

PEACE ENFORCEMENT

STEFAN T. POSSONY†

ALMOST 1000 years ago, the now forgotten Bishop Gui d'Anjou initiated one of history's great attempts to secure peace. He proclaimed a truce of God and issued instructions limiting the use of arms. At the same time, he mobilized the spiritual power of the Christian religion against the scourge of war. To the surprise of many, the Bishop succeeded in curbing violence in his diocese; so impressive was his success that other French Bishops emulated his example. In the year 1000, a council at Poitiers adopted the motto "*Guerre à la guerre*" and passed a resolution which obligated the princes of the Church to oppose war by forceful means, that is, by the intervention of troops under religious leadership. At a synod in Limoges in 1031, it was resolved to excommunicate violators of the peace. It was also decided that, should moral coercion prove insufficient, military force was to be used against any breakers of God's truce. The participants of the synod of Bruges in 1038 swore to take military measures against violators of ecclesiastic peace laws. Under the energetic leadership of Archbishop Aimon of Bourges several punitive expeditions were carried out against rebellious knights; the Archbishop may, in fact, be considered as the earliest predecessor of the commander of a modern international armed force. Priests in large numbers fought in his peace enforcement army to safeguard the inherent justice and the disinterested nature of the intervention. Unfortunately, Aimon's peace force was soon annihilated by a group of knights who were more expert in the art of war than the 700 clerks whom they killed.¹

During the 11th and 12th centuries, many French and German dioceses adopted laws and institutions to impose the truce of God. The *iudices pacis* determined whether or not the truce had been violated, while the *communitas pacis*, a medieval security council, enforced the decisions of the judicature. The principle of *active* maintenance of God's truce was proclaimed time and again. Pope Urban II, in preparation of the Crusade, decreed a general pacification of the Occident to be imposed by associations of nobles; the Crusade was to unite Christendom and create the essential prerequisites of perennial world peace. (Council of Clermont, 1095). Pope Alexander III (1159-1181) decreed

† Ph.D., University of Vienna (1935); research associate on military problems, Institute for Advanced Study, Princeton, N. J., 1941-3; U. S. Navy Department, Office of the Chief of Naval Operations, 1943 to May, 1946; author of *To-Morrow's War* (1938) and more than thirty articles on military history and international relations. A new book on air power will be published shortly by the Infantry Journal.

1. HUBERTI, *Studien zur Rechtsgeschichte des Gottesfrieden und Landfrieden* in 1 DIE FRIEDENSORDNUNGEN IN FRANKREICH, (1892) 216 *et seq.* Contains bibliography.

that "*pacem et concordiam . . . praedicari ac seminari oportet*," the word *seminari* being a euphemism for "to coerce."² In the Council of Avignon (1209) a resolution was passed that peace was to be forced upon knights and towns. A few years later, the Council of Toulouse perfected the legal framework for the maintenance of the truce of God; it was ordered that

(a) every person over fourteen years of age was to pledge himself with a solemn oath not to violate the truce of God and not to assist any violator of the peace;

(b) this oath was to be repeated every three years, and a person refusing to renew the pledge was to be treated as a breaker of the law;

(c) alliances between nobles were forbidden;

(d) any violator of the peace was to be attacked forthwith by all the others who had pledged themselves to maintain peace; his territory was to be cut off from communications and traffic; his stronghold was to be besieged and stormed; the aggressor and his men were to be punished severely and their property confiscated;

(e) the violator of the peace was to be excommunicated (a sanction which frequently entailed economic ruin and even physical destruction);

(f) the subjects of the aggressor were formally ordered to revolt against their master and to obstruct his aggression.³

In some regions of France, it also became customary for the knights who had obligated themselves to protect the truce of God to accept personal responsibility for any breaches of the peace. Out of his own pocket, the knight paid, or was expected to pay, an indemnity to those persons who had suffered from illegal warfare which he had been unable to prevent.⁴

The overall success of these various measures was by no means small. On the whole, fighting was limited to the period between Monday morning and Thursday evening; the truce of God reigned on Fridays, Saturdays, and Sundays. Certain groups of persons and institutions enjoyed a perpetual peace of God—clerics, monks, nuns, pilgrims, women, children, and workers, as well as churches, monasteries, cemeteries, and tools of work.

We do not know whether the frequency and intensity of war was reduced between 1000 and 1250. We know that powerful princes often disregarded the limitations imposed upon them and that they observed the law only when it was in their interest to do so. But we also know that the truce and peace of God were strictly observed in many regions.

2. "Peace and concord . . . must be proclaimed and begotten." 1 SÉMINON, LA PAIX ET LA TRÈVE DE DIEU (2d ed. 1869) 35 *et seq.*

3. 2 *id.* at 62-7.

4. *Id.* at 251.

Peace was enforced by the spiritual power of the Church, accompanied by strong economic and sometimes military sanctions. But later the church's power declined, and it was no longer able to impose its law. In France wars tended to become perpetual; in Germany the *inter-regnum* created conditions wherein everybody was everybody else's enemy. Secular power then assumed the task of pacification. In France, Saint Louis IX issued his famous *ordonnance* which outlawed "private warfare"; an edict enforced by the power of his sword. In Germany, Rudolph of Habsburg ended the lawless chaos by declaring the *Landfrieden*. The maintenance of internal peace had become the duty as well as the *raison d'être* of the secular state.⁵

DANTE AND DUBOIS

At the beginning of the 14th century, the question arose whether international war could not also be limited. While the ideal of peace was, of course, known to previous centuries, it is nevertheless correct to say that the roots of modern pacifism go back to that period. Scholastic philosophy, under the leadership of Thomas of Aquinas, had insisted on the difference between just and unjust war. But now the idea was pronounced that war is always an evil; Pierre Dubois said explicitly, "*Omne bellum in se malum et illicitum.*"⁶ It was also stated that permanent peace is the greatest of all blessings, and that society thrives best in the tranquillity of universal peace; in the words of Dante, "*Genus humanum optime se habens quaedam concordia.*"⁷

Yet how should peace be preserved? Dante wanted to gain universal peace through the establishment of a universal monarchy. Pierre Dubois rejected this idea, asserting that advocates of universal monarchy were of unsound mind, but proposed instead a congress of princes to rule the affairs of Europe. Union and federation still compete as alternative patterns of world organization; the political inventiveness of mankind is undeniably small.

Dante pointed out that disputes between princes cannot be settled because the litigants are equal in rank,⁸ whereas the monarch is most powerful and can impose his will to maintain peace. The idea of international military coercion was implicitly argued by Dante; there would be no point in establishing a universal monarchy unless the monarch has the power to eliminate aggression. He would preserve

5. EGGERT, *STUDIEN ZUR GESCHICHTE DER LANDFRIEDEN* (1875) *passim*. For precedents in ancient Greece, Rome, and the early Middle Ages, see DAVIES, *THE PROBLEM OF THE TWENTIETH CENTURY* (1938) c. 2, and the literature quoted therein.

6. DUBOIS, *DE RECUPERATIONE TERRE SANCTE, TRAITÉ DE POLITIQUE GÉNÉRALE* (Langlois' ed. 1891) 4.

7. DANTE, *DE MONARCHIA* (Moore's ed. 1916) c. 1, § 15.

8. *Id.* § 10.

peace by virtue of his authority, to be sure, but this authority was to be based on material strength superior to that of any other prince.

While Dubois argued that universal monarchy⁹ could not lead to peace—continuous wars would have to be waged to establish and maintain the universal system—he recognized that the establishment of his system in the contemporary world also would require a series of preventive wars in the Holy Land, Italy and Germany. After pacification, international cooperation was to be achieved by a lucrative association of the states in common enterprises for the colonization of the Holy Land.

Within the league, peace was to be settled by arbitration, the Pope being the supreme arbiter; the judges were to be appointed by papal council. If peace was violated, the aggressor, called "*bellum ferens*," was to be subdued by an international army formed from the troops of all confederate states. Economic blockade was to be used as one of the chief weapons.¹⁰ No help was to be given to the aggressor populace which, after repression of its rebellion, was to be expropriated and expelled from its territory and used for conquest and colonization of the Holy Land. The aggressor was to be outlawed and prevented from resuming the attack. Thus, universal peace was to be preserved through four devices: confederation, economic association, arbitration and military coercion.

THE LATE MIDDLE AGES

The writings of Dante and Dubois had virtually no effect. Dubois was soon forgotten, and even Dante whose treatise could have served as a program for an expanding Imperial institution was almost totally neglected. In the ideology of the medieval Imperium, the idea of peace was little emphasized. The Holy Roman Empire became a mere symbol for the unity of the Christian world. For short moments the Empire took charge of the common defense of the Christian world against the assaults of Arabs, Mongols, and Turks. But the eternal struggle between the spiritual and temporal leader weakened both to such an extent that both lost their authority. The Pope, depending on the fluctuations of the *Zeitgeist*, was from time to time able to arbitrate and mediate international disputes, but when Emperor Sigismund tried, during the Council at Constance (1415), to rejuvenate the Emperor-institution by transforming it into a supreme arbitration authority and to mediate peace between France and England, he

9. On Dubois, see MEYER, *DIE STAATS—UND VOELKERRECHTLICHEN IDEEN VON PETER DUBOIS* (1908); BARTOUX, *Pierre Dubois et la Paix perpétuelle* (France, 1933) 47 *REVUE D'HISTOIRE DIPLOMATIQUE* 232; Knight, *A Medieval Pacifist—Pierre Du Bois* (1924) 9 *GROTIUS SOCIETY TRANSACTIONS* 1.

10. DUBOIS, *op. cit. supra* note 6, c. 5, at 8. His ideas on enforcement were also developed in *DE ABBREVIATIONE* which was not available to the author.

failed completely. Nevertheless, the Emperor ideology did not die; as late as 1688, for example, Charles V, Duke of Lorraine, proposed that the Emperor should arbitrate the disputes of Germany and Italy.

In the sphere of theoretical writings, there was for a long time no development of the idea of peace enforcement, except in Marsiglio di Padua's *Defensor pacis* which showed the connection between "democracy" (or, more generally, society) and peace.

In 1462, George Poděbrad, King of Bohemia, under the influence of the otherwise obscure pamphletist Antonius Marinus, proposed the establishment of a European league.¹¹ The nucleus of this league was to be an alliance against the Turks between France under Louis XI, Venice and Bohemia. (Constantinople had fallen nine years earlier.) The suggested treaty authorized sanctions against the aggressor; the victim of aggression was to be helped by all members of the confederation, which was to assume the initiative to settle disputes even among states not belonging to it. Article VI stipulated the outlawing of any individual who disturbed the peace; every aggressor was to be punished as a "violator of general peace." The right to declare war was no longer to be exercised by individual states, but devolved upon the confederation as a whole.

Another abortive attempt to preserve peace was made during the early years of the 16th century. In 1517, Pope Leo X published a bull ordering a general truce of five years.¹² Trying to follow the papal recommendation, François I of France, Henry VIII of England, and Charles I of Spain (later Emperor Charles V) concluded, in October 1518, a convention to establish "universal peace." The Papal State and the Church adhered to this alliance. If an aggression should occur, diplomatic means were to be employed; if peaceful means should fail, the confederates would, after the lapse of one month, declare themselves to be the enemies of the aggressor, and after the delay of a second month, invade the aggressor's country. Every confederate was to pay for his own expenses; the right of free passage was guaranteed. Moreover, the federation was open to everybody. Although conceived for all future times, it fell apart one year after its conclusion when the death of Emperor Maximilian secured Charles' ascension to the Imperial throne. It ended legally in 1521 when Cardinal Wolsey, one of the fathers of the confederation, concluded a secret alliance with Charles against France. There followed a series of devastating wars between Charles and François, two former "confederates."

11. SCHWITZKY, DER EUROPÄISCHE FÜRSTENBUND GEORGS VON PODEBRAD. EIN BEITRAG ZUR GESCHICHTE DER WELTFRIEDENSIDEE (1907) *passim*. See also Darby, *Some European Leagues of Peace* (1919) 4 GROTIVS SOCIETY TRANSACTIONS 169.

12. 1 LANGE, HISTOIRE DE L'INTERNATIONALISME, JUSQU'À LA PAIX DE WESTPHALIE, 1648 (1919) 118; TER MEULEN, DER GEDANKE DER INTERNATIONALEN ORGANISATION IN SEINER ENTWICKLUNG, 1300-1800 (1917).

In 1544, after the last war between Charles and François, Guillaume Postel published his book *De Orbis Terrae Concordia Libri IV* in which he proposed a universal monarchy under France.¹³

FROM CAMPANELLA TO JAMES MADISON

The 17th century witnessed the publication of a number of peace projects. The series was opened by Campanella's *De Monarchia Hispanica Discursus*, a treatise which resumed Dante's and Postel's fundamental argument but placed the burden for the enforcement of universal peace on Spain, then the most powerful country. (In *Monarchia Messiae*, published in 1633, the Pope was chosen for the task.) Spain should establish unity of faith and a united government—a republic of all states with the Pope as its chief; if this were done, there would be no schism, no heresy, no famine and no war.

In 1625, an anonymous statesman submitted to the Chancellor of France, Etienne d'Aligre, a book titled "*Le Caton du Siècle, un conseil salutaire d'un ancien ministre d'Etat pour la conservation de la paix universelle.*" In this book, the anonymous Frenchman, realizing that one country will always be too weak to establish a universal system, advocated a sort of a federal union between France and Spain.¹⁴

In the same year, Grotius published "*De jure belli ac pacis,*" where a paragraph was devoted to our problem. It reads as follows:

" . . . It would be useful and in some fashion necessary that the Christian powers should make between themselves some sort of body in whose assemblies the troubles of each should be determined by the judgment of others not interested, and that there should be sought means of constraining the parties to come to an agreement under reasonable conditions."¹⁵

In his *Mémoires*, written between 1617 and 1638, the Duc de Sully alleged that Queen Elizabeth of England and King Henry IV of France had elaborated a scheme for the maintenance of peace in Europe. Whether Sully's report was historically accurate is immaterial.¹⁶ Some of the thoughts expressed in the scheme were probably not unfamiliar to the two princes; it is certain that most European statesmen of later periods were familiar with the project. The "Grand Design" suggested that Europe should be divided equally among the powers in such a manner that none of them could impose his will upon the others; no state was to seek aggrandizement by conquest. The reallocation of

13. *Id.* at 378.

14. *Id.* at 397.

15. Quoted from RALSTON, INTERNATIONAL ARBITRATION FROM ATHENS TO LOCARNO (1929) 118-9.

16. *Ibid.*; also DAVIES, *op. cit. supra* note 5, at 72-6. THE GRAND DESIGN; in the version by the Abbé de l'Ecluse des Loges, was reprinted by the Grotius Society.

land was to eliminate causes of international friction; this is an idea which, 200 years later, was developed in its economic aspects by Fichte in "*Der geschlossene Handelsstaat*." The European states were to be ruled by a general council, to be named by the princes, including the Emperor and the Pope. The council would have at its command military and naval contingents to enforce its decisions and to preserve the peace. "I dare maintain," wrote Sully, "that peace is the great and common interest of Europe . . . The greater powers should force the lesser into it, if necessary, by assisting the weak and oppressed; this is the only use they ought to make of their superiority."¹⁷ This statement could have served as a motto of the Dumbarton Oaks Conference.

In the period of the Thirty Years War, the organization of peace was a widely discussed subject. Since that time, each major conflagration was accompanied by a flood of ideas about the art of "peacefare." The treaties of Osnabrueck and Muenster reflected this tendency and contained provisions to assure the stability and permanence of peace. Paragraphs 114-116 of the Treaty of Muenster determined that any person breaking the convention or public peace, either intentionally or in fact, would incur the punishment prescribed for such violations. Despite violations, the peace would remain in force; all signatories to the treaties were obligated to defend and protect each other as well as the laws or conditions of the peace against whomever it might be, without distinction of religion. If violations occurred, it was to be attempted to settle the dispute by friendly means or legal procedures; if, however, after three years (sic) the dispute could not be settled by peaceful means, all the interested parties were bound to help the victim.¹⁸ No attempt was ever made to apply these provisions in practice.

In 1693, William Penn, in his "*Essay towards the Present and Future Peace of Europe, by the Establishment of an European Diet, Parliament or Estates*" suggested the organization of an international tribunal and a diet of the European Sovereigns.¹⁹ This tribunal was to settle disputes which could not be resolved by diplomacy. "Refusal to refer by one party or refusal to respect the decision subjected the offender to the exercise of force by the others."²⁰ All the members of the European Parliament were to unite against the aggressor to "compel the submission and performance of the sentence."

The end of the War of the Spanish Succession brought forth the publication of one of the most renowned peace projects, the "*Projet de Paix Perpetuelle*," by the Abbé de Saint-Pierre.²¹ The Abbé was

17. SULLY, MEMOIRS, Book XIV. Quoted from VESTAL, THE MAINTENANCE OF PEACE (1920) 288.

18. 1 LANGE, *op. cit. supra* note 12, at 497.

19. DAVIES, *op. cit. supra* note 5, at 77.

20. RALSTON, *op. cit. supra* note 15, at 120.

21. *Ibid.* This project was also reprinted by the Grotius Society.

secretary of one of the French plenipotentiaries to the peace negotiations, and since his book was published at Utrecht, it may be assumed that he, or high persons behind him, tried to influence the proceedings. In fact, copies of the book were distributed to members of the conference. Saint-Pierre envisaged, like others before and after him, a European senate or council, yet his project is interesting for the methods of coercion it suggested. In his Fundamental Article VIII we read the following sentences:

"The Sovereign who shall take up arms before the Union has declared war, or who shall refuse to execute a regulation of the society, or a judgment of the Senate, shall be declared an enemy to the society, and it shall make war upon him, 'till he be disarmed, and 'till the judgment and regulations be executed. . . . If after the society is formed . . . , a Sovereign shall refuse to enter into it, it shall declare him an enemy to the repose of Europe, and shall make war upon him 'till he enter into it, or 'till he be entirely dispossessed." ²²

Saint-Pierre also attempted to determine the aggressor by defining him as the sovereign who attacks suddenly or who refuses to conform to the decisions of the Union. In his Fundamental Article IV, the Abbé linked peace clearly and unequivocally to the maintenance of the status quo:

"All the sovereignties of Europe shall always remain in the condition they are in, and shall always have the same limits that they have now."

While Leibnitz commented favorably upon the project and considered it feasible, Frederick II of Prussia, writing to Voltaire, said, "The thing is most practicable, for its success all that is lacking is the consent of Europe and a few similar trifles." ²³

There may have been no "consent" on the part of Europe, yet Saint-Pierre's scheme became very well known during the 18th century. It was known to Benjamin Franklin who may have had it in mind when he proposed his Albany plan. During the Seven Years War, Rousseau used the "*Projet*" to work out a peace plan of his own, calling it "*Lasting Peace through the Federation of Europe*," published between 1761 and 1782. Rousseau proposed that the powers should conclude a perpetual and irrevocable alliance ²⁴ and settle their differences by arbitration or judgment; there was to be mutual guaranty of possessions on the basis of the status quo; violators were to be put under the

22. Quoted from DAVIES, *op. cit. supra* note 5, at 81.

23. ALDINGTON, LETTERS OF VOLTAIRE and FREDERIC THE GREAT (1927) 160 (Letter of Apr. 12, 1742).

24. RALSTON, *op. cit. supra* note 15, at 121.

ban of Europe as common enemies, and the confederation would be entitled to enforce its rights. Rousseau's plan also contained a veto provision; the diet was to vote by majority, but the five fundamental articles of the European constitution were not to be changed without the unanimous consent of all parties.

In America, the problem of coercion was thoroughly discussed by the drafters of the Constitution. Both the so-called Virginia and New Jersey plans contained provisions for enforcement against recalcitrant states and against those members of the Union who should fail to fulfill their duty under the articles of the Constitution.²⁵ These proposals met, however, the strenuous opposition of Madison and Hamilton. Madison thought that force should not be applied to people collectively but individually, and pointed out that enforcement would lead to war and to the destruction of the Union. Speaking militarily, he observed,

"Could the national resources, if exerted to the utmost enforce a national decree against Massachusetts abetted perhaps by several of her neighbors? It would not be possible. A small proportion of the Community in a compact situation, acting on the defensive, and at one of its extremities might at any time bid defiance to the National authority."²⁶

He called the idea that the central government could force its will upon the states "visionary and fallacious." Hamilton added that foreign powers would "not be idle spectators" during enforcement operations, and summed up his opinion,

"To coerce the states is one of the maddest projects that was ever devised. A failure of compliance will never be confined to a single state. This being the case, can we suppose it wise to hazard a civil war?"²⁷

PRACTICAL ATTEMPTS

During the 18th century, war was accepted as a matter of course. Yet two political attempts at peace preservation deserve attention. After the War of the Spanish Succession, the European cabinets pursued a rigorous policy of peace and appeasement. This policy was symbolized by Walpole, Fleury and Charles VI, statesmen who in many respects presage the protagonists of the Metternich and Chamberlain-Briand periods. The main danger of that time was the resump-

25. LOWE, *THE ORIGINS OF AMERICAN DIPLOMACY* (unpublished manuscript) c. 1. See also SCOTT, *THE UNITED STATES OF AMERICA: A STUDY IN INTERNATIONAL ORGANIZATION* (1920) 203 *et seq.* Compare *THE FEDERALIST* Nos. 15 and, especially, 16. These same arguments later played a major role in the Senate debate of 1919 concerning the League. See FREEMAN, *COERCION OF STATES IN INTERNATIONAL ORGANIZATIONS* (1944).

26. LOWE, *loc. cit. supra* note 25.

27. *Ibid.*

tion of the fight between Austria and France for the Low Countries, and England's preoccupation lest France should gain possession of Belgium and Holland. To avoid a conflict in the Low Countries, Britain, Austria and the States-General in 1715 signed a "Locarno" treaty at Antwerp, called the Barrier Treaty.²⁸ From our point of view, the main stipulation was that part of the Austro-French frontier was to be guarded by Dutch troops, acting as a sort of international police. In order to preserve peace, Austria renounced the exercise of full sovereignty in Belgium, and so permitted the permanent presence of foreign troops on Belgian soil. Only on this condition did she enter into legal possession of the country. However, the Dutch international police never became operative. ". . . On the only occasion when it was seriously wanted, in the War of the Austrian Succession, the Dutch garrisons were withdrawn from the fortresses in 1745 in order that the Dutch should preserve their neutrality."²⁹ For the same reason there were no Dutch garrisons during the Seven Years War, although they were restored afterwards. In 1782, Emperor Joseph II requested the Dutch to leave, which they did under protest, although they had little choice in the matter as they needed the troops for their own war with Great Britain. The history of the Dutch corps is instructive as it points up some of the difficulties which may afflict international forces in the future.

In 1717, an unforeseen danger menaced the peace of Europe—the aggressive policy of Alberoni's Spain which aimed at the destruction of the system created by the peace of Utrecht and more specifically at the conquest of Sardinia, Sicily, and Southern Italy. Sardinia and Sicily fell easily enough, but in 1718 the Utrecht powers (Britain, France, Austria, and the United Netherlands) concluded an alliance, promising each other mutual support in case of attack. Continued Spanish aggression was forestalled by the annihilation of the Spanish fleet off Cape Passaro by the British, acting without declaration of war, in behalf of the Quadruple Alliance—a most successful "archetype" of peace enforcement action.³⁰ It was perhaps this event which, in 1736, led a now peaceful Cardinal Alberoni to propose a peace project of his own in which military enforcement was to play a prominent role.

THE HOLY ALLIANCE

The most elaborate attempt at peace preservation prior to the 20th century was undoubtedly the system which resulted from the liquidation of the Napoleonic wars and which is wrongly known as the "Holy

28. MOWAT, *A HISTORY OF EUROPEAN DIPLOMACY, 1451-1789* (1928) 209.

29. *Id.* at 288.

30. *Id.* at 213.

Alliance." This system was constructed on several levels and can be understood only if it is considered in its complex totality.³¹

The basis of the system was the Holy Alliance proper, a treaty suggested by Czar Alexander I and signed by all European states with the exception of England, Turkey and the Papacy. Although "a piece of sublime mysticism and nonsense" (Castlereagh) and so vague that it can hardly be called a legal, let alone an enforceable, document, the treaty precluded war between the legitimate sovereigns, or rather it codified the fact that, under the circumstances, such war was a very remote possibility. Article I stated that the signatory powers "will, on all occasions and in all places, lend each other aid and assistance." Article II proclaimed that

"the sole principle of force, whether between the said Governments or between their Subjects, shall be that of doing each other reciprocal service, and of testifying by unalterable good will the mutual affection with which they ought to be animated, to consider themselves all as members of one and the same Christian nation."

Goethe said about the Holy Alliance, "Nothing greater or more beneficial for mankind was ever devised."³² This statement becomes more understandable if it is recalled that the Holy Alliance had been designed by the Czar as a first but decisive step to the establishment of a Confederation of Europe—an ideal which Alexander had taken from Saint-Pierre and Rousseau with whose writings his tutor, La Harpe, had made him familiar.

While the Holy Alliance bound the European states against unspecified dangers, there was unanimity among the leading powers that France was the country most likely to start a future war.³³ Accordingly, Britain, Austria, Russia, and Prussia signed a specific military alliance to protect each other by intervention against French aggression. In 1818, France entered the alliance, thus signifying her purpose to adhere to a policy of peace; to be protected against any eventuality, the four original signatories renewed by a secret treaty their mutual defense pact. This second level of Metternich's peace system was called the Concert of Europe.

Under the impression of recent French history, continental statesmen of the time believed that revolution must inevitably engender

31. 3 MEMOIRS OF PRINCE METTERNICH, 1815-1829 (1881) 182-8; 4 *id.* at 638. Various peace plans preceding the downfall of Napoleon, and others accompanying the activities of the Holy Alliance, including some peace ideas of Napoleon himself, are briefly reviewed in WYNNER and LLOYD, *SEARCHLIGHT ON PEACE PLANS* (1944).

32. VESTAL, *op. cit. supra* note 17, at 390.

33. Gentz, *The Results of the Congress at Aix-la-Chapelle*, reprinted in 3 METTERNICH, *op. cit. supra* note 31, at 189.

aggression. Any uprising or insurrection, especially when it led to the dethronement of the legitimate ruler, signer of the Holy Alliance, was considered a potential threat of war. Hence, if peace was to be preserved, revolutions had to be crushed. Of course, this was not the only reason why Metternich and Alexander were opposed to revolution; yet, grasping the intricate relationship between internal and external peace, they acted to maintain both in order to preserve the internal as well as the external status quo. This was the third level of the system.³⁴

Metternich's experiences within the German Confederacy³⁵ led him to believe that the treaties would be useless unless threats to peace were terminated by immediate intervention. In July 1820, a revolution broke out in Naples; by virtue of the pact of 1815, a conference convened in Troppau at the end of which Austria, Russia and Prussia—but neither France nor England—signed a protocol promulgating the principle of intervention for the maintenance of peace. The text of the protocol is as follows:

"States which have undergone a change of government due to revolution, the result of which threatens other states, ipso facto, cease to be members of the European Alliance, and remain excluded from it until their situation gives guarantees for legal order and stability. . . . If, owing to such alterations, immediate danger threatens other states, the powers bind themselves, by peaceful means, or if need be, by arms, to bring back the guilty state into the bosom of the Great Alliance."³⁶

The three eastern powers were strongly opposed by England. Metternich was unable to convince Castlereagh that the new principles were merely the logical conclusion of the premises to which England was already committed. Castlereagh's answer was that Britain could never accept a principle which she would not permit to be applied in her own case; England, he wrote,³⁷ "cannot and will not act upon abstract and speculative principles of precaution." Nevertheless, a breakdown of the alliance was avoided; while objecting to intervention, England admitted that Austria had special interests in Italy, and interposed no objection to the Austrian enforcement which followed against Naples and Piedmont. This solution was worked out in the Conference of Laibach which was still in session when news arrived of the outbreak of the Greek War of Independence. It was now Russia's turn to frustrate intervention.

34. 3 METTERNICH, *op. cit. supra* note 31, at 194.

35. *Id.* at 315.

36. 1 HAYES, A POLITICAL AND CULTURAL HISTORY OF MODERN EUROPE (1932) 733.

37. MANN, SECRETARY OF EUROPE. THE LIFE OF FRIEDRICH GENTZ, ENEMY OF NAPOLEON (1946) 271.

In 1822 a revolution in Spain necessitated a new conference, which convened in Verona. The Czar offered to march 150,000 Russians to Piedmont where they would serve as an international police against revolutions in western Europe—a proposal rejected by all the other states. Russia, Austria and Prussia agreed, however, to support France in intervening in Spain; this intervention took place in 1823 and re-established the legitimate monarchy.

Great Britain was afraid that the French intervention might serve as a pretext for European powers to seize territory in South America. In fact, it had been suggested at Verona that Spain should recover some of her former possessions, but in addition there was an informal understanding between France and Russia to take Buenos Aires and establish naval control in the Pacific. England threatened immediate war if France or Russia would attack South America, and communicated with the American government which, shortly afterwards, proclaimed the Monroe Doctrine. The Verona conference also decided to recall the enforcement contingents from Naples and Piedmont in order to demonstrate clearly that the interventionists had no secret design of annexing territory. Nevertheless, the "Congress system" was at its end; Metternich had been unable to get acceptance of the enforcement principle.

NAVARINO

Yet while Metternich's system was dead, his idea lived on and soon found an important application, this time in the interest of liberalism. When the Greek insurrection broke out, Alexander, true to the principles of the Holy Alliance, condemned the revolution, although it had been prepared with Russian help. The Czar sympathized with the Greeks and felt morally obliged to support them against the Sublime Porte, not only for religious reasons but also because, apparently, he was a member of the secret Greek organization which prepared the uprising. As time went by, Russia foresook the Holy Alliance and openly supported the Greeks; in 1827 the former Russian Foreign Minister, Capo d'Istria, himself a Greek, was elected president of Greece. While the powers were unwilling to permit Russian action against Turkey, the Greeks, in a clever move of political warfare, put themselves under British protection. Thereupon, Russia and Britain, later joined by France, concluded the treaty of London (1827), requesting Turkey immediately to conclude an armistice, threatening otherwise to support the Greeks. When the Turks refused, British, French and Russian naval forces destroyed, in an international peace enforcement action, the Egyptian-Turkish fleet at Navarino.³⁸ Though Turkey's naval power was thus broken, she was not ready to yield.

38. ERFUTH, SURPRISE (1943) 46.

England and France showed no intention for further intervention, but Russia declared war and, in a hard campaign in which she almost suffered defeat, advanced to Adrianople.

At that stage, of course, the war assumed an entirely different character; the question was no longer Greek but Turkish independence. Further Russian advances toward Constantinople would have compelled Britain to intervene against Russia. The battle of Navarino had greatly damaged British interests. The elimination of the Turkish fleet had upset the naval balance, thereby menacing British security. When, after initial enthusiasm, this unexpected result became clear, British public opinion was enraged. Admiral Codrington, the Commander of the Allied intervention squadron, was recalled and a cabinet crisis was barely avoided. Russia hastened to make peace with Turkey.

In Europe the basic principle of the Congress of Vienna, namely the sacrosanctity of the status quo and legitimacy, had been violated by the powers themselves. Navarino aided an individual revolution directly, and the dissonances of the European concert thereby revealed indirectly strengthened the Continent's rebellious spirit, thus leading to the revolutions of 1830 and those which followed. The weakening of Turkey caused perpetual unrest in the Near East which, in the end, culminated in the Crimean War. Metternich had been right when he predicted that the emancipation of the Greeks would ". . . consummate a new revolution in Europe—a triumph the reaction of which on the whole of Europe is far beyond our calculations; which would give birth to a new era of war. . . ." ³⁹

Metternich stated that with the maintenance of all legal rights "alone can general peace be possible." ⁴⁰ Peace is thus the preservation of the status quo, which must be maintained by crushing all forces liable or willing to upset existing conditions. Obviously, such a solution must sooner or later lead to ultra-reaction and radically stifle political progress. The Holy Alliance would have become an instrument of "reaction" even if Metternich had been a "liberal." Castlereagh and Canning were perfectly right on this point. Yet the British solution—to intervene in order to remedy dangerous situations and to help oppositional movements in securing their "justified" objectives—must create further unrest, call forth revolutions, and upset the equilibrium between powers. Metternich's system would lead to stagnation and to arbitrary tyranny among and within the states; Canning's system to perpetual revolution, hence to international conflict and, in its logical culmination, to continuous wars.

39. 4 METTERNICH, *op. cit.* *supra* note 31, at 387.

40. *Id.* at 638.

BEGINNING OF PACIFISM

The unsatisfactory results of peace enforcement were too obvious to be ignored. Under the influence of Bentham's posthumous writings which admitted the necessity of peace enforcement only as a "last resource," many relied upon public opinion as an instrument of peace. Nor was the idea of peace enforcement part of the doctrine of the emerging pacifist movement led by Elihu Burritt, Richard Cobden, August Visscher, and Victor Hugo. In 1835 a movement started in the Senate of Massachusetts to settle international disputes by arbitration—similar proposals were made in 1849 in France by Bouvert and in England by Cobden and Hobhouse, and defeated in both countries.⁴¹ Palmerston opposed Cobden's motion on the ground that "without a sufficiently large army, the arbitral tribunal would be no more than a mediation." Yet the idea of peace enforcement all but vanished from literature and public discussion. The idealistic phase of the pacifist movement had begun.

ENFORCEMENT ACTIONS

In actual practice, however, peace enforcement was not entirely discontinued. Significantly, it was exclusively employed against weak countries. In 1832, Franco-British land and naval forces intervened against Holland to secure Belgium's independence. In 1835, England and France blockaded the Argentine coast; ten years later, in order to check expansionist tendencies of Argentina against Uruguay, French and British troops occupied the latter country and blockaded the Rio de la Plata. In 1854, France and Britain occupied the Piraeus to prevent Greece from attacking Turkey, then at war with Russia. In 1880, a naval demonstration by the powers settled troubles between Montenegro and Turkey. In 1886, international naval forces blockaded the Greek coast and compelled the Greeks to disarm and not to attack Turkey. Ten years later, in 1896, the Armenian massacres led to a British proposal for intervention, but Russia declined to join in the action and prepared instead to seize Constantinople and the Straits should the intervention take place—an interesting indication of the complications which might result from peace enforcement.

In 1897, an insurrection in Crete threatened to cause civil war in Macedonia; the powers requested both Greece and Turkey to withdraw their troops on pain of "measures of constraint"; rejection of the note was answered by blockade and occupation of the island. The island remained occupied, and while the occupation still lasted, a new uprising occurred in 1905, the insurrectionists claiming union with Greece. This union was opposed by the powers, yet after the annexation of Bosnia and Herzegovina by Austria in 1908, the union was pro-

41. KREHBIEL, NATIONALISM, WAR AND SOCIETY (1916) 160.

claimed by Crete; ten months later, the powers withdrew; they had been unable to impose the will of "Europe."

In 1900, an international army was sent to China to repress the Boxer rising. Taken by itself, the intervention was successful; yet it gave the Russians an opportunity to occupy Manchuria, an event which was the chief cause of the Russo-Japanese War. The intervention, therefore, remotely caused the Russian revolution of 1905 and the emergence of Japan as a world power.

In 1913, the coasts of Montenegro were blockaded in order to raise the siege of Scutari. Although Montenegro was one of the weakest countries in the world, it defied the powers and took Scutari; only a threat by Austria to intervene on land compelled it to yield.

In addition to these actions, there were some others which, though ostensibly carried out for the cause of peace, actually had different motivation. There was the intervention against Mohammed Ali of Egypt in 1840 which put an end to his quarrel with the Sultan and compelled him to return the Turkish fleet to Turkey, but which had the more important result that it strengthened England's position in the eastern Mediterranean and redressed the naval balance that had been upset at Navarino. In October 1848, the Russians, in agreement with the Turks, occupied the Danubian principalities which had become rebellious; Russian forces stayed until 1851. In 1849, a revolution broke out in Hungary; the Czar's offer of help was accepted by the Austrian Emperor and Russian and Austrian forces crushed the rebellion.

THE HAGUE PERIOD

During the last quarter of the 19th century, the peace movement had indeed gained ground. While previously peace was a purely negative condition, namely the absence or interruption of war, it now became, to an ever increasing extent, the supreme objective of statecraft, at least in some countries. True, when Nicholas II of Russia invited the powers to the First Peace Conference at the Hague, he had very good domestic and military reasons to propose disarmament—new and superior Austrian ordnance equipment had temporarily put Russia in an inferior position.⁴² At the same time, Bismarck's system of alliances and re-assurance agreements, which for more than 20 years had prevented war through the isolation of France, the most likely aggressor in the post-1870 system, had broken down. But Nicholas took his inspiration in part from Alexander's Holy Alliance. He was also greatly influenced by Secretary Blaine's success with the First Pan-American Congress and by the writings of I. S. Bloch. Yet while the Hague Conference is an important milestone in history because it

42. PARES, *A HISTORY OF RUSSIA* (1944) 417.

codified a large body of international law, it failed in its primary purpose, which was to initiate disarmament and to construct an inviolable system of peace. The first decennium of the 20th century witnessed a series of armament races and international crises and also a number of wars, one of major importance. The futility of the system of "voluntary arbitration" agreed to at the Hague was obvious; only minor conflicts were submitted to arbitration (the treaties stipulated that questions of honor, independence, and vital interests could not be arbitrated). People began to look to other methods; the idea of peace enforcement was reborn after almost eighty years of advocacy of non-violence.

It is, for reasons of space, impossible to enumerate even the names of those who, in one form or other, suggested an international police as executive organ of the international court. They include distinguished international jurists like Bluntschli, economists like Irving Fisher, soldiers, and participants of the Madrid Congress of the Ibero-American Union (1900).⁴³

As far as we can see, the first person of outstanding international stature to bring up the idea of peace coercion in the present century was Theodore Roosevelt, proponent of the "international sheriff." He spoke of such a scheme in a message to Congress in 1904, and, in an address delivered to the Nobel Prize Committee at Oslo, in 1910 he advocated a forceful combination of "those great nations which sincerely desire peace."⁴⁴

In June of the same year, a resolution was submitted to Congress by Mr. Bartholdt from Missouri and Mr. Bennet from New York, and received the consent of both Houses; to limit armaments, mankind was invited ". . . to consider the expediency . . . of constituting the combined navies of the world in an international force for the preservation of universal peace, . . ." ⁴⁵

THE FIRST WORLD WAR

Shortly after the outbreak of the World War, the idea of peace coercion made new headway. Theodore Roosevelt re-stated his position; Hamilton Holt suggested a league endowed with force for the administration of sanctions; the Dutchman, Hendrik Dunlop,⁴⁶ published a

43. Most pre-World War I proposals were collected in a booklet issued by the Dutch publishing house Martinus Nijhoff, *WAR OBIATED BY AN INTERNATIONAL POLICE* (Van Vollenhoven's ed. 1915). The first solid, though short, discussion of peace coercion was published by DUMAS, *LES SANCTIONS DE L'ARBITRAGE INTERNATIONAL* (1905).

44. Quoted from SCHUMAN, *INTERNATIONAL POLITICS. THE WESTERN STATE SYSTEM IN TRANSITION* (1941) 211.

45. 45 CONG. REC. part 8, 8545 (1910). See also two pre-war American publications: SMITH, *AMERICANISM CONQUERS PANICS, SOCIALISM AND WAR* (4th ed. 1913); ELIOT, *AN INTERNATIONAL FORCE MUST SUPPORT AN INTERNATIONAL TRIBUNAL* (1914).

46. DUNLOP, *ALS DE VREDE KOMT* (1914).

little book in which he suggested that an "international *gendarmérie*" ought to be established with a strength of one per cent of the population, with contingents in every country; 25 per cent of the contingents were to consist of police troops, native to the territory where the contingents were located. In 1915, a symposium was published in the Hague which contained more than a dozen authoritative statements about the practicability and advisability of an international force; the book attracted world-wide attention.⁴⁷

The idea of peace coercion found a particularly good reception in the United States where a "League to Enforce Peace" was created under the leadership of former President Taft and A. Lawrence Lowell, President of Harvard University.⁴⁸ At a conference in Philadelphia in June 1915, a program was adopted which called for compulsory arbitration and the application of economic and military force by all states against any state resorting to war without submitting its disputes to pacific settlement.

PRELIMINARIES TO THE LEAGUE

During the discussions about the Covenant of the League of Nations, Clemenceau and Léon Bourgeois, the delegates of France, suggested that the League be provided with a powerful executive. In some form or other, most drafts for the Constitution of the League envisaged military sanctions, *e.g.*, the plans of Phillimore, Smuts, Cecil, and Hurst-Miller, the German and Italian schemes, the project of the League to Enforce Peace, and that of the Fabian Society.⁴⁹ The French plan, which was the most elaborate, dealt with military sanctions in the following manner:

"The execution of the military sanctions on land or at sea shall be entrusted either to an international force or to one or more Powers, members of the League of Nations, to whom a mandate in that behalf shall be given.

"The International Body shall have at its disposal a military force supplied by the various member States of sufficient strength: (I) to secure the execution of its decisions and those of the international tribunal; (II) to overcome in case of need, any forces which may be opposed to the League of Nations in the event of armed conflict."⁵⁰

47. WAR OBLVIATED BY AN INTERNATIONAL POLICE, *loc. cit. supra* note 43.

48. BARTLETT, THE LEAGUE TO ENFORCE PEACE (1944) *passim*. This book deals also with American pre-war pacifist activities, including proposals for international forces, and later American developments connected with the founding of the League of Nations. See also MARBURG, DEVELOPMENT OF THE LEAGUE OF NATIONS IDEA (1932); HEMLEBEN, PLANS FOR WORLD PEACE THROUGH SIX CENTURIES (1943).

49. DAVIES, *op. cit. supra* note 5, app. E, at 726-31.

50. *Id.* at 731-4.

The strength of the international force and the national contingents was to be fixed by the "International Body." The League army was to be distributed over the globe and to be commanded by a permanent general staff of the League. The activities of national armies were to be controlled by the League, which had the right "at any time to require that the member states introduce any alteration into their national system of recruiting which the staff may report to be necessary."

To be sure, this idea had been conceived by Clemenceau as a device to improve France's military security; because, fully aware of France's inner weakness, the French leader wanted to prevent British and American disarmament which he foresaw and dreaded. Whatever the motivation might have been, President Wilson refused to discuss the project on the ground that "the United States would never ratify any treaty which put the force of the United States at the disposal of such group or body." The idea that, instead of a League army, the member states should put troops at the League's disposal, was equally vetoed by Wilson. "The only method lies in our having confidence in the good faith of the nations who belong to the League."⁵¹

THE COVENANT

It is in the nature of things that an all-embracing international treaty designed for the maintenance of peace must contain some stipulation about unified action in case of aggression. In spite of Anglo-American abhorrence against obligations which might commit them to military action under unforeseen circumstances, the Covenant contained, in addition to several random references, Articles 10 and 16 which deal with peace enforcement. Article 10 was almost entirely of American origin and was, incidentally, one of the chief reasons why the Senate refused to ratify the Covenant. It reads as follows:

"The Members of the League undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all Members of the League. In case of any such aggression or in case of any threat or danger of such aggression the Council shall advise upon the means by which this obligation shall be fulfilled."

In Article 11 any war or threat of war was declared to be "a matter of concern to the whole League, and the League shall take any action that may be deemed wise and effectual to safeguard the peace of nations."

It is hardly necessary to belabor the vagueness of these articles; yet, speaking legally, this very vagueness would have entitled the Council to advise even military coercion. However, while in domestic politics

51. SCHWARZSCHILD, *WORLD IN TRANCE. FROM VERSAILLES TO PEARL HARBOR* (1942) 89.

few governments will hesitate to take the fullest possible advantage of all the rights conferred upon them by law, in international treaties general authorizations, such as Article 10 of the Covenant, carry no weight; their loop-holes are interpreted so as to permit a policy of "wait and see." The framers of the Covenant felt this themselves and, making a concession to the French proposal, included Article 16, which stated that any aggressor should be "deemed to have committed an act of war against all other Members of the League"; to oppose the aggressor, the League was to order economic sanctions. Article 16 stipulated clearly that these economic sanctions were to be complete, that is to say, that *all* trade or financial relations were to be severed and that *all* financial, commercial or personal intercourse was prohibited. According to the mandatory language of this Article the imposition of only partial sanctions, as occurred in 1936, was excluded, although it could be justified by various other Articles and, in practice, by the unanimity rule. In addition to economic sanctions, Article 16 envisaged the use of military power. The pertinent paragraph follows:

"It shall be the duty of the Council . . . to recommend to the several governments concerned what effective military, naval or air force the Members of the League shall severally contribute to the armed forces to be used to protect the Covenants of the League."

Attention must be called to the fact that this article, in a very indirect and oblique manner, speaks of armed forces for the protection of the League covenants, hence of an international force. On the other hand, the article did not *direct* that military force was to be used against the aggressor. Nor were the conditions determined wherein the Council would have been obliged to recommend military coercion. Moreover, the seemingly forceful wording of Article 16 was voided by Article 5 which stipulated that the Council could make recommendations only upon unanimous approval. In practice, therefore, the Council was prevented from recommending military sanctions.

The League was not entirely unsuccessful; out of 66, it settled 35 international disputes. It was able to settle disputes if and when both litigants wanted to accept the arbitration awards and if and when, as in the Swedish-Finnish conflicts about the Aalands Islands, they did not exploit their disputes as a pretext for aggression. When, however, one country was determined and able to carry out aggressive plans, the League was powerless and usually ended up by pronouncing Solomon-like judgments which legalized the aggressor's conquest. An example was the occupation of Vilna by Poland, in connection with which an abortive attempt was made to create an international force to supervise a plebiscite; the idea was quickly dropped when Russia, at that time not a member of the League, declared that the presence of an

international army close to its borders would constitute a *casus belli*. Apparently the Kremlin did not believe that peace enforcement could ever be made for the sake of peace alone.

After Japan's occupation of Manchuria, the Lytton report was unanimously adopted by the League's General Assembly. This report was fair enough to Japan, and it recommended no sanctions. Nevertheless, Japan rejected it, left the League, and continued its campaign of conquest, undaunted by the condemnation of "public opinion."

The League also intervened in the Chaco conflict by declaring a weapons' embargo against the belligerents. The embargo was later lifted from Bolivia, but maintained against the aggressor Paraguay; this did not prevent Paraguay from winning the war. The symbolic sanctions against Italy in 1935-36 failed to stop the aggression but, by strengthening Mussolini's domestic position, breaking the Stresa front, driving Italy into the arms of Germany, and demonstrating the irresolution and utter impotence of the Western Powers, paved the way for later Axis aggression on a world-wide scale.⁵²

ATTEMPTS TO STRENGTHEN THE LEAGUE

The refusal of the United States to ratify the League of Nations and to enter into a security agreement with Great Britain and France, left France in a very precarious military position. Great Britain, feeling that her own security was intimately linked to that of France, opened negotiations for a mutual security pact. These negotiations soon encountered difficulties; yet as other nations also were interested in security, the discussions were transferred to the League. In 1922, the third assembly of the League adopted the famous Resolution XIV which called for a defensive treaty open to all countries and based upon a plan of military and mutual defense. Accordingly, the draft "Treaty for Mutual Assistance" was submitted to the Assembly in 1923. It suggested a general pact supplemented by regional military agreements; the Council was to determine the military forces which each member was to provide in case of aggression and was to appoint a commander-in-chief under whose orders the military contingents were to fight. The draft was not favorably received. Strongest opposition was made by the British (Conservative) government which made the objection, among others, that the unanimity rule would paralyze the Council and dangerously delay its intervention.

In view of this criticism, a new document was prepared which became known as the "Geneva Protocol," and whose official title was "Protocol for the Pacific Settlement of International Disputes." The

52. For these and various other cases, see CARR, *INTERNATIONAL RELATIONS SINCE THE PEACE TREATIES* (1943) 103 *et seq.* For a complete survey of League disputes, including statistics of success and failure, see 2 WRIGHT, *A STUDY OF WAR* (1942) 1429-31.

Protocol was to make possible implementation of the disarmament provisions of the Covenant. The disarming states were to be assured that the reduction of armaments would not impair their security. The Covenant had proclaimed the "moral solidarity of the new era," but it had failed to provide for compulsory arbitration or effective international jurisdiction. The Protocol, essentially a proposal for the amendment of the Covenant, was to remedy this "great omission of the Covenant" (Dr. Benes).⁵³ It was also to correct the previous draft Treaty which had conferred too much discretionary power upon the Council, particularly with respect to the determination of the aggressor. It was felt that the aggressor should not be determined *ad hoc*, on the basis of actually existing circumstances, but according to general criteria previously established in a binding legal form. The Protocol is an ingenious piece of work, and still remains a most logical plan for the elimination of war.

The basis of the Protocol was an agreement between all signatory states "in no case to resort to war" (Article 2) and, for certain cases, to "recognize as compulsory *ipso facto* and without special agreement, the jurisdiction of the Permanent Court of International Justice" (Article 3). Cases not covered by the Statute of the Court were to be submitted to the Council. Failing unanimous decision (minus the votes of the litigants), the Council was to appoint a committee of arbitrators whose recommendations were to be binding (Article 4, paragraphs 2, 3, and 6). The Assembly, too, was entitled to arbitrate disputes by majority vote, or if no majority could be obtained, to remit the case to arbitration (Article 6). In case of dispute, as well as before and during proceedings for pacific settlement, the quarreling states were to abstain from taking "any measure of military, naval, air, industrial or economic mobilization, nor, in general any action of a nature likely to extend the dispute or render it more acute" (Article 7). The Council was entitled to investigate and inquire into any complaint arising from this provision and to "decide upon the measures to be taken with a view to end as soon as possible a situation of a nature to threaten the peace of the world" (Article 7). Moreover, it was recommended that the litigants create demilitarized zones between their forces and place them under the Council's supervision (Article 9).

The Protocol then proceeded to define the aggressor (Article 10):

"Every State which resorts to war in violation of the undertakings contained in the Covenant or in the present Protocol is an aggressor. Violation of the rules laid down for a demilitarized zone shall be held equivalent to resort to war. In the event of hostilities having broken out, any State shall be presumed to be an aggressor,

53. MILLER, *THE GENEVA PROTOCOL* (1925) 201; NOEL-BAKER, *THE GENEVA PROTOCOL* (1925); WEHBERG, *THE OUTLAWRY OF WAR* (1931) 26-32.

unless a decision of the Council, which must be taken unanimously, shall otherwise declare.

"If the Council does not at once succeed in determining the aggressor, it shall be bound to enjoin upon the belligerents an armistice, and shall fix the terms, acting, if need be, by a two-thirds majority, and shall supervise its execution. Any belligerent which has refused to accept the armistice or has violated its terms shall be deemed an aggressor."

This was a masterly way to preserve the unanimity rule and yet to enable the Council to act if no unanimous decision could be reached. Whatever the merits of the conflict or the interests and policies of the Council's members, it is obligated to enforce an *armistice* and thereby to terminate hostilities in a practical, though not in a legal, manner. Moreover, it was mandatory to designate as aggressor any state which did not comply with the armistice terms; no unanimity rule applied for the determination of armistice violations. That it might be open to interpretation whether or not a state complied with the Council's orders, is another question; no provision was made for the voting procedure should any disagreement develop with respect to this point.

Once the aggressor had been determined, the Council was to "call upon the signatory States to apply forthwith against the aggressor the sanctions provided by Article 11 of the present Protocol." These sanctions were those of Article 16 of the Covenant, but Article 12 of the Protocol prescribed that, to avoid improvisation, effective plans for economic and financial sanctions should be drawn up *in advance*. Article 13 specified the nature of military sanctions. According to this article,

"The Council shall be entitled to receive undertakings from States determining in advance the military, naval, and air forces which they would be able to bring into action immediately to ensure the fulfillment of the obligations in regard to sanctions which result from the Covenant and the present Protocol . . . The said States may, in accordance with any agreements which they may previously have concluded, bring to the assistance of a particular State, which is the victim of aggression, their military, naval and air forces."

Although a considerable strengthening of the Covenant's Article 16, this Article still left to the individual states the right to determine for themselves the strength of their contingents.

Other shortcomings may be reviewed briefly. In a report of the British delegates to the Prime Minister, it was explained how, by preserving the unanimity rule, action could still be guaranteed by making the test of aggression automatic and "presuming" a certain state to be the aggressor; this "presumption . . . is to hold good until

the Council has made a unanimous decision *to the contrary*. If the presumption stands it is considered sufficient to justify the application of sanctions." ⁵⁴ This solution, it was claimed, eliminated the difficulty of a "procedure by a majority vote" which "might have resulted in a State being obliged to apply sanctions against its own judgment." However, it can be readily seen that it did no such thing; if a state believed that sanctions were injurious to its own interests, it might not obey the injunctions of the Council whether the attacking nation were "deemed" or merely "presumed" to be the aggressor. The obligations of the Protocol were, in the words of Dr. Benes, "imperfect obligations in the sense that no sanctions are provided for against any party which shall have failed loyally and effectively to co-operate in protecting the Covenant and resisting every act of aggression." ⁵⁵ This is, of course, the crux of the whole matter; the problem of peace coercion reappears on a higher level. Yet on this level this problem can be "solved" only by ignoring the non-cooperative state—in which case there would be no coercion, or by presuming it to participate in aggression—in which case sanctions would have to be applied against it. But then the original aggressor would be gratuitously provided with an ally.

The Protocol contained no provisions for the maintenance of basic military strength. The possibility that under conditions of general disarmament as well as under other conditions the aggressor may be the strongest power was not considered. Nor was it taken into account that surprise attack may make possible the rapid and cheap execution of territorial conquest by the aggressor. Like other peace projects, the Protocol sanctified the status quo. ⁵⁶

On the other hand, if a majority of the signatory powers had become opposed to the existing international arrangement, aggression might have been approved by the Council. In 1914, for example, Germany demanded that France, as a token of her peaceful intentions, should permit German troops to occupy Toul and Verdun, the two strongest fortresses in the French defense belt. A Council which is in favor of the aggressor might impose similar terms on the victim country on the ground that non-compliance with the "just" demands of the attacker constitutes aggression.

Austen Chamberlain pointed out that the discontinuation of military preparations and activity during settlement proceedings would frequently benefit the aggressor. Before starting his operations, he might arrange his time-tables in such a manner that compliance with the

54. MILLER, THE GENEVA PROTOCOL (1925) 244.

55. *Id.* at 199.

56. For a justification of status quo treaties, see DE MADARIAGA, DISARMAMENT (1929) *passim*, particularly at 130.

Council's request would not weaken, but further increase, his striking power. By contrast, the victim, not having expected the onslaught, would have made no preparations. The perpetuation of this condition during the "cooling-off period" would actually penalize the victim country. Alternatively, by resisting such a development, the victim country might technically become an aggressor. Furthermore, as Bismarck and Hitler have shown, the victim often can be forced to make the first attack.

Whatever the merits or demerits of the Protocol, it never came to life. England under the Labor Government had already voiced its opposition to the principles laid down in the document. Ramsay MacDonald took the position that "our interests for peace are far greater than our interests in creating a machinery of defense. A machinery of defense is easy to create but beware lest in creating it you destroy the chances of peace."⁵⁷ He pleaded confidence in human nature but, as Jules Cambon rightly commented, the British Prime Minister forgot Pascal's word that justice without force is powerless.⁵⁸ At any rate, the Labor Government was soon succeeded by a Conservative Government which took the attitude that it could not accept an unlimited obligation of arbitration in its own disputes and would not ask other nations to accept such an obligation—an attitude which is reminiscent of Castlereagh's opposition to Metternich.

To replace the Protocol, Chamberlain suggested that those nations whose conflicts and differences were most likely again to lead to war should bind themselves not to attack each other and to submit their disputes to arbitration. This suggestion was the origin of the Locarno pact.⁵⁹

THE FRENCH PROPOSALS OF 1932

Despite these setbacks, the idea of military peace enforcement continued to be discussed. In 1929, Nicolas Politis declared in the Preparatory Disarmament Commission⁶⁰ that the establishment of an international force was an essential prerequisite for the reduction of arma-

57. 20 ENCYC. BRIT. (1944) 265.

58. Article *Security*, 20 ENCYC. BRIT. (15th ed. 1944) 265.

59. Various attempts to amend the Covenant and to establish world security (*e.g.*, the pact of Paris, the Litvinov Protocol, the "model treaties," the Convention for Improving the Means of Preventing War, etc.) are described in WHEELER-BENNETT, *DISARMAMENT AND SECURITY SINCE LOCARNO 1925-1931* (1932). Lack of enforcement power was viewed as the fundamental weakness of the League; see SCHMITT, *DIE KERNFRAGE DES VOELKERBUNDES* (1926). In 1927, a newspaper campaign for the establishment of international forces was waged in England by Sir Sidney Low and Lord Thomson. See also, SPAIGHT, *PSEUDO-SECURITY* (1928); JESSUP, *AMERICAN NEUTRALITY AND INTERNATIONAL POLICE* (1928).

60. LOOSLI-USTERI, *GESCHICHTE DER KONFERENZ FUER DIE HERABSETZUNG UND DIE BEGRENZUNG DER RUESTUNGEN, 1932-1934; EIN POLITISCHER WELTSPIEGEL* (1940) 37.

ments. An international association of airplane pilots submitted a memorandum in which it was stated that the majority of fliers would prefer to serve in a common air force for the maintenance of peace instead of becoming "executioners in war." In 1930, Lord David Davies published his book, *The Problem of the Twentieth Century*, wherein he argued with an imposing array of historical facts that peace cannot be preserved except by an international police. In September 1931, Poland, in an official communication to the Preparatory Disarmament Commission, suggested the creation of an international army.

At the beginning of the Disarmament Conference, France again came forward with a plan for an international armed force which was to secure peace and disarmament. The proposal was presented by André Tardieu on February 5, 1932.⁶¹ It envisaged:

"1. An international police force to prevent war.

"2. A first contingent of coercionary forces to repress war, and to bring immediate assistance to any State victim of aggression."

The police force was to be ". . . permanently available with complete freedom of passage to occupy in times of emergency areas where a threat of war has arisen . . .";⁶² it was to be composed of contingents furnished by each of the contracting parties. It was a special feature of the French project that offensive weapons, such as heavy artillery, warships with a displacement exceeding 10,000 tons, heavy bombers and large submarines, were no longer to be part of national armaments but were to be put at the exclusive disposal of the international police. Civil aviation was to be internationalized under the League's control.

The French proposal received a very cool reception. The liberal English paper, *Manchester Guardian*, suggested that it had been put forward in order to wreck the Disarmament Conference.⁶³ However, in the discussions of the Conference, the representatives of many countries considered the proposals as theoretically sound, albeit impractical. Only Maxim Litvinoff, Russian Foreign Commissar, attacked the idea as such and tried to prove its futility. An international police force, so he stated, would neither prevent war nor offer effective assistance to the victim of aggression. In the past, no aggressor ever desisted from his projects merely because he had to fight several nations. So it will remain in future. It is all a question of relative strength. The international police cannot be very strong—a few hundred thousand men against the millions of a strong aggressive nation; hence the

61. DAVIES, *op. cit. supra* note 5, app. M, at 785 *et seq.*

62. *Ibid.*

63. LOOSLI-USTERI, *op. cit. supra* note 60, at 40.

aggressor will only have to modify his strategy so as to protect himself against sanctions. After having made several critical remarks about the League's ability to determine the aggressor or to assist victims of aggression, Litvinoff showed concern that the nation which, by virtue of its alliances, agreements or general influence, came to dominate the League might use the international police for its exclusive benefit—a circumlocution for his fear that the League army might lead an attack against the Soviet Union.⁶⁴

Shortly afterwards the French dropped the project for which, in November 1932, they substituted another, presented by Herriot, aiming at the establishment of national defense forces of a "uniform general type," viz., short-service armies with limited effectives. Herriot's proposal also envisaged that

"Each of the contracting Powers will place permanently at the disposal of the League of Nations, as a contingent for joint action, a small number of *specialized units* consisting of troops serving a relatively long term and provided with the powerful materials prohibited for the national armies . . . these specialized contingents will be kept constantly ready for action."⁶⁵

This proposal contained an idea which recently was put forward, in a somewhat similar form, by the Acheson report on international atomic control; it continued:

"Any mobile land material which is prohibited for the national armies . . . will be stored in each of the contracting States under international supervision. These stocks will, if necessary, be placed at the disposal of the parties in aid of which collective action is taken . . . Supervision will involve an investigation at least once a year."

Like Metternich's system, the plan contained security provisions to be carried out on different levels—general obligations to be assumed by all signatories, and continental and regional arrangements, the obligations becoming increasingly strong and more definite as the area is narrowed.

Hitler's ascension to power put an end to all discussions about international organization; for all practical purposes, the Disarmament Conference transformed itself into a conference about German *Gleichberechtigung*. Although the discussion continued on a literary plane,

64. *Id.* at 42.

65. DAVIES, *op. cit. supra* note 5, at 797. For the reaction of a revisionist country, see CIMBALI, *L'ESPANSIONE GUERRESCA, IL DISARMO, LE RIPARAZIONI E L'ESERCITO INTERNAZIONALE DI ANDREA TARDIEU* (1932). A general Nazi interpretation is given by the German delegate to the Disarmament Conference, former Undersecretary of State, RHEINBADEN, *UM EIN NEUES EUROPA, TATSACHEN UND PROBLEME* (1939) 178 *et seq.*, 276 *et seq.*

with a particular emphasis on the capabilities of an international *air* force, the idea of peace enforcement was abandoned as a practical possibility when France, in 1933, refused the Polish Marshal Pilsudski's proposal to intervene against German rearmament, and when, in 1936, England was unwilling to honor the Locarno Pact against the re-occupation of the Rhineland. Officially, the idea of peace coercion did not re-appear prior to the Conference of Dumbarton Oaks in 1944.⁶⁵

THE UNITED NATIONS CHARTER

The Charter reveals the effort that has been made to avoid some shortcomings of the Covenant and the Geneva Protocol, although not all the strong points of these documents were salvaged. The new document shows weaknesses of its own. From the point of view of peace enforcement, the Charter has fewer "teeth" than the Protocol and the French proposals of 1932.

The outstanding feature of the Charter is the authority that it bestows upon the Security Council. It is stipulated that the Security Council shall "be able to function continuously" (Article 28). The United Nations "confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf" (Article 24). "The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter" (Article 25). This sweeping provision implies that a country may be obliged to abide by a decision to which it was no party, and which runs counter to its intentions and interests.

The Council is entitled to investigate any international dispute and

66. The literature for the period between the Disarmament and the San Francisco Conferences includes the following works: AN INTERNATIONAL AIR FORCE, ITS FUNCTIONS AND ORGANIZATION (Memorandum submitted by Exec. Com., Int'l Cong. in Defense of Peace, Brussels, Feb. 1934); LAWSON, A PLAN FOR THE ORGANIZATION OF A EUROPEAN AIR SERVICE (1935); WEBBERG, THEORY AND PRACTICE OF INTERNATIONAL POLICING (1935); THOMAS, AN INTERNATIONAL POLICE FORCE (1936); MUMFORD, HUMANITY, AIRPOWER AND WAR (1936); CARDONA, LE PERIL EXTERIEUR; OU, TOUS CONTRE UN (1939); DAVY, AIR POWER AND CIVILIZATION (1941); AIR POWER IN THE POST-WAR WORLD (A plan prepared by the Military Research Committee of the New Commonwealth, 1943); BEDFORD, TOTAL DISARMAMENT OR AN INTERNATIONAL POLICE FORCE (1944); Richmond, *Policing the Seas in THE NEW COMMONWEALTH* (1944); NEW COMMONWEALTH SOCIETY, THE FUNCTIONS OF AN INTERNATIONAL AIR POLICE (1944); Wright, *Constitutional Procedure in the United States for carrying out Obligations for Military Sanctions* (1944) 38 AM. J. INT. L. 678; BEVERIDGE, THE PRICE OF PEACE (1945) 80 *et seq.*; ALTMAN, THE INTERNATIONAL POLICE AND WORLD SECURITY (1945). In many of his writings, R. N. Coudenhove-Kalergi, president of the Pan-Europe Union, proposed the creation of a Federal European armed force. There are also several books written on the subject by Lord Davies. A bibliography, which, however, is far from being complete, is contained in Johnson, *International Police Force* (1944) 17 THE REFERENCE SHELF No. 2.

even any *situation*—note the widening of scope—either by its own initiative, or upon invitation or complaint of any member or non-members. The General Assembly “may call the attention of the Security Council to situations which are likely to endanger international peace and security” (Article 11, paragraph 3). Yet “while the Security Council is exercising in respect of any dispute or situation the functions assigned to it in the present Charter, the General Assembly shall not make any recommendation with regard to that dispute or situation unless the Security Council so requests” (Article 12).

This virtually unlimited authority of the Security Council stands in marked contrast to the weakness of the General Assembly which has merely the responsibility “to discuss, debate, reveal, expose, lay open—to perform, that is to say, the healthful and ventilating functions of a free deliberative body, without the right or duty to enact or legislate.”⁶⁷ With less verbiage it could be said that the General Assembly has no rights and but one duty—to talk, and it may discharge that duty during international disputes only if the Security Council grants permission (Article 12). The Security Council, as the executive, has no legislative counterpart; it has to make the laws itself, but in many instances it has also to act as the judiciary—a construction without checks and balances which runs counter to democratic-liberal ideas, but which is consistent with absolutistic constitutional law.

The Security Council may, whenever it chooses, “recommend appropriate procedures or methods” of adjusting a dispute or a situation (Article 36), with the proviso that “legal disputes should as a general rule be referred by the parties to the International Court of Justice.” Hence, the Council has primary jurisdiction over political and non-justiciable disputes.

The most far-reaching powers are conferred upon the Security Council by Article 39 which reads:

“The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken . . . to maintain or restore international peace and security.”

Before making recommendations or decisions, however, the Security Council may call upon the parties “to comply with such provisional measures as it deems necessary or desirable” (Article 40). This seems to be a broader as well as a vaguer formulation of the Protocol’s provision for the creation of demilitarized zones. Article 51 accords to any state “the inherent right of individual or collective self-defense if an

67. Edward R. Stettinius, Jr., Chairman of the United States Delegation to the United Nations Conference at San Francisco, Letter of June 26, 1945, to the President. DEP’T OF STATE, CONFERENCE SER. No. 72, at 7.

armed attack occurs." This provision was, apparently, designed to remove Austen Chamberlain's objection previously mentioned.⁶³ Since, however, aggressive acts are often termed "acts of defense," this article may leave wide leeway to a diplomatically and propagandistically skillful aggressor. One danger is avoided, another courted; the squaring of the circle is not more difficult than the legal construction of eternal peace.

Besides the right to make recommendations, the Council may decide upon the employment of non-military measures of coercion, such as "complete or partial (sic!) interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations" (Article 41). It may also order military measures of coercion "as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of members of the United Nations" (Article 42). In short, the Council has the power to order military intervention or, in traditional parlance, war. In its military decisions, the Council will be advised and assisted by a technical Military Staff Committee, which will include the chiefs of staff of the permanent members or their representatives. Thus, Clemenceau's proposal comes to life.

The members are obligated to carry out the decisions of the Security Council even if they do not agree with them. Yet like the Covenant and the Protocol, the Charter contains only "imperfect obligations" in that no action is stipulated that may be taken against members refusing to abide by the Council's decisions.

In theory, the Council may commit any country which is not a permanent member of the Security Council to war-like acts without its (the country's) desire or declaration of war. The right to declare war may thus no longer be considered as the exclusive prerogative of national sovereigns. However, the text is extremely vague. How far will war-like acts carried out on the order of the Security Council legally commit the countries of origin of the military contingents? The position could very well be taken that once a military unit has come under the jurisdiction of the Security Council, it is no longer part of the armed forces of its native country. Such an interpretation would mean that while the members may subscribe to the policies of the Security Council *qua* members of the United Nations, they can disavow them *qua* independent national states.

THE INTERNATIONAL POLICE

Articles 43 and 45 endow the Security Council with the means necessary to enforce its decisions. These articles stipulate that "all Members

68. See text discussion *supra*, at 933-4.

of the United Nations . . . undertake to make available to the Security Council, on its call and in accordance with a special agreement or agreements, armed forces, assistance, and facilities, including rights of passage" (Article 43). To make possible "urgent military measures, Members shall hold immediately available national air force contingents for combined international enforcement action" (Article 45).

It will be observed that the Security Council can call only on those forces which will be put at its disposal by special agreements which still are to be concluded. These agreements shall fix "the numbers and types of forces, their degree of readiness and general location, and the nature of the facilities and assistance to be provided" (Article 43). The Security Council can plan for the combined action of the national air force contingents only "within the limits laid down in the special agreement or agreements" (Article 45). It is true that the agreements shall be negotiated at the initiative of the Security Council, but they "shall be subject to ratification by the signatory states in accordance with their respective constitutional processes" (Article 43).

This provision may, in various ways, destroy or cripple the military strength of the international forces. For example, they may not be ratified, like several of their Geneva predecessors. Even if ratified, the maintenance of the military contingents to be transferred to the Council is dependent upon budgetary allocation by national legislatures. The military budgets will, in the beginning, probably be authorized through the agreements of implementation; yet if these budgets are large (as they must be if the international force is to be strong), the agreements probably cannot be concluded for very long periods but may have to be re-negotiated at short intervals. If so, composition and strength of the contingents can be altered at every re-negotiation at the will of the legislatures. The conclusion of very long-term agreements would, of course, greatly impair the fundamental budgetary rights of democratic legislatures, a problem which may become serious if financial difficulties arise.

The real extent of the Council's powers has as yet not been determined. Future failure to secure agreements implementing the general provisions of the Charter would make the Articles dealing with enforcement meaningless. It is not unlikely that later developments will, for all practical purposes, limit the executive powers of the Council; individual members may wish to retain the sovereign right to approve or deny war-like actions of their military forces. Hence in major conflicts it may not be possible to commit national contingents to sanctions without previous explicit approval of the national governments or legislatures. Perhaps no such restriction will be put upon the use of small contingents which may unconditionally be placed under the Council's orders. If so, the "immediately available" international force would be weak and its intervention would have little military

importance. Whether it will have symbolic or political influence will depend on the willingness and ability of the nations to support the contingents with whatever national military power may be required to subdue the aggressor. It would have been advisable if the functions of the international force had been clearly circumscribed as in the Tardieu plan.⁶⁹

THE TECHNICAL AGREEMENTS

It would be a fallacy to assume that the drafting of the agreements of implementation is a mere technicality or that the purely military problems of an international force can be solved with relative ease.⁷⁰ In fact, these problems are at least as complex as those of disarmament; while it would be wrong to say that disarmament failed because its technical problems were not solved, the fact remains that no generally satisfactory solution was found or even suggested. There are numerous difficulties inherent in setting up an international force which, if they can be overcome at all, will require organizations and arrangements so highly complicated that their sabotage, or misuse, should be a relatively easy matter.

If a modern international force becomes very strong, the persons who command it or the nations who control the international commanders may impose their will on the rest of the world. If the force is not overwhelmingly strong, it cannot fulfill its primary function. If the international force is concentrated within one region, it will exert very strong influence there, but its presence may not influence events in distant parts. Concentration at one place makes possible a devastating attack against the international force, yet dispersion—no strength anywhere, weakness everywhere—will be tantamount to emasculation. There may be complicated keys according to which the international force will change positions and personnel in order to avoid abuse of command posts for personal or national interests. Yet we must remember that during more than 2,000 years, hundreds of governments and soldiers have made attempts to solve similar problems typical of coalition war, and no generally applicable solution was ever found.

In modern war the army equipped with technically superior weapons possesses a great and frequently decisive advantage. But what degree of technical perfection will the weapons have which are put at the disposal of the international force? If one nation relinquishes its best arms to the force, it will ipso facto inform other nations, including a possible enemy, of its military secrets and thereby jeopardize its own security. Not all nations will desire to reveal their secrets. There can be no law to compel them to do so, not even on the basis of a second-

69. See text discussion *supra*, at 935.

70. The purely technical aspects of an international air force are discussed at length in the author's forthcoming book on air power, to be published by THE INFANTRY JOURNAL.

level enforcement superimposed on ordinary enforcement. Violations in this field are undoubtedly easy, and as soon as the mere suspicion exists that one nation keeps its secrets, all others must follow suit. Yet an international force equipped with yesteryear's weapons will have little chance of stopping the aggressor who, incidentally, will have guarded his military secrets most jealously. The French proposals of 1932 were logical in that they wanted to arm the international police with the best weapons, but such a goal seems unattainable.

Logistics and supplies interpose other tremendous obstacles. Immediately available strength is of relatively little importance. If a force consisting only of troops of the line is thrown against a strong aggressor, it cannot sustain its attack; after a few desultory engagements it will no longer exist. The international force can remain a military force only on condition that it is kept continuously supplied with new equipment and replacements, but even if the nations agree and desire to do so, their ability to fulfill this obligation depends on the state of their own industrial mobilization. Without continuous industrial mobilization, the international force simply cannot be kept adequately supplied. Without control of industry by the Security Council or its staff, the international force is, at best, capable of fighting one battle.

Proponents of the international air force usually overlook the crucial importance of logistics and supplies. Whether the international air force consists of 1,000 or 2,000 planes is not the question at all; *the question is at what strength the international air force can be maintained.* The original strength will be quickly destroyed, especially if the aggressor possesses superior aircraft. Yet to maintain a bomber force with real striking power, full industrial mobilization in one or more large industrialized countries is required. Even assuming that no political obstacle would be interposed, supplying the international air force with adequate bombing power could not begin before many months and possibly years. But what good would an international air force do if it could not become an effective military force at the very moment of aggression?

To be sure, some of these limitations may be overcome through the use of the atomic bomb; yet as the United Nations must attempt to outlaw this weapon, such a contingency need not be considered. Even if no legal restrictions are placed on the employment of the atomic weapon, the United Nations cannot very well set a precedent legalizing atomic warfare.

THE VETO

The most serious of all limitations placed upon the future international force is the legal impossibility of its use against one of the five presently existing major military powers.

The conversations which were initiated between the Security Council and the powers are predicated upon the assumption that the international forces can, on account of the veto (Article 27), be used only against countries of minor military strength (and against a former Axis country, should it recover). The veto may be justified on the ground that enforcement action without participation or approval of the "leading nations" will lack military striking-power as well as truly supra-national authority desirable for common international action. The present voting procedure is, no doubt, much more workable than the unanimity rule of the Covenant which permitted any small country to block decisions. Yet while the voting rules of the Covenant practically prevented enforcement action, the rules of the Charter in effect provide that the Security Council can act only in secondary matters. Threats to world peace do not arise from small powers except insofar as a small power may fire the first shot with the backing of a major military power. Aggression cannot occur if the big military powers are united and pursue a coordinated policy. It occurs only if the aggressor has succeeded in splitting the major powers or if the aggressor is himself a first-class military nation. While the Charter may offer protection against small dangers, it offers none against the chief danger—war between the big powers.

This fundamental weakness of the Charter has been widely recognized, and the opinion is often voiced that through the abolition of the veto the United Nations may be transformed into a reliable instrument of peace preservation. Yet while it may be possible to abolish the veto *de jure*, it is questionable whether, in serious cases, it can be abolished *de facto*. No state, least of all a major power, will participate in enforcement action against its own judgment or interests. While the Charter may be modified to the effect that a veto will no longer be a legal block to action on the part of affirmatively voting members of the Security Council, there is no way to make the decisions of the Council obligatory for the vetoing state. The dissenting member could abstain from any action which the rump Council might order. This arrangement might work out satisfactorily should the aggressor be a secondary country aiming at an objective of little overall importance, with the dissenting permanent member being sympathetic to the aggressor but unwilling to lend it more than diplomatic assistance.

Should, however, the object under litigation be of great international and strategic importance, a veto lodged by a permanent member would serve notice that he will not allow interference with the aggressor's plans. If the aggressor country is adjacent to vital territory of the protesting permanent member, he may not permit enforcement action in these regions. As a variant, the aggressor may have attacked on the secret suggestion of the permanent member, or actually as his proxy; in such a case, the permanent member would be ready to defend the aggressor with his own military forces.

If the aggressor is a permanent member, the international force minus the contingents of the aggressor and his friends would be utterly inadequate for the purpose of stopping aggression. To defeat the aggressor, the other powers would be compelled to mobilize fully and to attack in force; thus enforcement action would be tantamount to world war.

That the abolition of the veto would often prove futile may also be gathered from the possibility that not only one but several permanent members may object to peace enforcement. Member *A* vetoes enforcement against one of his satellites and threatens to consider intervention as a *casus belli*. Thereupon, member *B*, not desiring to go to war, also vetoes the proposal. What will the other three permanent members do? If the dispute affects their vital interests, they may be compelled to fight, yet if war does not appear inevitable they are not likely to use a debilitated international force, court its destruction, and provoke the very war they want to avoid.

INTERNATIONAL AND DOMESTIC SECURITY

Enforcement was an integral part of many peace systems which have been proposed throughout history; yet only now is an attempt made to set up an international police and to create permanent institutions through which peace enforcement may be carried out. In this sense the Charter constitutes a pioneering experiment, but it is certainly not a definite solution. The United Nations will possibly be able to prevent some wars, especially those which "break out" without being willed by anybody. Re-reading, for example, the history of the events which led to the wars of 1870 and 1914, one can see that there may have been opportunities which a well-functioning Security Council could have seized to avert these wars. That the United Nations will be able to master the great crises of history and prevent those major wars which are provoked deliberately by powerful nations is doubtful; in fact, it is highly improbable. What is more, it cannot even be claimed that the basic soundness of the idea of peace coercion has been definitely established.

This idea was conceived *per analogiam* to domestic peace and security. Unfortunately, the analogy between the sheriff and the international gendarme is tenable only within limits. Some wars may be of a criminal nature, but war cannot be compared to crime. While the criminal clearly violates laws and customs, war may actually be a valid and necessary expression of a nation's will. International relations, or to choose a more appropriate term, history, cannot be regulated in the same way as safety is organized in the streets of a suburban town.

Let us point out a few essential differences between national and international security:—

(1) While the behavior of individuals is prescribed by an all-inclusive body of law which defines clearly whether or not an act is illicit and punishable, no such law exists in the international sphere. The decision not to incorporate into the Charter objective criteria for determining acts of aggression⁷¹ is an admission that international society cannot be administered like a national community. It also implies that the principle *nullum crimen sine lege* does not obtain in international relations.

(2) Bertrand Russell once said that "the use of force is justifiable when it is ordered in accordance with law by a neutral authority in the general interest." While it is an essential tenet of domestic justice that the judges should not be parties to a dispute, no such rule can be applied in international disputes. The Security Council, hybrid legislator-judge-sheriff, is composed of "interested parties" whose own vital interests may be at stake and who are unable to judge any case *sine ira et studio*. They cannot speak in the name of general interest, except by arrogation. Even with the best intentions, the members of the Security Council must decide in accordance with their individual political interests. Any arrogation of an international agency to determine what the nations should consider to be right or wrong must, sooner or later, lead to intervention in the domestic lives of nations; an interventional policy amounts, in the last analysis, to the imposition of governments upon nations and to the abrogation of the *droit des peuples de disposer d'eux-mêmes*. To be sure, the manner in which this right may be exercised should be more clearly defined in order to avoid the adoption of policies detrimental to other nations. But exhumation of the principle of intervention may drive small nations to follow, as they did 100 and 125 years ago, a policy which was expressed by the Hungarian poet Petöfi: "Life is dear to me, love dearer still, but I would give them both for liberty."⁷²

(3) The life of nations follows other rules than the life of persons. There is such a thing as a *bellum iustum*, at least according to the fundamental beliefs of the nations waging it. Nations may resort to war to gain national independence, to remove conditions which obstruct progress or condemn them to poverty, or they may fight in the pursuit of what they consider their highest ideals.

(4) We have seen that attempts to outlaw war must, in some way or other, be based upon the sanctity of the status quo, at least as long as there are no effective methods of "peaceful change." Law can be enforced in domestic life because the principles of justice change extremely slowly and because, in the sphere of criminal offense, the law does not fluctuate. Yet in other fields, the status quo cannot be maintained even domestically. It has been said that only one form of gov-

71. Fox, *Collective Enforcement of Peace and Security* (1945) 39 *Am. Pol. Sci. Rev.* 972.

72. Quoted from SARFATTI, *THE LIFE OF BENITO MUSSOLINI* (1925) 179.

ernment can prevent fundamental political and social transformations, namely, "*un despotismo corretto dalla difenestrazione*"; yet even this "ideal" governmental organization does not stop incessant change. Democracy is a superior system precisely because it permits continuous adaptations. It should never be forgotten that intra-national violence is still recognized, for example, in the form of strikes and that the domestic enforcement of law is possible only because the individual may advance through labor, service, trade, organization, and marriage and that, in modern societies, hardly anybody is compelled, for his subsistence, to kill and rob. Yet no effective methods of "peaceful change" have as yet been developed in the international field, where, in most cases, the status quo can be broken only by brute force.

CAN NATIONAL SOVEREIGNTY BE CURTAILED?

The idea is frequently advanced that, to make the Security Council militarily and politically powerful, nations should transfer elements of their sovereignty to the international authority. Nations may indeed restrain themselves in exercising their prerogatives, but sovereignty is not merely a legal concept or a right that may be bestowed upon, or taken away from, a nation. Sovereignty is a *fact* in the same sense that power is a fact.⁷³ It simply means that some nations possess the material strength to make vital decisions without taking counsel from anybody. When they so choose, their decisions may run counter to the interests of other nations. The establishment of an international authority would not alter the geographical power distribution on the globe. The elements of power cannot be removed, but will remain where they are; hence power centers may continue to engage in competition with each other. It is an inherent weakness of the international force that it can possess derivative power only; it may control some instruments of coercion, but not the sources of power; it will have weapons and troops, but no war potential. As long as the majority of nations uphold the principle of self-determination and are unwilling to hand over control of their industries and other resources, the international force can act only through agencies of *national* power. Hence the sources of its strength may dry up.

HOW CAN A STRONG AGGRESSOR BE STOPPED?

It is a historical fact that most major wars in modern times broke out because the strongest country attacked or because an aggressive alliance of superior military power was created. Implicitly or explicitly, the idea of international peace coercion is always predicated

73. The impossibility to "surrender" sovereignty is discussed in Viner, *The Implications of the Atomic Bomb for International Relations* (1946) 90 PROC. AM. PHILOSOPHICAL Soc. 53.

upon the assumption that the community of peace-loving nations is vastly stronger than the aggressor. This assumption may be correct insofar as war *potentials* are concerned and, in recent history every aggressor nation aiming at world hegemony has been ultimately defeated by the superior strength of its opponents. But this assumption is usually wrong in terms of mobilized military strength at the precise moment of aggression.

Aggressors calculate their chances, pitting their own strength, speed of mobilization, strategy, material, and presumed speed of advance against the military capabilities of their opponents. If they believe that they can make their position impregnable before these opponents attack in full strength, they will attack. This, then, is the *military* weakness of any peace league, including the United Nations; peace might be enforced by superior military power, but an aggressor who is substantially, even though temporarily, stronger than his opponents cannot be restrained.

Regardless of the existence of an international force, the potential aggressor will desist only if he is convinced (a) that other military powers will not hesitate to throw their full strength against him without delay; (b) that their full strength will be superior to his own; and (c) that the superior military strength will appear on the battlefield before the aggressor has secured the final decision.

In other words, aggression by a major power can be stopped only on the condition that a defensive *alliance* is concluded *before*, and not after, the attack, and that it is made *effective* by timely mobilization which must proceed at the same or at a quicker rate as the mobilization of the aggressor. The terms of such alliances will vary from case to case. The three-level peace construction of the Holy Alliance is logically still the most reliable safeguard against war—a general pact, enforcement against secondary and potential threats to the peace, and a specific and effective defensive alliance against the potential major aggressor. Only by checking *major* aggression can the intentions of the general pact be fulfilled, that is, world peace be preserved. *Chechs against the strongest potential aggressor must be the keystone of any peace system.*

CAUSES AND SYMPTOMS OF WAR

Enforcement by an international police cannot become reliable and effective before world society has assumed a character similar to that of individual nations.⁷⁴ The unification and integration of the world will

74. SPAHN, *GEIST UND GEWALT IN DER VOELKERPOLITIK* (1937) 173, points out that the 22 cantons of Switzerland had their own armed forces and were frequently warring against each other. The last war between Swiss cantons, the so-called *Sonderbundskrieg*, took place in 1847; afterwards, a new constitution was adopted, the cantons were disarmed, and the federal government alone was permitted to keep military forces.

presumably continue, and perhaps barriers between nations will crumble. "*Il faut spiritualiser les frontières,*" said the Rumanian Foreign Minister Titulescu a decade ago. As the world unifies, international forces will develop; a world state needs as its corollary a world police. But as long as there is one world merely in phraseology, and not in political reality, international security cannot be patterned after the model of domestic security. "Broadly speaking, international (or better, supernational) ways of thinking, feeling, and acting cannot be simply superimposed on national ways. The larger mode will not embrace the smaller; it must replace it by means of a thorough permeation." ⁷⁵

Peace cannot be legislated. "The felt necessities of the time, the prevalent moral and political theories, intuitions of public policy, avowed or unconscious, even the prejudices which judges share with their fellow-men, have had a good deal more to do than the syllogism in determining the rules by which men should be governed." ⁷⁶

The major objection to peace enforcement is, therefore, that it attacks only the symptoms, but not the causes of war. Private warfare was not ended by a strong central government alone; in the course of five centuries, it vanished together with feudal society and medieval technology, which provided knights and lords with military strength. Wars are due to social, economic, ideological, and political "incompatibility"; if the "integration of the systems of the basic values and their mutual compatibility . . . and harmoniousness decline, especially suddenly and sharply, the chances for international or civil war increase." ⁷⁷ Throughout history, wars occurred most frequently in times of radical and quick social and economic transformation; the increasing closeness of social and cultural contacts between peoples did not lead, as was expected, to better mutual understanding but to a greater incidence and destructiveness of war. The slowing-down of social transformations and the integration of values would then appear to be an indispensable prerequisite of peace preservation. To become effective, the international army would have to be supplemented by systematic policies on the part of all nations, aiming at the abolition of the fundamental causes of war,—if such policies can be devised. True, even under present conditions, the international force may sometimes be a handy tool to master crises arising from the turmoil of social transformation. The point is that social dynamics and the ensuing differentiation of norms and values are likely to break the tool. An

75. ORTON, *THE LIBERAL TRADITION. A STUDY OF THE SOCIAL AND SPIRITUAL CONDITIONS OF FREEDOM* (1945) 255.

76. HOLMES, *THE COMMON LAW* (1881) 1.

77. Sorokin, *The Cause of War and Conditions of a Lasting Peace* in *APPROACHES TO WORLD PEACE, FOURTH SYMPOSIUM* (1944) 90.

international force within a divided world is a paradox that may not be resolved.

Throughout the ages, more than 8,000 peace treaties and hundreds of peace plans have been worked out by the world's great thinkers. Statesmen of first rank and achievement, from medieval Popes through Wolsey, Metternich, Clemenceau, to the Allied leaders in the second World War, attempted to organize universal and permanent peace. None ever devised a method of peace enforcement which was dependable and effective. Time and again the painfully elaborated peace organizations broke down; nations refused to underwrite international commitments or violated solemnly contracted pacts. What is the scientific basis for the expectation that the behavior of nations will be different in the future? What are the social facts from which a world of solidarity and convergent interests will emerge? Where are the technical solutions which will permit the effective use of international forces against the danger of major wars?

Since war was an integral part of the society as we have known it in history, the conclusion seems unavoidable that war cannot quickly be abolished unless a new type of society without fundamental cleavages is created. Assuming, for argument's sake, that the basic tenets of society can be changed, and that the change may be effected within a short period of time, the speedy re-planning of society will not be feasible except through conflict, violence, revolution, and war. Peace, if it can be achieved at all through "organization" and the establishment of institutions, can be won only at the price of war—the purge of the enemies of the new order. This inner contradiction, which was expressed by Dubois, must wreck any pacifist policy. Is it possible that an entirely different approach to the problem of peace has become necessary? To quote William A. Orton,

"The negative ideal of the prevention of war has no practical force unless it is absorbed in the positive ideal of expanding community . . . The positive creation of community must take precedence over the historic futilities of the negative policy; and those who are not interested in the extension of cooperative community must stop talking about peace, since all they really stand for is the status quo."⁷⁸

78. ORTON, *op. cit. supra* note 75, at 250.