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# Suspension from the Society of Nations, a Sufficient Sanction for a World-Court Judgment

Simeon E. Baldwin  
*Yale Law School*

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SUSPENSION FROM THE SOCIETY OF NATIONS,  
A SUFFICIENT SANCTION FOR A  
WORLD-COURT JUDGMENT

The term "Society of Nations," has long been a familiar one. Vattel (Preliminaries, Sec. 11) speaks of it as a great society established by nature between all nations. A synonym is the "community of nations" or "family of nations."

Until within a century religion was made a means of narrowing the circle of this society. When Wheaton published his treatise on the Elements of International Law, he expressed himself thus (Chap. I, Part I):

"The international law of the civilized, Christian nations of Europe and America, is one thing: and that which governs the intercourse of the Mohammedan nations of the East with each other, and with Christians, is another and a very different thing. The international law of Christendom began to be fixed about the time of Grotius, when the combined influence of religion, chivalry, the feudal system, and commercial and literary intercourse had blended together the nations of Europe into one great family. This law does not merely consist of the principles of natural justice applied to the conduct of States considered as moral beings. It may, indeed, have a remote foundation of this sort; but the immediate visible basis on which the public law of Europe, and of the American nations which have sprung from the European stock, has been erected, are the customs, usages, and conventions observed by that portion of the human race in their mutual intercourse.

"Many examples of the practical application of this theory will be found in the intercourse actually subsisting between Turkey and the Barbary States on the one hand, and the Christian nations of Europe and America on the other; in which the latter have been sometimes content to take the law from the Mohammedans, and in others to modify the Christian code in its application to them."

The formal entrance of Turkey into the "European family" dates from the treaty of Paris in 1856, and Japan, China, Persia and Siam soon followed to claim and receive a place in the full society of nations.

What is the basis of the relations which are or may be made incident to this Society, as now constituted?

international conduct intended for the observance of all

In general matters of international justice it is the implied consent of every civilized nation. In particular matters it may be the express consent of every civilized nation: it may also be something less, namely, the express assent of the greater part of civilized nations to certain rules of nations.

It is a rule of universal jurisprudence that he who enjoys a benefit must assume its incidental burdens. *Qui sentit commodum, sentire debet et onus*. Membership in the society of nations is a benefit. It therefore carries the corresponding burden.

As Heffter observes: "A nation associating itself with the general society of nations, thereby recognizes a law common to all nations by which its international relations are to be regulated. It cannot violate this law without exposing itself to the danger of incurring the enmity of other nations, and without exposing to hazard its own existence. The motive which induces each particular nation to observe this law depends upon its persuasion that other nations will observe towards it the same law. The *jus gentium* is founded upon reciprocity of will. It has neither lawgiver nor supreme judge, since independent states acknowledge no superior human authority. Its organ and regulator is public opinion: its supreme tribunal is history, which forms at once the rampart of justice and the Nemesis by whom injustice is avenged. Its sanction, or the obligation of all men to respect it, results from the moral order of the universe, which will not suffer nations and individuals to be isolated from each other, but constantly tends to unite the whole family of mankind in one great harmonious society."<sup>1</sup>

It was exactly this society which met at the Hague in the Peace Conference of 1907, and met for the first time in the history of the world. In the closing address of the Presi-

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<sup>1</sup> The translation of this passage is Wheaton's, in his *Elements of International Law*, Ch. I, Part I.

dent, M. de Nelidow of Russia, he called special attention to this fact.

One of the chief guaranties, he said, of the maintenance of peaceful relations among peoples was an intimate knowledge of their reciprocal interests and needs, and the establishment of numerous and varied relations between them tending towards a moral and material solidarity. "The present Conference," he added, "has accomplished the greatest progress in this regard that humanity has ever made. This is the first time that representatives of all constituted governments have met for the discussion of interests which are common to them all, and which tend to the welfare of all humanity."

Forty-five sovereign States sent delegates to this Congress. But two civilized nations, Costa Rica and Honduras, were unrepresented.<sup>2</sup>

It recommended favorable action by the constituent States on several measures of great international importance.

Of these measures several have been in fact generally adopted. Before it adjourned it provided, so far as it could, for another family meeting of the same character. On motion of M. de Nelidow, the following vote was unanimously adopted:

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

"In order to attain this object the Conference considers that it would be very desirable that, some two years before the probable date of the meeting, a preparatory committee should be charged by the Governments with the task of collecting the various proposals to be submitted to the conference, of ascertaining what subjects are ripe for embodi-

<sup>2</sup> Scott, *The Hague Peace Conferences of 1899 and 1907*, I, 141, 155.

ment in an international regulation, and of preparing a program which the Governments should decide upon in sufficient time to enable it to be carefully examined by the countries interested. This committee should be further intrusted with the task of proposing a system of organization and procedure for the Conference itself."

Such a re-assemblage was thus contemplated as likely to occur in eight years, that being the interval which had elapsed between the first and second Hague Conferences.

Had it taken place, and had the International Prize Court been organized, as hoped for, the course of the present war would have been materially affected.

The return of peace, whenever it comes, must usher in a new order of things, in world-regulation. This new order may conceivably be established by a League of some, but not all nations, meeting as a particular body. It may conceivably be established by the whole Society of Nations, acting unanimously at a meeting of all nations. It may conceivably be established by the whole Society of Nations by a majority vote at such a meeting. In one of these three ways it may be expected that some new rules of international conduct will be authoritatively laid down, and means taken towards securing their universal observance.

The re-convening of the whole Society of Nations, which met at the Hague in 1907, seems the most logical process to adopt, in order to put such rules on the firmest foundation.

It will be hard for any of the nations now at war to participate in such a Conference with the nations with which they have been contending. But peace is the normal condition of the world, and history shows that after an interruption, however violent and prolonged, the belligerent powers find it less difficult than many had anticipated to meet on terms of official courtesy, for the discussion of conditions of peace or questions of future intercourse. All statesmen must keep this historical lesson in view. Lord Morley, a few years ago, when Secretary of State for India, pressed it in these striking words upon the attention of Lord Minto, then Viceroy of India:

“If I were writing a manual for a statesman, I should say to him, Remember that in the great, high, latitudes of policy, all is fluid, elastic, mutable; the friend today, the foe tomorrow; the ally and confederate against your enemy, suddenly *his* confederate against you; Russia or France or Germany or America, one sort of Power this year, quite another sort and in deeply changed relations to you, the year after.”<sup>3</sup>

That the Society of Nations has now for years been weakened by a war which has come to involve all the Great Powers and many of the lesser ones cannot prevent its recognition as an enduring force. On the contrary, the war has given a new impetus to the movement towards bringing all nations ultimately under some closer form of political association. That form will naturally shape itself in terms of reciprocal obligations expressed in a treaty. Obligations import a duty of performance, either active or passive. For this performance there must be some security. That security will certainly be, for one thing, a pledge of the public faith.

To this might be added:

1. Suspension from the Society of Nations.
2. International outlawry, and economic pressure.
3. The use of the aggregate military and naval force of the Society of Nations.

Suspension from the Society of Nations would in practice generally involve international outlawry and economic pressure. It should and ordinarily would shut out the offending nation from intercourse with the rest of the world. It would terminate all correspondence whether personal or commercial. The mails would stop. The cables would be cut. Wireless telegraphy would be silenced. Imports and exports would cease.

All this could be effected automatically, as a necessary consequence of the breach of treaty obligation.

It would be requisite to provide some means for ascertaining that such a breach had occurred, and for a public

<sup>3</sup> Morley, *Reminiscences*, II, 205.

announcement of it. All the rest could be made to follow as a legal consequence.

Such a power could be safely entrusted to an international court. The Society of Nations, in 1909, at the Hague, planned two courts of that nature. It would be easier now to plan one of the particular kind, here considered. It should be a court with authority to render a judgment which, be it right or wrong, should be internationally respected. "Every law suit looks to two results: to end a controversy, and to end it justly; and in the administration of human government the first is almost as important as the last."<sup>4</sup>

How should such a judgment become practically effective?

Treaties have now the force of law in several countries. In most free governments they only become effectual when ratified by legislation. It would be a simple matter to make it a rule of the Society of Nations that all treaties should carry a legal obligation. This would make them law as to all parties in their respective jurisdictions. The courts, therefore, would be bound to enforce them in favor of any party who would be injured by their breach. This would be true as to all courts, including those of every nation, party to the treaty.

An absolute expulsion from the Society of Nations would be unnecessary and undesirable. A suspension would have an equal practical effect. It is believed that, if organized on such a basis, and thus empowered, the Society of Nations would never need to resort to military or naval power. Let the possibility of that be reserved as a matter for future agreement, should suspension and outlawry be found to be insufficient sanctions. Under any system that can be imagined for enforcing rules of the Society of Nations by cannon and dreadnoughts there would be practical difficulties of the gravest character. They should not be risked until all the remedies which peace can provide have been tried and found wanting. SIMEON E. BALDWIN.

Yale Law School, September 10, 1918.

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<sup>4</sup> Hoyt v. Danbury, 69 Conn. 348.