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INTERNATIONAL ORGANIZATION AND POLICE

International police as a sanction, that is, as a means of enforcing international law, is to-day one of the debated questions of the world peace movement. But when people speak of international police they often fail to distinguish carefully the meaning of the term. International police is a misnomer. What is meant is an international army and navy, not a force of policemen, sheriffs, or marshals in the sense in which the word is commonly used in the United States.

International police is, however, not a new idea. It is one of the oldest and most persistent ideas associated with the movement for world peace. It was embodied in the Great Design of Henry IV and in the project of William Penn for the peace of Europe, both which propositions date back to the 17th century. It was part of the scheme of the Abbé de St. Pierre, who elaborated early models, and was embodied in Rousseau's Project of Perpetual Peace which antedated by a few years the outbreak of the French Revolution. Europe has changed since those proposals were made; but they may be considered as steps in the evolution of thought about sanctions. Suffice it to say that in general they contemplated a European federation with armed force to carry into effect the vote of its congress or the decision of its court, to maintain a treaty, to punish a member who negotiated a treaty adverse to the confederation, or made preparations for war on it, took arms to resist it, or attacked one of its members.

Early in the nineteenth century, no less a personage than Czar Alexander I of Russia proposed to Great Britain the use of inter-
national force as part of his plan, first for a confederation of Europe and then of the world. While the result of the Napoleonic wars was still in doubt, the British government was willing to accede to a proposal to organize a collective force, but only under a specific treaty of alliance for definite purposes, like keeping France in order. It was unwilling to join in a standing arrangement for the use of international coercion for the vaguely defined or general objects of a confederation, a distinction that it may be well to bear in mind to-day in judging the probable attitude of Great Britain, or for that matter, of the United States should the views of either country on international police suddenly be put to the test.

After the defeat of Napoleon, the Holy Alliance, consisting mainly of Russia, Prussia and Austria, cooperated with their military forces against uprisings of democracy in Europe and thus disclosed that one of the chief dangers of the use of united force is interference in the internal affairs of nations. Great Britain was asked to join the Holy Alliance, but refused because her statesmen saw that, while the arrangement might enable her to intervene in the internal affairs of other European states, it would allow the other members of the alliance to interfere in her affairs. Her king and people were living under a parliamentary system and preferred democracy to absolutism. The Holy Alliance might have gone farther and put down by force of arms revolution against Spain in South America, but was prevented from doing so by fear of the fleet of Great Britain, which could hinder transportation of troops on the seas, and by the promulgation of the Monroe Doctrine which warned Europe against meddling in American affairs by extending her system here. Associated thus with intervention and with the repression of democracy by despots, the use of international police became abhorrent to the liberal sentiments of the generation that knew the working of the Holy Alliance, and has remained under suspicion ever since.

The organized peace movement, which was begun at the end of the Napoleonic Wars, has never as a whole favored coercive sanctions. It has followed in the steps of William Ladd, founder of the American Peace Society, and author of an Essay on a Congress of Nations, (1840), a work that in respect to the use of force is typical of most modern peace projects whether proposed by Europeans or Americans. William Ladd advocated a congress for the codification of international law and a court of
arbitration to apply the law, but behind neither congress nor court was there a policeman. The most influential organization of public men making for world peace, the Interparliamentary Union, does not as a body approve the idea of international coercion.

The Hague Conferences have not adopted collective force as a sanction to international conventions. The Hague Conference of 1907 provided certain penalties or compensations for the breaking of rules for the conduct of warfare on land and stipulated in the Porter-Drago convention that force should not be used to collect contractual debts until a nation had refused to arbitrate, or having consented to do so, declined to go on with the necessary arbitral proceedings; but, though the right to use force as a last resort was implied, no thought of its exercise by a union of the nations or by any other than the aggrieved nation was intimated. When the powers at The Hague in 1907 expressed their conviction that certain disputes relating to the interpretation and application of the provisions of international agreements might be submitted to compulsory arbitration, without restriction, no plan for the use of force was recommended. No international army or navy is authorized to enforce neutrality regulations relating to land or maritime warfare. Each state is to defend its own neutrality; so-called neutralized states like Belgium and Switzerland, whose integrity was guaranteed by some of the great powers are not protected by specific guarantee under the Hague Conventions. We find no mention of international force in the convention establishing the Permanent Court of Arbitration, or the draft for the Court of Arbitral Justice, or the convention for the International Prize Court. It was the understanding that the litigant nations who used these courts were to carry out their decisions in good faith and it was thought that public opinion as well as enlightened self interest would be strong enough to constrain them to do it.

It may be said that by custom, nations, when entering upon an arbitration, agree either expressly or impliedly to accept the decision to be rendered if it accords with the terms of submission though in some cases they may reserve the right to have another hearing. Thus far no force has been required to sustain an arbitral decision. If a decision has proved to be unacceptable, questions left at issue have been resubmitted to arbitration, or an adjustment of them has been made by diplomacy. But not all cases that might have been arbitrated have been brought to court, some of them, like the difficulty between the United States and
Spain, in 1898, having been referred to war; and here has been a limitation to the development of arbitration.

Such of their disputes as the nations have referred to arbitration have been submitted voluntarily in accordance with a treaty made for the settlement of a dispute, when it has arisen, or under a standing arbitration treaty or arbitral clause in some other kind of treaty previously agreed to. The agreement to arbitrate is made by nations acting in pairs, not in concert. It is not made by, but outside, the Hague Conference which has established an optional court and laid down a code of procedure, but has not created a compulsory jurisdiction even for this kind of treaty.

An arbitration treaty, therefore, is seen to be but the beginning of an international jurisdiction which is now of moral obligation, but which, under a fully developed international government, might also become compulsory by the sanction of force if it were deemed wise to adopt such sanction.

The basis upon which the world has been organized, or rather not organized, accounts in a large measure for the fact that public opinion has been regarded as the only practical sanction of arbitral decisions for our time. In an age marked by the rise and growth of nationalities independence has characterized the nations in their dealings with each other. On occasion they have resolutely asserted their claims by means of their own armed forces under an assumed right of self-redress or intervention. To an international system demanding the surrender of as much national sovereignty as collective international compulsion would imply they would not have agreed.

Furthermore, in this age of imperialism, nations like Great Britain, Russia, Germany and France have been reaching out beyond their borders to establish empires under their own flag or to exercise their power in self-appropriated spheres of commercial influence in other lands, to found colonies, or to establish self-governing dominions of their own race capable in time of federation with the mother country. By Europe the old balance of power theory has been extended to Asia and Africa, each rival nation claiming privilege or territory as compensation for another's gain. Treaties have been violated, antagonisms provoked, suspicions aroused, alliances formed and armaments multiplied. There has been no stability in the status quo and very little desire to have it fixed except by nations that were satisfied with what possessions, trade privileges, or national rights they had gained. No conference of responsible statesmen could
have agreed upon a status quo. The Interparliamentary Union, at Geneva in 1912, would not seriously consider a resolution, proposed by a United States delegate, looking to a fixed status as a starting point for the organization of a permanently peaceful world order. The members were not ready for the recognition of such a principle, as it was feared it would work injustice to some races, or defeat the cherished plans of others, or consecrate the colonial gains of predatory states. Only an occasion has been needed to throw a dissatisfied and agitated world into a state of war; and the war has come.

Under such conditions, the true import of which it is easier to see now than it was before the war, it was unreasonable to expect the nations to put themselves in a position to be coerced by international police; and, therefore, it was felt by some leaders of the peace movement that the proposition to institute it was untimely. They feared its advocacy would hinder the moderate but steady progress that the cause of peace was making under the Hague system.

But, though the majority of writers on international peace have thought the sanction of public opinion and good faith to be the most practical for the present age, several distinguished publicists of our time, believing lack of armed force behind international law to be a serious defect, have proposed international police for present use, or for use in the near future, but have offered no detailed plans for its organization. Others have considered it an essential adjunct to an international government or world state to be formed substantially on the model of the United States of America whenever it can be realized, whether now or in the distant future. Some writers have proposed international police for the execution of Hague conventions. Others have suggested it as a means of compelling obedience to decisions of the Hague Court or reference of a case to it, and still others have urged it as a substitute for rival armies and navies, a measure of economy in armaments, or a preparation for disarmament, and probably as a necessary preliminary to world peace. Among Europeans who have spoken out from strong conviction on the subject may be named Professor J. R. Seeley of Great Britain and Professor C. Van Vollenhoven of Holland; and, among Americans, Edwin Ginn, founder of the World Peace Foundation, and ex-President Eliot of Harvard University.

Since the war broke out the lack of force behind international law has been considered by many publicists more than ever before
to be a fatal defect which should be remedied. Of proposals made before the war, that of Professor Van Vollenhoven was the most widely discussed, while of those made since the war, that of the League to Enforce Peace is the most popular. Viewed from the standpoint of American interests, policies and institutions, a brief examination of the proposals of Professor Van Vollenhoven and of the League to Enforce Peace with some consideration of the proposal for a United States of the World, will enable one to see some of the problems underlying the question of the practicability or desirability of putting force behind the law of nations and of committing the United States now to a permanent arrangement for collective enforcement of the law.

PROFESSOR VAN VOLLENHOVEN'S PLAN

Professor Van Vollenhoven, distinguished jurist, member of the faculty of Leyden University, made his proposition to the Universal Peace Congress at The Hague in 1913. His proposal was not adopted, but by resolution was made a subject for study by future peace congresses. Although it has been frequently discussed in pacifist circles in Europe, it is not well known here, where it deserves more attention from Americans than it has received.

Professor Van Vollenhoven did not attempt a minute elaboration of his plan, but gave sufficient outline to indicate its nature. He did not propose a universal state, or a United States of the World, which he considered a Utopian idea; but believed that a community of nations might and should be organized now, with force behind it, under the Hague system; and he advised that to the Preparatory Committee for the Third Hague Conference, but not to suspicious and embarrassed foreign offices, the task be given to initiate a scheme for the use of international police.

He advocated the formation at first of a group of four or six great powers, together with some small powers, but finally enlarged to include more or all of the family of nations. This group of powers should have a police force at its service to be placed under the control of a board of admirals who could summon and command national contingents without permission of foreign offices. Eventually, however, it should have a completely internationalized army and navy. The board of admirals should be empowered to act independently in an emergency, or eventually, in a doubtful case, upon the orders of the Hague
Court or projected courts or a delegation of one of them. He would begin by enforcing the Hague Conventions, for example, the Convention Concerning the Rights and Duties of Neutral Powers in Naval War, which, when violated, is now expected to be executed by aggrieved individual nations; but later, he would include treaties of guarantee, treaties of permanent neutrality, other treaties not provided with express sanction of force, and finally arbitral awards; that is, he would enforce codified law at first, and complex matters afterward. But the law itself should first be made by the nations in the combination; it should however be adopted with their consent, not arbitrarily imposed. And nations, if they desired, should be allowed to withdraw from the association after a stated period of years.

If the Preparatory Committee elaborated such a plan, without attempting to organize a federal state, but only a community of nations, and safeguarded the authority granted, Professor Van Vollenhoven thought that the nations would accept it, and that if they accepted it, they might be as certain that there would be no more danger of usurpation by the police executives than by the Hague Court, from which no abuse of authority is feared.

By such plan the nations would not lose their sovereignty, but rather would gain a new sense of security by having the protection of the union. By the proposed plan, the police power should be made strong enough to cope with countries as powerful as Great Britain and Germany. Thus in a dangerous situation international police would have a preventive effect and be like the angel with drawn sword standing before the gates of Paradise.

The advantage of the sanction of police would be the substitution of the international will for the arbitrary will of individual powers; of its enforcement by a group of these instead of one of them; and of an impartial decision for decisions dictated as at present by selfish considerations on the part of the powers. In the opinion of Professor Van Vollenhoven international police would be a prerequisite to the limitation of armaments. It would be the only rampart behind which the powers would dare to disarm. It would also tend to create confidence in the Hague conferences, which it was feared might wane if they should devote themselves to technical detail, instead of attending to their greater duty which was to organize the community of nations. The institution of an international police, however, need not diminish the moral means now being tried for making peace; the arbitration movement at The Hague should go on; and sanctions like the boycott might also be considered.
As to the difficult problem of the status quo, that might be remedied by agreement or fixed arbitrarily; but first persuasion with dissatisfied powers might be tried, compensations promised, and an attempt made to bring within the law of nations everything that might help to secure a peaceful agreement. The powers, he believed, however, would not seriously seek juridical methods of settlement so long as they could accomplish their desires by force of arms; or until the nations were organized. Organization, even the least of it, would tend to do away with their double conscience, one for domestic, the other for foreign affairs, which often characterizes international life to-day.

In justifying his plan, Professor Van Vollenhoven gave some precedents of the use of international force in past years. He stated that international compulsion was exercised in 1831 and 1832 upon the Netherlands; in 1856, in the Crimean War when France and England defended the rights of Turkey from the attack of Russia; in 1862, in Mexico when a combination of European nations went there; in 1881, in a naval demonstration before Dulcigno; in 1900, when an international expedition went to Peking; in 1902, against Venezuela where pressure was exerted by the fleets of Germany, England and Italy, and, in 1913, before Antivari. He called attention to the provision for use of force that had been made concerning guarantees and permanent neutrality on the part of states that had become sureties, for example, in the treaty of April, 1856, between France, England and Austria, on the one hand, and Turkey, on the other, by which the three countries promised armed assistance against infraction of the treaty of Paris. He also made mention of the fragmentary and comparatively insignificant international sanctions or compensations that appear in the Hague conventions to which allusion has already been made.

THE LEAGUE TO ENFORCE PEACE

The League to Enforce Peace, initiated by Hamilton Holt, William B. Howland, Theodore Marburg, and others at a meeting held in New York City in January, 1915, was organized in Independence Hall, Philadelphia, June 17, 1915, with Hon. William H. Taft, as president, President A. Lawrence Lowell of Harvard University as chairman of its executive committee, and William H. Short as secretary. Its platform is as follows:

It is desirable for the United States to join a league of nations binding the signatories to the following:
First: All justiciable questions arising between the signatory powers, not settled by negotiation, shall, subject to the limitations of treaties, be submitted to a judicial tribunal for hearing and judgment, both upon the merits and upon any issue as to its jurisdiction of the question.

Second: All other questions arising between the signatories and not settled by negotiation, shall be submitted to a Council of Conciliation for hearing, consideration and recommendation.

Third: The signatory powers shall jointly use forthwith with both their economic and military forces against any one of their number that goes to war, or commits acts of hostility, against another of the signatories before any question arising shall be submitted as provided in the foregoing.

Fourth: Conferences between the signatory powers shall be held from time to time to formulate and codify rules of international law, which, unless some signatory shall signify its dissent within a stated period, shall thereafter govern in the decisions of the Judicial Tribunal mentioned in Article One.

This programme is as suggestive as it is concise. It is a political platform calling for action; not a mere resolution of sentiment. It proposes that the United States become a member of a league of nations. The nations that would be our copartners are not named, but we may learn who they are from explanation of the plan of the League to Enforce Peace in the speeches of its leaders.

From a speech of Mr. Taft it is inferred that only great powers would be members of the league of nations at the start; small powers would probably be glad to become included for the sake of protection, but no opportunity would be given for a disconcerting dispute to arise over the relative equality of great and small states.

From a speech of Mr. Marburg it is gathered that the membership of the League would be made up at first of only progressive nations. These are "the eight great powers,—including the United States,—the secondary powers of Europe, and the 'A B C' countries of South America." "In this group," says Mr. Marburg, "we find three great peoples with common political aspirations, namely, those of Great Britain, France and the United States, peoples which no longer regard democracy as a passing phase of political experiment, but as a permanent fact of politics. We find in it two powerful nations, Great Britain and the United States, which may be said to be satisfied territorially. We find,
moreover, a group of smaller nations with no disturbing ambi-
tions. It is believed that if such a league could be formed sub-
stantial justice would emerge from its united action just as under
the Federal Government substantial justice results to the forty-
eight states, originally sovereign entities, now composing the
American Union.”

From a speech by Professor John Bates Clark, who thinks
that ultimately there should be a consolidated European state,
but recognizes the likelihood of the continuance for a time, in
a balance of power, of the present combinations of European
powers which must necessarily adopt protective measures against
each other and keep at peace within themselves for the future,
it is learned that the Entente with its nine or more members has
“important qualifications” for becoming such a league of peace
as is suggested—“a commonwealth of nations—powerful enough
to preserve peace and vitally interested in doing it.” Professor
Clark does not definitely advise that the United States join either
the Entente or the Alliance, but believes that “with the Alliance
and the Entente continuing and a league of neutral countries
existing the situation will be ripe for creating the type of union
that shall have all needed qualities and can give to both continents
that lasting peace for the sake of which the countries of Europe
are impoverishing and depopulating themselves.”

The platform of the League to Enforce Peace like the plan of
Professor Van Vollenhoven, recognizes two principal kinds of
international controversies, but classifies them—in the words
of Mr. Taft, as,—

1st: Issues that can be decided on principles of inter-
national law and equity, called justiciable.
2nd: Issues that cannot be decided on such principles
of law and equity, but which might be quite as irritating
and provocative of war, called non-justiciable.

In the first class are such questions as the Alaskan boundary,
the Bering Sea Seal Fisheries, and the Alabama Claims; in the
second class would be questions such as whether Japanese should
be naturalized, or whether all American citizens should be admit-
ted to Russia as merchants without regard to religious faith,
questions that, in the absence of a treaty on the subject, are com-
pletely within the international right of a nation imposing
restrictions, and cannot be settled by a court.

The judicial tribunal to which a case not settled by negotiation
is submitted would not only decide it upon its merits, but would
be empowered to decide whether or not it was justiciable or within the jurisdiction of the court, and, if not, refer it to a council of conciliation to investigate, confer, hear argument, and recommend a compromise. Although matters of jurisdiction as they have come up have been incidentally determined by arbitration tribunals, acting for two parties, an advance would here be made by conferring this power upon a court explicitly in a permanent agreement applying to members of a league of nations. A court of international justice is a familiar ideal, now in process of realization at The Hague and, therefore, though details of its structure may be debatable, there is nothing new about it. The council of conciliation which is provided for the solution of all other kinds of questions, which are not settled by negotiation, would be a new institution, but would combine in its functions the attributes of mediation and an international commission of inquiry, both which are established in principle in the Hague system. The council of conciliation, however, would not only bring the parties together and provide for an investigation; but would make a recommendation as to the solution of a difficulty. The authority to make a recommendation is an extension beyond that given in the Hague plan for a commission of inquiry which is supposed to confine itself to a report on facts, though in the Dogger Bank case, between Great Britain and Russia, the commission was allowed to fix responsibility.

The League to Enforce Peace also provides for the holding of international conferences to codify law which the court shall apply to cases unless the dissent of one of the signatory powers is made known within a stated period. There thus would be both codified and judge-made law; for in applying the law to a case the court would naturally develop legal principles. Therefore by this plan in the end a system of international justice would be established which ought to inspire confidence in pacific methods of settlement on the part of the nations. And when we have built up confidence in international justice—we are, says President Lowell, "at least on the path to that Utopia which we all long for."

To this arrangement for judicial decision by a court and investigation by a council of conciliation is added the provision for the use of force as a sanction. This feature of it, like the Van Vollenhoven plan, is a distinct departure from the usual projects of peace organizations and from the present methods of the Hague system.
It would seem that provision is here made for international police in the sense of the collective use of armies and navies of the different nations that compose the League, each nation, presumably, contributing its contingent, or at least being represented in the combination by military or naval force, but the term international police is not used by the League. On the contrary, by some of its leaders the term, construed as meaning a permanent federal force, is rejected on the ground that it is impractical in this stage of the world's history; but possibly this distinction is too finely drawn, as international police includes both ideas.

The term "economic force," which is also a part of the pressure to be brought to bear, would seem to include boycott or non-intercourse, but neither of these terms is used in the platform of the League to Enforce Peace, though non-intercourse is advocated by Edward A. Filene and other members of the League.

Economic pressure in the form of increased tariffs on the goods of states that refuse to come to court or obey a decision was proposed by Leon Bollack to the international peace congress at Geneva in 1912, but was referred back by that body for further study. Non-intercourse is also to be related to military force in the form of blockade, siege and prohibition against trading with the enemy and is a subject which deserves treatment by itself. A limitation of space forbids treating non-intercourse at this time. Economic pressure, it will be observed, is mentioned before military power; and it has been conceded by some of the representatives of the League to Enforce Peace that it ought to be tried first, though, according to the platform, both may or shall be used at the same time. And these sanctions are to be used "forthwith" by the signatories "against any one of their number that goes to war, or commits acts of hostility against another of the signatories before any question arising shall be submitted as provided in the foregoing" articles.

There will be no undue delay by calling a council for deliberation after hostilities have been committed. But though force is provided for, some of the leaders of the League to Enforce Peace think that it would seldom have to be applied. It is conceivable that a case might be held under advisement by the court or council for a year. If war threatened, there would be time for parties in a country who oppose war, but are at first usually suppressed, to make themselves heard, and allow an interval for excited public passions to cool off. This is also expected to be
the result under the Bryan plan which by agreement precludes a declaration of war or an act of hostility while a case is pending. "What we are aiming at, therefore," says President Lowell, "is to delay war for a year, during which the cause can be pleaded before the bar of the public and the bar of a tribunal." If there is delay for a year there may be no war at all. The belligerent nature of the plan which its name suggests is limited and the function of investigation honored. It is also believed that if there is certainty that collective force will be used in case of an infraction of the obligation of the League by beginning hostile action before resorting to the court or council, that very potentiality will operate as a deterrent from war.

Like the Van Vollenhoven plan, the proposal of the League to Enforce Peace does not attempt to create a universal state or a United States of the World nor does it establish the status of an international citizen which is usually implied in a world state. The League to Enforce Peace does not in terms propose an international executive, nor make provision for raising money to pay its debts, but if the projected sanctions are to be carried out or have potential value we are doubtless expected to assume the existence of an international executive with ample incidental powers to perform its duty. The platform of the League to Enforce Peace does not elaborate the machinery of economic boycott or military organization. It does not require a limitation of armaments, but is consistent with preparedness for national defense. It does not prohibit alliances between member states.

In the words of Mr. Taft, who, like President Lowell, has by his confident appeals won many adherents to the plan of the League, the society is made up neither of "peace-at-any-price" men "nor militarists or jingoists," but of men who "are trying to follow a middle and practical path."

To sum up, then, the aim of the society is the formation of a league of nations limited in its membership, provided with a conference for the codification of law, together with a court of justice and a council of conciliation, its members obligated to use their economic and military forces against a nation that breaks the peace.

The League, if it should be based on neutrals and the Entente powers, but with the Teutonic powers left out, would seem to be in form a great alliance, but, if both the Teutonic and the Entente powers were included, it would be a confederation, i. e., an association of governments, not of peoples.
PROBLEMS THAT BESET PLANS FOR AN INTERNATIONAL POLICE

Though we may accept the principle that there should be force behind international law and agree that collective coercion would be an improvement upon national self-help, whether in the assertion of rights or the prevention of aggression, questions arise as to what kind of organization of the nations should precede the authorization of the use of force and how it should be applied.

Critics of the League to Enforce Peace may fairly say that it ought to develop a plan for an executive and not leave it merely to be assumed. How and under what officers are the military forces to be organized or economic pressure concerted? And what will happen if any of the members refuse to respond to the call of the league, or actually join the belligerent state? If the league is a confederation, how will money be obtained from its members to prosecute a war? Must each contribute its share or give what it chooses to give or pay according to its means? Must the league beg, or requisition its money for expenses, if it has any, in time of peace? Can these be legally or successfully exacted by compulsion from sovereign states as entities, there being no apparent intention to tax individual citizens?

Likewise, critics of the Van Vollenhoven plan may also fairly say that the idea of making a board of admirals the executive, even in conjunction with a court, would be objectionable. Should not the admirals be placed under a supreme civil executive power and the court be expected to apply to it for help? Should not this executive power, acting under legal limitations, have discretion to act or not on the report of the court?

The scope of these two coercive plans differs. The proposal of Professor Van Vollenhoven is progressive. By it force supports codified law first, and then in the far future other matters. The League to Enforce Peace is limited in its scope. Touching directly a defeat of the arbitration system, the League confines itself to inducing an aggrieved state to bring its case before the court or council; but the question might fairly arise whether it is enough simply to discipline a state for committing an act of hostility before submitting to an investigation and what the moral effect on enlistments would be when it was known that the decision of the court or council, should it be rendered, would not be enforced. Would it be right for the law of the league to permit a dissatisfied litigant state to attack another state that had joined in submitting its case to a court or a council and secured
judgment? In case of an infraction of the obligation previously to submit a case to investigation, how are we to be certain which side begins hostilities that shall warrant the application of coercion "forthwith"?

Judged by American experience, would it not be safe, within the bounds of present day statesmanship, and also in accord with the evolution of the Hague Convention for the Pacific Settlement of International Disputes, which now permits notification by a state to the bureau of the Hague Court of willingness to arbitrate a question, to arrange for a judgment by default or ex parte hearing after summons and not attempt to go farther? In a controversy between two states of the American Union, if there were a refusal to come to court on the part of one of them, it would be given time to get into a right frame of mind and no hostile action by the absentee would be likely to follow.

Thus far there has been no occasion to enforce arbitral decisions, and, therefore, it may not be necessary now to create machinery for their enforcement. In any event, before it is decided to authorize the Hague Court itself to use force, which is a favorite plan of some publicists as well as a suggestion of Professor Van Vollenhoven, we should do well to be cautious. The possible political consequences of a decision rendered by an international court should be taken into account. The Dred Scott decision on slavery in the United States, which is considered a forerunner of the Civil War, in which the national government finally fought against the political doctrine of the decision, which was at first applied to an individual, is a warning as to what, under an extraordinary temptation, an international court might try to do in deciding a controversy vitally related to the future policy of the society of nations, say in a question between the European polity and that of the United States. To give such a court power over armies and navies might enable it to impose an undesirable political system on our people or the peoples of this hemisphere and imperil the political foundations of the international order as well as our own. The best sanction of the decision of a court is not the fear that it inspires, but the justice that it declares. This will be realized all the better when a regular judicial court is established which has as its guide not the many and sometimes confusing sources of law, the decisions, text-writers, treaties, and customs of to-day; but an explicit code of laws consented to by the nations. And then behind this the best reliance may be an educated international public which, as in the United States,
is accustomed to respect a federal supreme court. Here decisions of controversies between states or between the states and the Federal Government do not have to be enforced either by the military arm or by the boycott, but are solved by the mental forcefulness of the judiciary, whose reasoned opinions have helped to establish the federal system in the confidence of the people. Again, in any international system of justice based upon the experiences of the United States, which advocates of coercion ought carefully to examine, not only must the elements of time and of patience be counted upon as factors in the solution of questions between the federal court or executive and a state, but the provision for constitutional amendment for the purpose of qualifying rights as in the case of *Chisolm v. Georgia* when Georgia, defeated in a suit by a citizen, was defiant; or for legislative compromise as in the dispute between the United States and South Carolina over the right of nullification of a federal law, by a state, when the action of Congress in meeting the difficulty was probably more effectual than the threat of executive coercion, and for the time served the purpose both of doing justice and keeping the peace.

The question is brought up by both the European and the American plans, whether it is best to organize at first a league of some nations, or to begin with a plan that includes the membership of all of them, say the forty-six that were invited to The Hague in 1907. Would not either plan, in this respect, be retrogressive compared with the inclusiveness of the Hague plan? If by any plan adopted the United States should become a party to an association of nations that repudiated the doctrine of the equality of nations, objection might come from our Latin American neighbors. It will be remembered that they so steadfastly maintained the doctrine of the equality of nations at The Hague, in 1907, that it was impossible to agree upon a method of appointing a board of judges for the Court of Arbitral Justice without giving small states equal recognition with the large states. If a league, of which the United States were a part, were formed and only Argentina, Brazil, and Chile of the Latin American States were considered sufficiently civilized to belong to it, might not the question arise as to what would be the effect of this exclusive action on public opinion in other states of Latin America toward the United States as well as the league? What would be the fate of those countries left outside the league? Would they not fear that they were to be exploited? Would they
not ask if they were now to become colonies or imperial territory, after already being recognized as states under the protection for nearly a century of the Monroe Doctrine? Might they not be anxious lest they should become objects of intervention by the league, according to the plan of the Holy Alliance? And what would become of the Monroe Doctrine if Europe were permitted, practically though indirectly, to compel the arbitration or mediation of American questions? The movement might be declared inconsistent with the present agitation in the United States to form a more real Pan-American Union than we now have concentrated in the bureau at Washington. Or again it might be said that if the government of the United States joined a league of European nations in the present chaotic state of boundaries and the conflict of imperial ambitions it would commit itself to the principle of the balance of power, from which we have always held aloof, and that, instead of helping to preserve peace or to enjoy it ourselves we should get into war sooner than if we remained in isolation. And it is pointed out that this might have been the case had the United States been in a league whose principles would have called for collective military action in consequence of the hostilities that followed after refusal to arbitrate the issue between Austria and Servia in 1914.

In determining upon a policy for the United States for the present day, would not the wisest plan be to co-operate, if need be, with other nations in the use of force for the preservation of public safety, in a specific emergency like the Boxer rebellion as it arises; but be in a position to withdraw when we consider the purpose sufficiently fulfilled, without taking the obligations of an alliance with all its possible entanglements? But if in far distant days, as common conceptions of government and habits of thought are developed, we should enter into a permanent arrangement, would it not probably be better to make coercion only an adjunct to a completely organized international government, with legislative, judicial and executive departments, placed under legal limitations, with checks and balances on the departments and especially upon the military power which, for most purposes, should be under the orders of the elected civil authorities, who by means of a representative system should be ultimately responsible to the people? This form of organization would help to ensure democratic control and tend to avoid imperial despotism. This of course would mean a world state or a United States of the World, with humanity at its base. It
would indeed spell Utopia, but it would point the way to justice, security and peace.

But how could an international government built after the model of the United States adjust and operate the sanction of international police? What might happen to this country, what should we have to give up, if we tried to extend our own principles of organization to the world order? What would be the advantages and disadvantages? As a practical matter, it may seem idle to ask such questions at this time, but an answer cannot help being suggestive to those who propose federation.

In a federation, not necessarily in exact imitation of, but somewhat like, that of the United States under the Constitution—the very fact of union would be strong sanction in itself. An association of friendly states which, in effect, voluntarily restrict their sovereignty and renounce war between themselves or with the federal government, though not the use of force for local or federal protection, would be a good and probably an essential foundation for peace. With this there would naturally go a limitation upon national standing armies or navies in times of peace. But even more important for justice as well as peace than too much or too little reliance upon force would be pacific machinery for settling controversies, a congress to deal with political questions, and a court with subordinate or special jurisdictions to attend to judicial questions, and an executive acting under legal limitations, to carry out the international objects of the federation.

But in a federation, there would have to be a fixed status quo. Agreement as to border lines or changes in them would have to be made. There could be no more territorial ambitions on the part of states, but some retrocessions or readjustments of territory would have to be made by judicial determination or consent. There might be an international domain or federal zones in backward countries administered by an international government, capable, if possible, of development into states as civilization advances. There would have to be an abandonment of alliances. There could be no such thing as a shifting balance of power—the bane of the present world system, the continuance of which means periodic wars, with horrible slaughter, taxation, load of debt, and injury of commerce. There would doubtless have to be a bill of rights for nations as well as men—signs of which have, however, begun to appear in the declaration of publicists, like the declaration of the American Institute of International
Law, and in the preamble of the Hague conventions. There would have to be a guarantee of the integrity and internal autonomy of states, with a check on domestic revolutions except by legal means, a beginning of which is being made in the relations of the United States with Latin American countries, while the problem of securing the rights of peoples as well as of the governments of states or their rulers would have to be met reciprocally as it was not met by the one-sided and repressive measures of the Holy Alliance.

The theory of the use of coercion in a union like that of the United States raises another question of procedure when we compare it with the theory of the Van Vollenhoven and the League plans. These plans, contemplating an association only of governments, but not of peoples, depart widely from the conception of force in this country. They apply it to organized states and not to citizens. Our government is a government that deals, within its sphere, directly with the individual. It does not primarily conceive of the use of force against states in their sovereign capacity with all their powers of organized resistance. And it might be difficult if not impossible without a great war, which we desire to avoid, for a league of nations to use its military and naval forces for federal execution against strong powers like Great Britain and Germany, and perhaps their allies, especially without a previous limitation of armaments, upon which neither the Van Vollenhoven or the League plan insists, though it is encouraged by the former. Such a theory might, however, be applied under the German Constitution which is more confederate in its character than ours and, in this respect, might have to be taken as a model for a confederation of the governments of nations, though whether federal execution would work successfully in the German Empire against military Prussia if she became recalcitrant is a question as yet undecided. Our federal force, when used, is or may be directed against individuals who violate the laws of the Union, or rebel against the government of the United States, or take possession of its property, interfere with interstate commerce or the mails, or do various unlawful acts that are specified in statutes, relating to public lands, the Indians, neutrality, etc. The thought behind our government, having as its crowning feature a Supreme Court and a system of subordinate tribunals empowered to interpret and enforce the Constitution and the laws, is that it is a government of law and not of men, a coercion of law and not of arms, which,
shall we not say, is different from the traditional European and Asiatic idea? Within our confines military force is used with reference to the support of public peace when the police or marshals of courts fail in the execution of the laws. Under our system, the innocent are not to be confused and punished with the guilty; we do not act at the start against whole populations, but select the real offenders against the law.

But, in an emergency, for purposes of suppressing rebellion, our system is elastic, and, in this respect, our experience is a valuable study for the nations as well as a caution to ourselves in considering whether and how we want to obligate our country now to a system of international police. Under our system, if a rebellion becomes strong enough the government may operate as if at war with foreign enemies and consider its opponents, even its own citizens, all the people within the borders of insurrectionary districts, as territorial or practically foreign enemies. If our system were applied to the nations, their rulers, if loyal, in time of war would be agents of the federal government, but the international authorities could, if necessary, pass over the heads of nations and lay hands on the national forces (cf. the Van Vollenhoven plan) and utilize both the federal and national forces in defense of the federation, or of one of its constituent nations in case of invasion or insurrection. If, following out another conception of ours, that the law of the Union can be enforced on every foot of American soil, if there could be an international federation with an international citizenship this doctrine might be applied not only in the protection of property, or interstate commerce, but by extension in defense of the rights of a human being of whatever race or condition anywhere in the world, and this might become a world benefit.

Under such a system as ours, if it were applied to the family of nations, there could probably be no exclusive control by any nation of a waterway like the Panama Canal, or the Dardanelles. Commerce would have to become internationalized and placed under international control. Tariff barriers, exclusive national spheres of influence, and concessions, which are recognized causes of friction and wars, notably of this European War, would have to be given up.

While the use of all seas, bays, rivers and harbors would be free in times of peace, an international fleet would, if it could, stop all commerce with the enemy in time of war. There could be no neutrality among the nations. A nation or people would
have to be for or against the international authority in time of war. If by violence the people of a nation opposed the federal authority the penalty might be war, non-intercourse, blockade, confiscations, the deprivation of important civil rights that are protected in time of peace, and punishments involving death or imprisonment of leading rebels. After a war, according to our practice, nations might be considered conquered provinces and occupied and administered under military governments until restored to their relations in the union—a form of intervention, however, that was hateful to the Southern States after our Civil War and would probably also be to the rest of the United States or any other country that had to endure it.

A mere glance at these propositions with which we in this country have become familiar by experience is enough to show, in view of present world conditions, how far the nations, either ours or those of Europe, Latin America or Asia, with their variety of governments, different degrees of civilization, and cross purposes are ready for complete federation. Would Great Britain give up her control of the seas and expose herself and her colonies to peril? Would Germany, except under pressure of defeat, give up the right to have as efficient an army as she wants or to have colonies for her surplus people and products? Would Russia give up her imperial ambitions to extend her sway? Would France and Italy curtail their plans for expansion? Would the old countries recognize the open door and surrender their trade privileges in Africa or Asia? Would Japan agree to confine herself to her present limits? Would the United States give up the Monroe Doctrine? Would we remove our tariff barriers? Would we admit all races to our territory in any number? Would we—ought we—without constitutional guarantees of the strongest kind to throw into the scale of international politics our conception of sovereignty in the people for sovereignty in kings or parliaments against which our whole system from the Revolution down is a protest? Would not there be an inevitable clash if democracies, monarchies and empires should try to live under the coercion of police, manipulated politically by the strongest, possibly at first, by the reactionary powers? Until changes come over the imperial dreams of other nations that are not democracies, or, shall we venture to say, until we of the United States are ready to make what are now impossible sacrifices, or better still, until the world has by disgust of war, waste and commercial competition, worked out for itself a better system
than that of unregulated nationalism; until, as in the case of the
United States in 1787, economic and political necessities compel
the acceptance of what are now ideals—we shall have to wait
for a United States of the World, an international arrangement
like that proposed by Professor Van Vollenhoven, or possibly
also, for a league of nations pledged to enforce peace.

In a word, an arrangement for international police or any kind
of plan for an international force other than for temporary pur-
poses presents very great difficulties—and in one sense a dilemma.
Without world federation it looks impractical, and world feder-
ation at the present time is impossible. International police must
be further studied before it can be adopted. Without American
help, the European War will undoubtedly facilitate somewhat
the solution of the problem by preparing Europe, though possibly
only Central Europe at first, according to the results achieved by
the Teutonic powers, for federalism with perhaps coercion in
some form. Rulers and statesmen of Europe may see the light, or,
if they do not, the people of Europe may, and a better organization
of the European nations, or in any case constructive measures
for their good from which the whole world will also profit will
be adopted. A more co-operative spirit, a deeper respect for
legal methods of settling disputes will prevail.

After the war, the nations may go back for a time to the balance
of power, but we should expect that after some interval the
Hague conferences would be resumed. By many students of
international relations these are now considered the historic basis
of the future world order. The present Court of Arbitration is
likely to develop in time into a tribunal or several kinds of
tribunals with a permanent personnel possibly representing a
judicial union of some or all of the nations; and the function of
mediation may be enlarged and become judicative; the diplo-
matic conference at The Hague may in time become a political
world congress. This conference may be expected to leave, when
they are completed, codes for the prevention of war, mediation,
commissions of inquiry, arbitration, the regulation of war, and
the rights and duties of neutrals, subjects hitherto chiefly con-
sidered, and then advance to the consideration of a limited class
of measures for the common social welfare. When this trans-
formation comes legislation may be made by delegates who are
instructed not merely by governments, but to a large extent by
the peoples as to their fundamental political needs. As the
Hague system responds to the needs of the peoples, as it mani-
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festly promotes commerce, gives security to property, improves the condition of labor and defends individual rights as well as the rights of nations and races, it will grow in public confidence, and once established in that confidence, it will be invested with inexorable sanctions.

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BIBLIOGRAPHY.

For the text of Professor Van Vollenhoven's Plan for an International Police, see The Peace Movement (Bern), June 15th, and July 15th, 1913. Also The Official Bulletin of the 22d Universal Peace Congress, 1913, where there is a discussion of the plan.

For extensive references see Extra-Blad, Vrede Door Recht, May-June, 1915; published at The Hague.

For an exposition of the plan of the League to Enforce Peace, see The League to Enforce Peace, American Branch, 505 (now 70) Fifth Avenue, New York, 1915, and various articles in newspapers and magazines. See also current articles in the Advocate of Peace, Washington, 1915-1916.


The Use of the Army in Aid of the Civil Power by G. Norman Lieber, Washington, 1898, is very useful. See also the works of Winthrop and Ballantine on this general topic.

Historic plans for the organization of nations with or without coercion will be found in Darby's International Tribunals, London, 1904. See also Bridgman's World Organization and Trueblood's Federation of the World; and consult Burgess, Willoughby and others on the Constitution, Whiting's War Powers under the Constitution, and similar works.