics. The most advanced and authoritative of these publicists was Vattel, whose work on the *Law of Nations* appeared just one hundred years after that of Grotius, and is still cited as an authority, notwithstanding the progress made since his day.

In no respect has the salutary influence of international law been shown more than in the amelioration of the severities of war. All through the Middle Ages and even down to the last century, war has been regarded as the normal condition of nations. Machiavelli taught that "A prince is to have no other design, nor thought, nor study, but war, and the art and discipline of it; for, indeed, that is the only profession worthy of a prince." So enlightened a sovereign as Henry IV of France, on receiving a book written by King James I of England, remarked: "It is not the business of us Kings to write, but to fight." And so late as the seventeenth century, we have philosophic Lord Bacon arguing in Parliament in favor of "enlarging the patrimony of our posterity" and seeking "the amplitude and greatness" of the nation as the natural and proper policy of the country.

It is not strange that, under such teaching, the history of Europe up to recent times has been almost exclusively a record of war, devastation and cruelty. The golden age of chivalry has been well characterized as a tale of tinsel splendor and cold-blooded brutality. The reading of Froissart and contemporaneous writers attests this assertion. The religious wars of a later age and the horrors of the struggle of the Netherlands are well known. What I have already quoted as to the Thirty Years' War suffices to show its horrors and brutality. The wholesale slaughter of prisoners, the sacking of cities and the massacre of their inhabitants, and the laying waste of the country were common practices. Up to the date of the Treaty of Westphalia, prisoners of war were sold into slavery, and even after the independence of the United States the practice was still maintained by the Mahometan States.

Even the humane Grotius admitted the right, but appealed to Christians to redeem one another by ransom.

The perfidious assassination of opponents was advocated on both sides during the religious wars. Philip II of Spain offered a public reward for the murder of the Prince of Orange, and approved of the plots against the life of Queen Elizabeth. The Pope caused *Te Deum* to be sung on the assassination of William the Silent and over the massacre of St. Bartholomew. The change in public sentiment is shown in the act of Mr. Fox, British Foreign Secretary, in notifying Napoleon of a well-laid scheme for his murder; and the universal condemnation and detestation of the South on the assassination of President Lincoln.

Following the Treaty of Westphalia great reforms were introduced into the practices of war; prisoners began to be exchanged; the lawlessness of the soldiery was restrained; the sack of cities and the indiscriminate destruction of private property diminished; and through the eighteenth and nineteenth centuries steady progress was made in the amelioration of war. To the United States belongs the credit of having framed and put into practice the first system of rules to this end during the Civil War, which was made the basis of those of other nations which followed during the last quarter of the nineteenth century. The Geneva conventions, the Red Cross organizations, and rules adopted by the First and Second Peace Conferences at The Hague for the regulation of war on land and sea, mark a notable advance in the humane sentiment of mankind. The saying of General Sherman that "War is hell," must ever remain a sad truth, but much has been done through international law to soften its asperities.

One of the most potent influences in bringing about changes and improvement in the law of nations has been commerce. This is especially manifest in the modifications which have taken place in the regulations respecting the high seas or ocean, at the demands of a freer commerce. During the Middle Ages and even within modern times, we have seen nations laying claim to an exclusive jurisdiction of the seas adjoining their territory. Venice claimed dominion over the Adriatic, and fortified it by a grant from the Pope. The Danes and Swedes held the Baltic to be territorial waters. England not only put forth a claim to the "Four British Seas," but exacted maritime honors to her flag from Cape Finisterre to the North Cape, and adhered to this claim as late as the beginning of the nineteenth century.

Upon the discovery of America, the Pope sought to divide the sovereignty of the oceans between his faithful servants, the Kings of Spain and Portugal, drawing a line from the North to the South Pole; but the other nations which were developing their maritime commerce disputed these extravagant pretensions. The Portuguese, who had discovered the route to the East Indies, established themselves at the Cape of Good Hope, and, joined by Spain, forbade all other nations to extend their commerce into the Indies; but the Dutch, who were rising into maritime importance, challenged this interdiction. The controversy gave occasion to Grotius' first work on international questions, his treatise on *Mare Liberum*, issued in 1609, nearly twenty years before his great work, *De Jure Belli ac Pacis*. He laid down the doctrine, borrowed from the Roman writers, that nature and public utility alike forbade the existence of private property in the sea; and that, like air, it was naturally, inherently, and forever, subject to the common use of mankind.

His treatise brought forth a number in reply, the most prominent of which was Selden's *Mare Clausum*, but in this, as in his work on *War and Peace*, Grotius won the support of the more intelligent and progressive public, and it had a marked effect in changing the practice of nations as to the use of the ocean. As the European countries grew more interested in commerce and the United States came into existence, the national claims to the ocean gradually disappeared, and the general rule of a three mile territorial limit and the high seas free to all, came to be recognized as the established law.

Neutrality is one of the questions which have undergone great changes in modern times. Machiavelli condemned the doctrine of neutrality on the ground that it was more profitable to declare for one or the other belligerent. The Italian princes and cities of that period allowed both parties at war to recruit in their territories. It was a common practice up to the end of the eighteenth century for sovereigns under treaties to hire out portions of their armies to other rulers at war, as is evidenced by the use of the Hessian troops by the British government in its efforts to suppress the revolt of the American colonies. That noted work of art, *The Lion of Lucerne*, commemorating the heroic self-sacrifice of the Swiss body-guard of Louis XVI, which attracts the attention of all tourists, is another indication of the then existing practice of the use of foreign levies. The action of the King of France in



furnishing from the royal arsenals artillery, small arms, and munitions of war to the revolting British-American colonists, under the illy disguised medium of Beaumarchais, also shows what little regard was paid at that day to the rules of neutrality.

The United States has the credit, now conceded by all foreign publicists, of inaugurating the first serious attempt to establish the practice of general neutrality. The action of the government was brought about by the effort of the First French Republic to embroil us in its war against England and Continental Europe. After careful consideration and much difference of opinion among his advisers, President Washington issued a proclamation of neutrality which has had a greater influence in moulding international law than any single document ever issued. The paper itself is a simple announcement of the neutral attitude of the United States, and a warning to American citizens to observe it; but its influence is in the significance of the act under the embarrassing circumstances surrounding the young nation, the strict impartiality of its enforcement, and the resulting legislation of Congress, which became a model for all other nations.

The proclamation was followed by the act of Congress of 1794, defining what were offenses against neutrality and affixing penalties therefor. This legislation was carefully revised in 1818, and has since practically remained unaltered, and has been made the basis of the legislation of all the civilized nations.

Canning, the British statesman, gave the following testimony to the action of Washington, in Parliament in 1823: "If I wished for a guide in a system of neutrality, I should take that laid down by America in the days of the presidency of Washington." Hall, one of the latest English writers on international law, says: "The policy of the United States in 1793, constitutes an epoch in the development of the usages of neutrality. \* \* It represented by far the most advanced existing opinions as to what the obligations of neutrality were. \* \* \* In the main, it is identical with the standard of conduct which is now adopted by the community of nations."

The proper observance of neutrality, as between belligerents by a neutral power, was the occasion of much controversy between the United States and Great Britain during the Civil War, and the action of Great Britain was made the basis of the Alabama claims, resulting in the Geneva arbitration. For the government of that arbitration, three rules declaratory of the law

were agreed upon, and the parties further stipulated to ask the acquiescence in them of the other maritime powers, but it was not until the Second Peace Conference at The Hague, that the approval of all the nations was secured and they became incorporated into the code of international law, thirty-six years after they were agreed upon by the United States and Great Britain.

The evolution of international law may be illustrated also by the history of what are known as the Four Rules of the Declaration of Paris of 1856, promulgated by the Great Powers of Europe as the result of their conference at the close of the Crimean War. The rules of maritime commerce in time of war had their origin when that commerce was mainly confined to the Mediterranean, conducted by the Italian cities, and are found in what is termed the *Consolato del Mare*, or the maritime code of that day. With the discovery of America and the sea route to the East Indies, commerce was greatly enlarged and was transferred to the more important European nations. The old rules of the Mediterranean were not suited to these changed conditions. Neutral commerce set up claims which nations at war were not willing to concede, and during the eighteenth and the early part of the nineteenth century a controversy existed which culminated or sought a solution in the Declaration of Paris of 1856. It embraced the abolition of privateering, and the exemption of neutral and enemy's goods under certain conditions, and defined blockade.

But this result had been reached only after a century and a half of controversy and war. The armed neutrality of the Northern European nations of the eighteenth century contended for the principle of "free goods in free ships." Privateering had been the practice of all nations for many generations—that is, the commission by governments of vessels belonging to private owners to engage in war. It had been found by the United States an available aid in the War of Independence. Both Napoleon and Great Britain had sought to establish blockade by mere proclamation, greatly to the injury of neutral commerce, especially that of the United States. It, combined with other matters, brought us to the verge of war with France and precipitated the War of 1812 with Great Britain.

The Great Powers of Europe invited the United States to accept the Four Rules of Paris. Our Secretary of State at the time, Mr. Marcy, offered to do so, if the Powers would add to

the Rules the exemption of all private property at sea during war; contending that we ought not to be expected to abandon privateering, unless private property should be exempt from seizure, as otherwise the Rules operated to the advantage of the nations with powerful navies. The controversy went on through the latter half of the nineteenth century, but at the opening of the Spanish War in 1898, our government announced that it would not resort to privateering, and Spain made a similar statement. From that date it may be regarded that the Four Rules of Paris have been accepted by the leading maritime nations of the world.

While in this way new principles of international law are being established by the slow process of evolution, the world is also outgrowing other principles which have become obsolete or inapplicable. This is illustrated by the history of the doctrine of territorial rights by discovery and occupation. Following the opening of the New World and the movement for colonization, a system of rules grew up governing territorial rights, which no longer have application. One of the reasons given by President Monroe for the enunciation of the celebrated doctrine which bears his name, was that the American hemisphere had ceased to be a field for colonization, because its entire limits were occupied by established governments. And such may be regarded as the condition of the entire habitable world.

As the *Consolato del Mare* of the Mediterranean commerce no longer answers as the rule of conduct of maritime trade, so also the rules which governed the nations in adjusting their colonial limits and territorial rights have ceased to have application with the progress of time. Changed conditions, the progress of science and invention, new demands, bring about modifications in both international and municipal law. The influence of changed conditions or localities upon the law may be illustrated by the modifications which the common law doctrine of riparian rights or water privileges have undergone in the United States within recent years. Under the common law, both in England and the United States, the waters of running streams are for the common use alike of all riparian proprietors. Each may use the water for all reasonable purposes as it passes by his land, provided he does not interfere with navigation; but he must return it without substantial diminution in quantity or change in quality to its natural bed.

This was the law as it became established in England and the Colonies, where the rainfall was abundant and extended throughout the year; and it was suited to the inhabitants of the United States who settled along the streams of the Ohio and Mississippi Valleys not needed for irrigation. But when the population reached the vast arid regions of the continent, the common law doctrine did not meet the situation and demands of the people. Hence, Colorado, Utah, New Mexico, Arizona, Nevada, and other States in the arid region, have found it necessary, by constitutional or statutory enactment, to change the riparian rights of the common law into what are termed rights of appropriation, by which the waters of streams are taken for purposes of irrigation. And the common law has undergone similar modifications in the arid regions of Canada and Australia.

This change in law and practice brought about complications, however, of an international character. The Rio Grande del Norte rises in the State of Colorado, flows through the territory of New Mexico, and then becomes the boundary between the United States and Mexico. Since the new doctrine of appropriation of waters has been put into practice, the Rio Grande when it reaches the international boundary, is, for a considerable portion of the year, barren of water, because of the appropriation in Colorado and New Mexico; and as a result, a considerable district on the Mexican side, which, through irrigation was very fertile and productive, has become desert land. The Mexican government for some years past has been making complaint, and the Government of the United States, yielding to the justice of this complaint, has by treaty stipulated with Mexico to erect a great dam a few miles above the boundary line in New Mexico to impound the flood waters of the Rio Grande, as part of its vast system of irrigation, and thence supply to Mexico a sufficient amount of water to restore to fertility the lands formerly under cultivation.

I regret that I shall not be able within the limits of this paper to pursue this review of the evolution of international law by other illustrations. Enough has been said, I trust, to show that its growth or development is a slow process, but that there is constant progress towards a higher standard of justice and fair dealing among the nations. This has been most clearly shown in the work of the First and Second Peace Conferences at The Hague. That they have not accomplished more makes it clear

that the task is difficult and must be advanced by patience and conciliation.

Before closing, I desire to ask your attention to that branch of international practice which has made the greatest advance in late years and which promises to be most fruitful of good results—the adjustment of controversies among nations by arbitration.

This practice is not of modern origin, as we find traces of it in the intercourse of nations in the earliest historical records. It was not uncommon among the Greek States. We find Thucydides referring with approval to the declaration of the King of Sparta: “It is impossible to attack as a transgressor him who offers to lay his grievance before a tribunal of arbitration.” The dominating spirit of Rome allowed little exercise of it; but when the Popes attained ascendancy in both spiritual and temporal matters, they often exercised the functions of arbitrator between contending sovereigns. Later, in the Congresses of Westphalia, Ryswick, and Utrecht, provision was made for the reference of certain subjects to arbitration.

As the warlike nations rose into importance, the practice became less frequent, and in the seventeenth and eighteenth centuries little resort was had to it. But towards the close of the latter period, the nations began to look again with favor on the settlement of their differences by an appeal to reason, and the nineteenth century was the most fruitful in the history of the race in a resort to arbitration. It is our proud boast that our own country stands at the head of the list of the nations which have most often and on most important questions submitted their international disputes to this peaceful method of adjustment. In one of the first treaties after independence, that with England of 1794, negotiated with a view to avoid a threatened war, provision was made for three commissions of arbitration. The first treaty with Spain, of 1795, likewise created an arbitration commission. The practice so early adopted has been faithfully observed throughout our entire history. Our government has been a party to about eighty arbitrations of an international character, embracing twenty different nations, including the most powerful and the weakest States. As a result of this policy, the United States has been engaged in foreign wars less than five years of its existence as an independent nation, a period of one hundred and twenty-five years.

The country with which we have most often resorted to arbi-

tration is the one with which we have had the most intimate, the most irritating and perplexing relations; and it is greatly to the credit of both the United States and Great Britain that for almost an entire century they have been able to settle all their differences, some of them of the most grave and threatening character, by the peaceful method of diplomacy or arbitration.

The other civilized nations have followed the example of the United States and Great Britain and have resorted frequently to arbitration to settle their controversies, especially in the last quarter of a century, one of them at least, Italy, having surpassed these Anglo-Saxon nations in the number and scope of its treaties of this class. In one respect, however, the tribunals or commissions of arbitration have not proved entirely satisfactory in their results. They have been composed of men, although intelligent and experienced in public affairs, yet as a rule without knowledge or practice in the duties of their new positions; and the consequence has been that their decisions have not been founded upon uniform principles, and they constitute a mass of ill-digested and oftentimes conflicting interpretation or application of international law.

The remedy for this defective system most usually suggested and discussed of late years, has been the establishment of a permanent international tribunal representing all the nations of the earth, and before which they may bring their differences not susceptible of diplomatic solution, and have them settled by a high court composed of the most expert jurists of the world. The establishment of such a tribunal has been the dream of philanthropists and philosophers, has been discussed by publicists, and even considered by wise monarchs, during the past three centuries. Nothing more fully marks the steady evolution of international law than the fact that the establishment of such a tribunal seemed to be upon the point of realization at the Second Peace Conference of all the nations of the earth at The Hague last year.

It was proposed at the First Peace Conference in 1899, but was then considered impracticable. At the Second Conference last year, no one subject was more fully and exhaustively discussed and examined. The desirability of the establishment of such a permanent international tribunal was unanimously approved by the assembled nations; and the method of exercising its duties, its government and its support were agreed upon with-

out much difficulty. But when the question of the composition of the tribunals, the persons who were to constitute its members, was taken up for consideration, an apparently insuperable obstacle was encountered.

The smaller nations insisted upon the observance of the principle of the equality of sovereign States, and many of them claimed a representation on the tribunal. Such a plan would require, in place of a tribunal of fifteen or seventeen members as contemplated, a body of forty-five or more persons. It was held that such a numerous body would lose its judicial character, and that, besides, it would be unjust to the large and more powerful nations. While as a general principle the equality of States was conceded, it was insisted that in practice it was in many respects a theory and not a reality.

The same question arose between the larger and smaller States in the formation of the Federal Government of the United States, and it became necessary to effect a compromise of conflicting interests. It is hardly to be anticipated that the establishment of such a tribunal, so ardently and so long desired, will be allowed to fail, but that a way will be found to reconcile all reasonable differences of views as to its composition, and that the present generation will see assembled in the Temple of Peace at The Hague a Permanent International Tribunal, to which all the nations of the world may resort for the peaceful adjustment of their controversies.

Much has been said in recent years of some plan for a limitation of the enormous standing armies which have turned Europe into a military camp, and of some check upon the ever-increasing competition in naval armament which seems to threaten the bankruptcy of the nations; but the discussion has thus far been to little purpose and of no practical result. If such an international tribunal as is contemplated could be established and could gain the confidence of the nations, it might, in some degree at least, furnish a solution of the question of limitation of armaments. Through the operations of such a tribunal the governments of the world might have an illustration of the fact that there is a cheaper, more satisfactory, and more humane way of settling their controversies than by war; and as confidence in the tribunal grew the nations might more and more come to believe in the efficacy of the tribunal to safeguard their rights, and rely less and less upon their armies and navies.

To-day, three powerful influences are arrayed against war—commerce, democracy, and christianity. The enormous growth of maritime commerce and the vast industrial interests dependent in large measure upon it, are mighty factors for the preservation of peace. Only yesterday, as time goes, the monarchs of the world held its destinies in their hands and they could determine at their will war or peace for their subjects. To-day, not only in the republics but in the monarchies, the people who bear the brunt of battle must be reckoned with; the spirit of democracy has rendered nugatory the boast of Louis XIV: "I am the State." Christianity never was more responsive than in the present era to the teaching of its divine founder, the Prince of Peace. Though nominally Christian nations engage in war, they cannot do it with that reckless disregard of justice and humanity which marked the history of past generations. The spirit of Christ more and more enters into the counsels of nations. The present vast armaments and the rampant martial spirit seem to disprove this, but beneath the display and bravado there is a sober sentiment of justice and right, and the slow but steady evolution of international law is bringing the nations more and more to a higher standard of duty, which is an augury of the eventual triumph of reason and the reign of peace.

*John W. Foster.*