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The Prospect for International Law in the Twentieth Century*

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I. THE TER-CENTENARY OF GROTIUS

Three hundred years, almost to a day, have now passed since Grotius published his magnum opus, *De Jure Belli ac Pacis*.¹ If the event may not be taken to have marked the beginning of modern international law, if, indeed, we must say that "the famous book of 1625 was not a treatise devoted to international law",² we are nevertheless justified in taking the date as our historical *point de départ* in any survey of attempts to *find* a law of nations which will serve and order the modern world of states. The illustrious president of Cornell University, Mr. Andrew D. White, may have been a bit extravagant in saying that "of all works not attributed to divine inspiration" Grotius' book "has been the most fruitful in results to mankind."³ But certainly we do not err in feeling a deep sense of obligation to a scholar to whose work we still turn, on whose inspiration we still draw, long after we have forgotten most of the men of action who have played parts in the international scene during these three centuries. "Of so great consequence are sometimes the silent exertions of the closet, to the more active and louder professions which contend with it for the government of the world."⁴

Our generation cannot more fittingly celebrate the ter-centenary of Grotius than by a careful inquiry into the place of law in the world

*Two addresses before the Cornell University College of Law, under the Schiff Foundation, March 30 and 31, 1925.

¹Professor Jesse Reeves sets the approximate date of publication at the Frankfurt Fair as March 17, 1625. See 19 Amer. Jour. Int. Law, p. 20. The publication at Paris was in June of the same year. See also Vreeland, Hugo Grotius, p. 164.

²Professor van Vollenhoven, in 19 Amer. Jour. Int. Law, p. 1.

³Andrew D. White, Seven Great Statesmen, p. 101. See also the Proceedings at the Laying of a Wreath on the Tomb of Hugo Grotius, July 4, 1899, by the commission of the United States of America to the International Peace Conference of The Hague, p. 14.

⁴Robert Ward, An Enquiry Into The Foundation and History of the Law of Nations in Europe (1795), II, p. 364.

of states of our own time. We live in an era which has much in common with that in which Grotius did his pioneering; and if we will know the course which law has run since he gave it fresh start, if we will take stock of the currents and tendencies of our own century, we may improve our own opportunities to give direction to future effort, even though we may not hope to rival his achievement. In 1625, world society was being reshaped by the Thirty Years' War, very much as today it is being reshaped by the consequences of the World War. Grotius explained the reason for beginning his work in terms which have a familiar ring in our own ears:

"...I saw prevailing throughout the Christian world a license in making war of which even barbarous nations would have been ashamed; recourse being had to arms for slight reasons or no reason; and when arms were once taken up, all reverence for divine and human law was thrown away, just as if men were thenceforth authorized to commit all crimes without restraint."⁵

If Grotius had the advantage of living when political events were creating in men's minds a new hospitality to conceptions of a universal ethics, we may have the advantage of living when events in the physical world are creating in men's minds a new hospitality to the ordering of the nations' common life. If Grotius lived when philosophers were emerging from a ruinous bankruptcy, so we may reap the harvest of the War's demonstration that our political and juristic theories have lagged behind the changes which were wrought by the industrial revolution of the nineteenth century.

Human action does not pour itself into the moulds of the Gregorian calendar, but centuries frequently serve as yardsticks for measuring progress. With the contributions of the seventeenth century so vivid in our recollections, with the impetus of Grotius' labors projected as a living reality into our twentieth century, what do we propose to make of our heritage and our opportunity? What shall be the addition made by our generation in passing on the stock of ideas with which we were endowed? How shall we capitalize the transitions in which we have been forced to participate? What do we hope to be the contribution of the twentieth century to the progress of international law?

High time it is that such enquiry were under way! A quarter of our century has passed already. Not only has it seen shaken the juristic foundations of our state system, but it has seen greatly increased the juristic pessimism which would rob our efforts of the confidence which must be their inspiration. The ter-centenary has

⁵Prologomena, 28 (Whewell's Translation, p. lix.).

arrived at a propitious time, and its celebration challenges us to reflect on our present situation and on the methods by which we are to begin to meet its demands.

Now I think it is quite clear that the way in which we shall take advantage of our opportunities will depend very largely on the picture which we paint of ourselves while we are engaged in the effort. We shall be limited to some extent by the achievements of the past to which we have fallen heir; but we shall be limited more by the patterns which are lodged in our minds. Mr. Pound has told us that "the nineteenth century achieved relatively so little in international law" because "the jurists of the last century had no confidence in themselves *qua* jurists."⁶ The contributions of the twentieth century will be great or little in proportion to the confidence which we have in ourselves as builders. This does not mean that power can be summoned by an act of will. It means rather that our conception of the nature of our task must give direction to our efforts and our enthusiasm will condition their results. In the end we may prove to be no bigger than our race, but unless we are slaves to the Hegelian tradition we have ample scope for achievement within that limitation. The satisfaction which we take in Grotius' accomplishments should help us to see that the range of our own action is by no means narrow. We must recognize in the beginning that progress is not simply the result of that automatic process which speeds the calendar on its way.⁷ The thoughts of men are neither widened nor narrowed by the process of the suns. Fortunately the effort which must produce progress can be consciously directed.

During the past century much of our juristic effort was confined to a mere working over of materials which had been handed down to us. There were a few outstanding figures, such as Lord Stowell and Chief Justice Marshall, who dared to indulge in speculation under the cloak of current philosophy. But in the main, students of the law of nations felt themselves bound by what their teachers had said, and they contented themselves with lengthening and broadening the received tradition as practical necessities goaded them into reaching results. The conception that new foundations might be laid or new

⁶Roscoe Pound, "Philosophical Theory and International Law," published in *Bibliotheca Visseriana*, I, pp. 73, 88.

⁷"Making or finding law, call it which you will, presupposes a mental picture of what one is doing and of why he is doing it." Roscoe Pound, *An Introduction to the Philosophy of Law* (1922), p. 59.

⁸"The doctrine of evolution has been used to give a kind of cosmic sanction to the notion of an automatic and wholesale progress in human affairs. . . Progress is not automatic; it depends upon human intent and aim and upon acceptance of responsibility for its production." John Dewey, "Progress," *International Journal of Ethics*, vol. 26 (April, 1916), p. 315.

superstructures buided would have smacked in many minds of disloyalty to the masters. The general attitude was that levels should be maintained and that sound thinking should essay no more.⁸ Now it is obvious that such an attitude would never have produced a Grotius, and I think it is equally obvious that it will not suffice for our endeavor in the period which now stretches itself before us. As Professor van Vollenhoven has put it, "law is not any longer to us a plane, a thing of two dimensions; it has got three dimensions."⁹

If we would make it possible for the future to look back upon the twentieth century as we now look back upon the seventeenth century, we cannot go on with the imitative process which contented our immediate predecessors. We cannot hope to find in their work all that is needed for our own building. If our century is to be another formative period in international law, we must understand not only the content of Grotius' achievement, but also the methods which made it possible. We must re-examine the foundations of the law of nations by the methods which Grotius himself employed. We need yield nothing in our admiration of Lord Stowell and John Marshall, but we cannot content ourselves with quoting what they said. New needs have come with the manifold changes in world society and new furrows may have to be plowed to meet them. We must have not only the patience and the detachment necessary to understand them, but also the boldness to make the departures which understanding may prompt us to undertake.

Even if there had been no World War, our generation would have had the privilege of addressing itself to this task. We should probably have felt the call less imperative, and we should doubtless have turned our faces in other directions. We might have gone on with the Hague Conferences and with their attempts to build machinery; we might have succeeded in establishing an international court of justice without any compulsory jurisdiction; we might have set up an international prize court; and we should doubtless have continued the efforts to develop a law of war and neutrality based upon experience in the conflicts of the nineteenth century.¹⁰ But following so closely as we do upon the spiritual and intellectual upheavals of the decade since 1914, we find our responsibilities increased many-

⁸We have "attempted to maintain existing values, but rarely to create new ones." Professor J. L. Brierly, "The Shortcomings of International Law," *British Year-Book of International Law*, 1924, p. 4, 9.

⁹19 *Amer. Jour. Int. Law*, 7.

¹⁰The Second Conference expressed the opinion that "the preparation of regulations relative to the laws and customs of naval war should figure in the program of the next Conference." 2 *U. S. Treaties and Conventions* (Malloy), p. 2379.

fold and we cannot fail to attempt to learn the new lessons which the world's travail has put before us. There are few signs that the "reaction towards increased stringency of law" which W. E. Hall foresaw in 1889,¹¹ has yet set in, and we may well doubt whether it is stringency that we need. To take a single example, the encouragement given by the War to the use of the air for transportation and communication has made it quite impossible for us to go on with some of the ideas which obtained in the last century. However else the world may seek to restore itself to pre-war normalcy, the generation which waged the war and the generation which just escaped it will hardly be content to have restored the system of international law which prevailed when the twentieth century opened. We are confronted with the challenge which sudden transition always brings, and upon our method of meeting it the development of international law in the twentieth century will largely depend.

The War has left many specific problems which cry out to us for solution. They are so numerous, so varied, and so bewildering, their background is so new, so shifting and so complicated that even if the War had purified us as some people seem to believe,¹² we could hardly summon the courage to face them without a pretty clear understanding of our situation and of the methods by which our work may be done. Two fundamental tasks lie at the threshold of our endeavor, therefore, and they must receive attention before our generation can entertain much hope of solving specific problems. The first task is the renovation of the philosophical bases of the law of nations;¹³ the second task is the improvement of the method by which nations may consciously legislate to enact international law. The first involves a choice of the direction in which our century shall go, while the second involves a choice of the vehicles in which our journey shall be undertaken.

II. CURRENT PHILOSOPHY OF INTERNATIONAL LAW

Like jurisprudence, philosophy is a word which to use Maitland's phrase "stinks in the nostrils of a practicing lawyer." Yet we must recognize that no juristic effort is possible except as it is based on

¹¹W. E. Hall, *International Law* (3 ed.), p. x.

¹²In 1919, Mr. Elihu Root pronounced us "ten times as good a people as we were five years before." Root, *Men and Policies* (1924), p. 209.

¹³The recent volume on "The Renaissance of International Law," by Manfred Nathan (Grotius Society Publications, No. 3) is very disappointing in this connection. A far more useful study is Oppenheim, *The Future of International Law*, republished by the Carnegie Endowment of International Law in 1921, but first published under the title *Die Zukunft des Völkerrechts* in 1911. See also Jitta, *La Rénovation du Droit International* (1919).

some philosophy, and the very men who are most loath to admit this fact are they who most blandly and most blithely indulge their philosophical assumptions. International law has suffered from nothing else as from our unwillingness to deal with its underlying philosophy in the open. John Chipman Gray thought that "on no subject of human interest, except theology, has there been so much loose writing and nebulous speculation as on international law."¹⁴ It was one of the chief contributions of Grotius that he exposed the philosophical assumptions which other writers of his day indulged but did not admit.¹⁵ The same service needs to be performed for our century. Judge Cardozo has told us that "implicit in every decision where the question is, so to speak, at large, is a philosophy of the origin and aim of law, a philosophy which, however veiled, is in truth the final arbiter."¹⁶ How many of our questions in international law are in this sense "at large"!

Two great services were rendered to international law by the nineteenth century. In the first place, it was emancipated from theology and received into our general jurisprudence. The tendency in this direction had been inaugurated by Grotius himself. Much attention was given to the doubts raised by Austin whether international law was in any strict sense law, and though little purpose was served by the long controversy,¹⁷ it may have had some effect toward freeing international law from the associations which had kept it apart from the general currents in juristic science. The great work of Ward, published just before the century opened, had been based on the conception that the foundations of the law of nations were to be sought in Christianity and revealed religion.¹⁸ Down into the century that fashion lingered. In 1827, Chancellor Kent attributed the establishment of international law to "the brighter light, the more certain truths and the more definite sanction which Christianity has communicated to the ethical jurisprudence of the ancients."¹⁹ In 1834 Joseph Story accredited the growth of the law of nations to "the

¹⁴Gray, *Nature and Sources of the Law* (2 ed.), p. 127. Cf. Zitelmann, *Die Unvollkommenheit des Völkerrechts* (1919), p. 14.

¹⁵"Truth, in the pursuit of which Aristotle faithfully spent his life, suffers no oppression so great as that which is inflicted in Aristotle's name." Prologomena, 42. (Whewell's Translation, II, lxxviii.)

¹⁶Cardozo, *The Growth of the Law* (1924), pp. 25-6. See also, Lehman, "The Influence of the Universities on Judicial Decision," *CORNELL LAW QUARTERLY* I, 7; Wigmore, *Cases on Torts* (1912), preface, viii.

¹⁷"A vast deal of time has been wasted in controversy over the question whether international law is law at all." John Bassett Moore, *International Law and Some Current Illusions* (1924), p. 291.

¹⁸Ward, *History of the Law of Nations*, I, pp. xi, 77.

¹⁹Kent, *Commentaries* (1827), I, p. 3.

combined influence of Christianity and commerce."²⁰ As late as 1839, Manning wrote that "the law of nature, by the obligations of which states are bound, being identical with the will of God, it is necessary to ascertain that will, which is done either by consulting direct revelation, where that is declaratory, or by the application of human reason where revelation is silent."²¹ It is not strange that Austin should have put international law into the category of "positive morality" in that day. But few writers in the twentieth century will feel it necessary to preserve any nexus between the law of nations and religion, and a recent author has sought to exclude from his definition all "reference to the moral standards by which the rules of international law should be tested."²²

The second service of the last century was in some degree a corollary to this divorcement of law and religion—it was the widening of the circle of nations within which the law of nations must be applied. The eighteenth century had been concerned with the law applicable to the states of Europe. It was a natural consequence of the association of Christianity and the law of nations that the latter should prevail only where the former was embraced. Ward wrote that "what is commonly called the law of nations, is not the law of *all* nations, but only of such sets or classes of them as are united together by familiar religions and systems of morality."²³ Hence "the Christian nations of Europe" were said by Chancellor Kent to have "established a law of nations peculiar to themselves,"²⁴ and the limitation was not challenged by any wider reaches of culture or of commerce during the eighteenth century.

But the opening of the new world necessitated some extension. When the Continental Congress of the American colonies enacted a law for the regulation of maritime captures, in 1781, it prescribed that "the rules of decision in the several courts" should include "the law of nations according to the general usages of Europe."²⁵ With the growth of the independence movement in South America, the number of nations which professed the law of nations was greatly enlarged, though for a time it was not clear whether the new states

²⁰Story, *Conflict of Laws* (1834), § 3.

²¹Manning, *Commentaries on the Law of Nations* (1839), p. 58.

²²Fenwick, *International Law* (1924), p. 34.

²³Ward, *History of the Law of Nations*, p. 76.

²⁴Kent, *Commentaries*, I, p. 3.

²⁵*Journals of the Continental Congress* (Hunt's Ed.), XXI, p. 1158.

For the theory by which the United States continued to be bound by the law of nations after the separation from England, see Lodge's *Works of Hamilton* (1885), p. 89. Apparently, the application of the law of nations to the relations of the thirteen American colonies *inter se* was little discussed. See also *Works of James Wilson* (ed. by Andrews, 1896), I, p. 128 ff.

were to adopt the European state system as their model.²⁶ Soon thereafter the "family of nations" began to be organized along other lines than those of religious faith. In 1856, Turkey was admitted "to participate in the advantages of the public law and system of Europe,"²⁷ though not until the Lausanne Conference recognized the abolition of the capitulations in 1923, did she achieve a regular standing. Before the end of the century, also, Japan had been fully admitted to the "advantages" of the public law which once had been the exclusive possession of Christian peoples,²⁸ and to some extent China, Persia and Siam began to share in them. As to China, the declarations of the Powers represented at the Washington Conference in 1922, including what Mr. Elihu Root has called "the great objective of an independent China under international law,"²⁹ rather question than establish her independent position. In fact, many communities still have a doubtful position in the "family of nations,"³⁰ but by the events of the nineteenth century the law of nations has ceased to be the law of a continent embracing the Christian religion.

International Law has not yet been universalized, however. Professor Oppenheim therefore felt it necessary to distinguish between the universal and the general law. Mr. Root distinguishes between the "peoples who are subject to international law and peoples who are not subject to that law."³¹ The resolutions of the Fifth International Conference of American States meeting at Santiago in 1923 still

²⁶A century ago the United States was debating the formation of a confederation with the independent states of South America. See Snow, *American Diplomacy* (1895), pp. 295-312. For questions which arose as to the representation of Latin-American states at the Second Hague Conference, see U. S. *Foreign Relations*, 1905, p. 828; 1906, p. 1625, 1631; 1907, p. 1110 ff. Brazil was invited to the First Hague Conference, but declined the invitation. Scott, *Hague Conventions and Declarations*, p. vi.

²⁷Hertslet, *Map of Europe by Treaty*, II, p. 1254. "It is of vital importance, that Grotius admits the Turkish government to share on an equality in the mass of rights and privileges." Figgis, *From Gerson to Grotius* (1916), p. 286.

²⁸In 1875, David Dudley Field read a paper before the Institute of International Law on the "Applicability of International Law to Oriental Nations."

²⁹Root, *Men and Policies*, p. 458. Cf. Willoughby, "Principles of International Law and Justice Raised by China at the Washington Conference," *Proc. Amer. Soc. Int. Law*, 1922, p. 19.

³⁰Immigration quotas under the United States Immigration Law of 1924 are attributed to many countries which would probably not be included in a list of the present members of the "family of nations;" for example, Andorra, Arabian Peninsula, Bhutan, Muscat, Nepal, and Yap.

³¹Root, *Men and Policies*, p. 454. Professor John Westlake, writing in 1894, included in "international society" all European states, all American states, and "a few Christian states in other parts of the world." Westlake, *Principles of International Law* (1894), p. 81.

deal with "American International Law"³² as if it had some independence of the general international law, and apparently the American Institute of International Law would perpetuate the distinction.³³ The fact seems to be that we have not yet extended international law to all the peoples of the world. We frequently limit it to "civilized" states³⁴ as once we limited it to "Christian" states, and hence the Permanent Court of International Justice is enjoined by its statute to apply "the general principles of law recognized by civilized states."³⁵ It was the boast of Chief Justice Marshall in 1825 that "Russia and Geneva have equal rights",³⁶ and for a century we have proudly rehearsed the phrase. But it was not then true that Russia and Turkey had equal rights, and it is hardly more true of Russia and Persia today. It must be the aspiration of our twentieth century to make the statement of our law of nations conform to the facts of our present-day world, and we may have to admit that there is yet no law of nations by which all nations are bound.

These achievements of the nineteenth century assisted in undermining the law of nature philosophy on which the law of nations has been founded since before the days of Grotius.³⁷ No doubt that phil-

³²See Report of American Delegates, p. 131. The Fourth International Conference of American States distinguished between "matters of universal application" and matters of "American application." See Report of American Delegates, Senate Doc. 744, 61st Cong., 3d Sess., p. 99.

The existence of any special American or Latin-American International law is refuted in Sa Vianna, *De la Non-Existence d'un Droit International Américain* (1912). At the Fifth International Conference of American States in 1923, it was stoutly defended by Señor Alvarez (Chile) and stoutly opposed by Mr. Daniel Antokoletz (Argentina). Verbatim Record of the Plenary Sessions, I, pp. 426-442. See, also, the protest of Professor A. Pearce Higgins, *British Year-Book of International Law, 1923-24*, p. 154; and Fauchille, *Droit International Public* (1922), I, p. 34. But in his remarks before the Governing Board of the Pan-American Union on March 2, 1925, Mr. Charles E. Hughes said: "It is natural that the law to be applied by the American Republics should, in addition to the law universal, contain not a few rules of American origin and adapted to American exigencies, and that the old and the new taken together should constitute what may be called American international law."

³³See 6 *Revista de Derecho Internacional*, p. 245.

³⁴Professor Westlake is one of the few writers who have attempted to say what is meant by "civilized." Westlake, *Principles of International Law* (1895), pp. 141-143. But his statement that the treatment of natives in Africa is to be left "to the conscience of the state to which the sovereignty is awarded" needs to be modified, now that the mandate system has been adopted.

³⁵Article 38. See Hudson, *The Permanent Court of International Justice* (1925), p. 346.

³⁶In *The Antelope*, 10 Wheaton 66, (1825). Professor P. J. Baker refers to this as the "favorite argument" of the giant and the dwarf. Baker, "Doctrine of Legal Equality of States," *British Year-Book of International Law, 1923-24*, p. 8. Professor Garner has recently spoken of the equality of states as a "useless fiction." Garner, *Limitations on National Sovereignty in International Relations*, *Amer. Pol. Sci. Rev.*, XIX, p. 20.

³⁷"It is notorious that all authorities down to the end of the eighteenth century and almost all outside England to this day have treated it [international law] as a body of doctrine derived from and justified by the law of nature." Pollock, *The History of the Law of Nature*, 2 *Columbia Law Rev.* (1902) 131, 132.

osophy served useful ends in the eighteenth century, and possibly also in the nineteenth; but in the twentieth century it is of doubtful utility.³⁸ Blackstone conceived of a law of nature "coeval with mankind and dictated by God himself," and therefore "binding all over the globe, in all countries and at all times."³⁹ But in 1825 Chief Justice Marshall succeeded in upholding the enslavement of the African negroes whose fate was involved in *The Antelope*,⁴⁰ in spite of his admission that the slave trade was "contrary to the law of nature," partly on the ground that the law of nations of the continent of Africa allowed prisoners to be made slaves. When Justice Story assumed the Dane Professorship at the Harvard Law School in 1829, he announced a course of lectures on the law of nature and of nations, explaining in his inaugural discourse that the law of nature "lies at the foundation of all other laws, and constitutes the first step in the science of jurisprudence."⁴¹ It was well into the nineteenth century before it became unfashionable to base the law of nations on the law of nature,⁴² and the disapproval of fashion has not yet banished the practise. Indeed a distinct school of thought seems bent on a revival of the law of nature.⁴³ The "reason" and the "right reason" to which we make such constant appeal frequently differ little from the "nature" which formerly served as our storehouse,⁴⁴ and hence a recent writer tells us that the "real law of nations" is

³⁸"What natural law and natural law methods have done for the law of nations in the past stands high above all doubt, but they have lost their value and importance for present and future times." Oppenheim, *The Future of International Law* (1921), p. 56-7.

³⁹1 Blackstone, *Commentaries*, 41.

⁴⁰10 Wheaton 66 (1825).

⁴¹Story, *Miscellaneous Writings*, p. 465. The readings for Story's course at the Harvard Law School first included Martens' *Law of Nations*, Rutherford's *Institutes of Natural Law*, Ward's *Law of Nations*, Vattel's *Law of Nations*, and Bynkershoek's *Law of War*. King's College in the City of New York (later Columbia University) had a professorship of natural law from 1773 to 1776, held by John Vardill.

⁴²Mr. Pound tells us that the conception of a law of nature has "held on longer in international law than elsewhere." *Bibliotheca Visseriana*, I, p. 83. Lorimer, writing in 1883, defined the law of nations as "the law of nature realized in the relations of separate states." Lorimer, *Institutes of the Law of Nations*, I, p. 1. Sir Frederick Pollock referred to the term "law of nature and of nations" as still current in Scotland in 1910. *Cambridge Modern History*, vol. XII, p. 703.

⁴³Cathrein, *Die Grundlage des Völkerrechts* (1918), p. 29; O'Rahilly "The Law of Nations," *Studies* (Dublin, December, 1920), p. 579.

⁴⁴"Natural law may fairly claim, in principle though not by name, the reasonable man of English and American law and all his works." Pollock, "The History of the Law of Nature," 1 *Col. Law Rev.* 11, 29; 2 *Ibid.* 131, 136. "If Natural Law is but too often made to serve as a cloak to individual whims and groundless claims, the same arguments that were formerly adduced under its generic name may still prevail under the less ambitious titles of equity, humanity, morality, common interest, logic, reason, consistency, etc." Kaeckenbeck, *International Rivers* (1918), pp. 8-9.

written "in the hearts of civilized and instructed people."⁴⁵ The American Institute of International Law has but recently invited the nations to declare that "all nations have the right to claim and, according to the Declaration of Independence of the United States, 'to assume, among the powers of the earth, the separate and equal station to which the laws of nature and of nature's God entitle them;'"⁴⁶ and Dr. James Brown Scott has proposed that this be embodied in a twentieth century code, apparently on the theory that "there is a universal law of reason, of justice and of conscience, of which the law of nations is naturally a part."⁴⁷ Professor Edwin D. Dickinson finds in the American Institute's declaration "nothing which we could not have read in a seventeenth century edition of 'The Laws of War and Peace.'"⁴⁸

Similarly, we still have recrudescences of the conception of the social compact in our prevailing theories, and they do not fail to influence the form of our conventional statements. Professor Charles Cheney Hyde, in his excellent treatise published three years ago, tells us that "the basis of the law imposing common rules of restraint has been the consent of the several independent states which were to be governed thereby;" such consent is said to be "yielded by necessary implication," and Mr. Hyde then proceeds to treat the hypothesis as an explanation of historical origin by assuring us that it has been "irrevocably given."⁴⁹ The bare statement is so out of consonance with the juristic thought of today that the author would probably be the first to repudiate its philosophical implications. The "consent" which so many writers seek to establish is merely a substitute for the "nature" which they would repudiate, and Oppen-

⁴⁵Thomas Baty, "Danger-Signals in International Law," 34 Yale Law Journal (March, 1925) 457. "Ad primum ergo dicendum, quod promulgatio legis naturae est ex hoc ipso quod Deus eam mentibus hominum inseruit naturaliter cognoscendam." Thomas Aquinas, *Summa Theologica*, 1-2, qu. 90, a. 4.

⁴⁶In the Declaration of Rights and Duties of Nations, adopted in Washington, January 6, 1916. Dr. Scott has explained that this declaration "differs from other projects of a like kind in that it is not based solely, or indeed at all, upon philosophic principles, but is based exclusively upon decisions of the Supreme Court of the United States." Scott, *The American Institute of International Law: Its Declaration of the Rights and Duties of Nations (1916)*, foreword. This may be thought to confuse the dicta of the Justices with the decisions of the Court, however.

⁴⁷Scott, "The Codification of International Law", 18 Amer. Jour. Int. Law, 260, 266, 280. The proposal is apparently being made also by the American Institute of International Law. See 6 *Revista de Derecho Internacional* (November, 1924), p. 259.

⁴⁸New Republic, February 26, 1916.

⁴⁹Hyde, *International Law* (1922), I, p. 4. See also, Salmond, *Jurisprudence* (7th ed., 1924), p. 33. The law of nations derived from a law of nature was once thought to bind nations even against their will. Martens, *Europäische Völkerrecht* (1796), p. 2. Cf. Franz von Liszt, *Das Völkerrecht* (1918), p. 7.

heim's attempt to rationalize "common consent" as a matter of fact involved him in all the tergiversations of the naturalists.⁵⁰

Such instances of our failure to develop a philosophy of the law of nations susceptible of statement in modern terms, are not without far-reaching practical consequences. They have prevented us from evolving any accepted theory of rights, and in consequence we spend much of our time in discussion which, as Mr. Roland R. Foulke has pointed out, "begs the question by assuming that there is a right, and then without defining it, enumerating what the writer conceives may be done in the exercise of that right."⁵¹ In the middle of the last century, President Woolsey introduced his treatise with the statement that "the creator of man has implanted in his nature certain conceptions which we call rights, to which in every case obligations correspond,"⁵² and his approach is by no means out of fashion. The American Institute of International Law declares that the "fundamental rights" which the "municipal law of civilized nations recognizes and protects" can be "stated in terms of international law;" and it proceeds to attribute to every nation a series of natural rights—a right to exist, a right to independence, a right to equality, and a right to territory—buttressed with quotations of John Marshall's *dicta* pronounced when the law of nature was still supreme in America, and before Bentham's influence had begun to be felt on this side of the Atlantic. Similarly, Mr. Hyde conceives of natural rights possessed by every state—a "right to acquire territory" and to exercise therein "an exclusive right of property and control;" a "right to do justice in its own domain;" a "right to expel an alien;" a "right to live and develop;" and a "right" to determine the extent of its relations with other states. The objection to such a method is not so much its dissonance with what is going on in other fields of juristic science; it is not so much the maintenance by writers of individual grab-bags out of which these "rights" are drawn to fit occasions; it is rather that such formulations, in advance of the process of weighing competing interests which wise judges always go through in reaching results, affect the process itself and often create

⁵⁰Oppenheim, *International Law* (3d ed., 1920), I, p. 14 ff. See Pound, "Theories of Law," 22 *Yale Law Journal* 114, 135.

⁵¹Foulke, *International Law* (1920), I, 155. See Oppenheim, *The Future of International Law*, p. 59. The following statement of Mr. Elihu Root is an example of the effect of our use of the term *right*: "The fundamental ideas of international law are, first, that each nation has a right to live according to its own conceptions of life; second, that each national right is subject to the equal identical right of every other nation." Root, *Men and Policies*, p. 429. Such doctrine means of course an "anarchy of sovereignties." Dupuis, *Le Droit des Gens et les Rapports des Grandes Puissances* (1920), p. 7.

⁵²Woolsey, *International Law* (1860), p. 1.

dispositions to reach certain results without reference to the process.⁵³ Certain it is that the resort to natural rights has had an anti-social tendency which only increases the difficulties of organizing the society of nations under a universal law. It puts emphasis on independence at a time when we are seeking to take account of the new inter-dependence of peoples.⁵⁴

It was the habit of such approach, also, which rendered our profession so ineffective in dealing with the new problems which arose during the War. It may be too much to hope that any achievement in juristic science will serve in time of war to overcome the excesses of nationalistic fervor. Yet we might have hoped that our professional efforts would have furnished surer guides to judgment than seemed available while the War was on. Any people fighting a war will be tempted to look chiefly for a law that will restrain its enemies, and the traditional body of war laws had been evolved under wholly different conditions of warfare, not on any foundations of general interest but chiefly as a result of the exigencies of past struggles.⁵⁵ But even in neutral countries the legal guides were so inadequate that they furnished few anchors to public opinion, and hence any departure from the traditional practices which belligerents had followed under different circumstances was met with moralistic condemnation by all peoples whose national interests it did not serve. Discussion of blockade and the use of submarines proceeded both during and after the War in terms which afforded little opportunity for a careful weighing of the issues involved. Little of the recent literature on those two subjects is a credit to the profession, though one article by James Parker Hall is a notable exception.⁵⁶

But the inadequacy which results from our failure to build a better philosophical foundation for our law does not simply beset our profession in time of war. It is a serious handicap to us in dealing with many of our current problems in time of peace. In all our statements of the law of recognition of foreign governments, we have furnished little assistance to the courts which have been called upon to deal with problems arising from the failure of the United States to recog-

⁵³See Pound, "Legal Rights," 26 *International Journal of Ethics* (1915), p. 92; Pound, *Interpretations of Legal History* (1923), p. 159.

⁵⁴Cf. Garner, "Limitations on National Sovereignty in International Relations", *American Political Science Review*, XIX, p. 1-24.

⁵⁵John Quincy Adams wrote of the British maritime law in 1796, "I never could find that their admiralty Courts were governed by any other code" but "Britannia rule the waves." Quoted in Warren, *The Supreme Court in United States History* (1922), II, p. 28. See Professor Westlake's explanation, in *Principles of International Law*, p. 84.

⁵⁶Hall, "The Force of Precedents in International Law," *International Journal of Ethics*, vol. 26, p. 149.

nize the Government of Soviet Russia; and though the courts of New York have been dealing with such cases frequently during the past two years, we still lack any statement of the American law of recognition which would enable a lawyer to advise a client with much confidence.⁵⁷ The decisions may still leave a citizen's rights in property acquired in Russia dependent on what the political branch of the Government may later decide as to the relations between the two governments.⁵⁸ Similarly, our statements as to the immunity of foreign public vessels engaged in commerce left the courts with little guide to follow, and when Judge Mack decided *The Pesaro*⁵⁹ he felt himself faced with a "confessedly new and unsettled problem", and in his endeavor to search out "the practical ends of law in a moving, working world" he derived little aid from all our statements of the theory during the past hundred years.

We still lack, also, an adequate theory of treaty obligations.⁶⁰ Mr. Hyde merely tells us that treaties are concluded "because in the minds of the contracting parties their undertakings are to be performed, and because the rights of non-performance are given up."⁶¹ In the absence of explanation, we resort to analogies drawn from municipal law. Mr. Fenwick declares that "a treaty providing for the cession of territory, such as the treaty between the United States and Russia in 1867, differs in no appreciable way from a deed of sale executed between two individual citizens of the same state,"⁶² as if

⁵⁷See *Russian Government v. Lehigh Valley R. R.*, 293 Fed. 133 (1919); *Wulfsohn v. Russian Republic*, 234 N. Y. 372 (1923); *Sokoloff v. National City Bank*, 239 N. Y. 158 (1924); *James & Co. v. Second Russian Insurance Co.*, 239 N. Y. 248 (1925); *Russian Reinsurance Co. v. Stoddard*, 207 N. Y. Supp. 574 (1925). See also Connick, "The Effect of Soviet Decrees in American courts", 34 *Yale Law Journal* 499.

⁵⁸*Luther v. James Sagor & Co.* 3 K. B. 532 [1921].

⁵⁹277 Fed. 473 (1921). Cf. *The Maipo*, 259 Fed. 367 (1919). The subject of immunity of publicly owned ships was discussed at length at the International Maritime Conference at Brussels, October, 1922. Report of the Delegates of the United States, p. 18. See, also, International Maritime Committee, Bulletin No. 65, for the discussion at the Gothenburg Conference of 1923.

⁶⁰See the excellent study of Professor Quincy Wright, "The Legal Nature of Treaties" (1916) 10 *Amer. Jour. Int. Law*, 706; Sir Cecil Hurst, "The Effect of War on Treaties", *British Year-Book of International Law*, 1921-22, p. 37; Denys P. Myers, "The Control of Foreign Relations", 11 *American Political Science Review* 24, 30; Henry G. Crocker, "Codification of International Law", 18 *Amer. Jour. Int. Law*, 38 ff. Mr. Crocker would provide in an international code that "states are presumed to know the national law of other states" with respect to the competence of state organs to exercise the treaty-making power; while Mr. Thomas Baty says "it is never incumbent on states to study the constitutional law of other powers." 34 *Yale Law Journal* 477.

⁶¹Hyde, *International Law*, II, p. 2. President Woolsey likened a treaty to a contract which "is one of the highest acts of human free will." Woolsey, *International Law*, 235.

⁶²Fenwick, *International Law* (1924), p. 316.

the interests of the inhabitants were to be disregarded in international barter. But the analogy to contracts is much more frequent and quite as misleading. In *Hooper v. U. S.*,⁶³ an American court assumed the Anglo-American doctrine of consideration to form a part of the law of nations and found that a "failure of consideration" warranted annulment of a treaty. And the peculiar American doctrine as to the interpretation of a most-favored-nation clause seems in some degree due to the municipal law of consideration.⁶⁴ We have not erected a doctrine of international law analogous to our American "freedom of contract",⁶⁵ but we have given wide sanctity to treaties in the conception that they are perpetually and absolutely binding. The Powers declared in 1871 that "it is an essential principle of the law of nations that no power can free itself from the engagements of a treaty, nor modify its terms except with the assent of the contracting parties by means of a friendly understanding."⁶⁶ Since such a strait-jacket did not wholly discourage the negotiation of treaties, it was bound to lead to statements of the doctrine of *rebus sic stantibus* which shocked many people during the War.⁶⁷

It is chiefly the conception of treaties as contracts which has produced our reluctance to acknowledge their legislative quality. In his *Institutes* published in 1849, Richard Wildman stated that while treaties "are recognized and enforced by international law," yet "they no more form part of it, than the contracts of private persons form part of the municipal law by which they are enforced."⁶⁸ Mr. Hyde follows a long line of writers in stating that "few treaties are to be regarded as sources of international law."⁶⁹ The purpose of such statements is usually to exclude the possibility of a state's

⁶³22 Ct. Cl. 408 (1887).

⁶⁴*Bartram v. Robertson*, 122 U. S. 116, 120 (1887).

⁶⁵Such a doctrine was not unknown in the past, however. See Suarez, *De Legibus*, ii, 19, 7. quoted by Professor Alfred O'Rahilly in *Studies* (Dublin, December, 1920), p. 590.

⁶⁶Declaration by Great Britain, Austria, France, Italy, North Germany, Russia and Turkey, of January 17, 1871. Hertslet, *Map of Europe by Treaty*, III, p. 1904. See Professor Brierly's illuminating comment in the *British Year-Book of International Law*, 1924, p. 14. Cf., also, the controversy over the Prussian-American treaties, described by Professor Jesse Reeves in 11 *Amer. Jour. Int. Law* 475 ff.

⁶⁷Time limits are usually included in modern treaties.

See Willoughby, "Principles of International Law and Justice Raised by China at the Washington Conference," *Proc. Amer. Soc. Int. Law*, 1922, p. 21.

⁶⁸Wildman, *Institutes of International Law* (1849), I, p. 2. Cf. the following statement in Walker, *Science of International Law* (1893), p. 49 note: "Treaties like other public records, although they do not themselves make international law, and are not even conclusively binding, are evidence of certain rules observed as international law."

⁶⁹Hyde, *International Law*, I, p. 6. On the other hand, Oppenheim dealt with treaties as a source of international law "which has of late become of the greatest importance." Oppenheim, *International Law* (3 ed. 1920), I, p. 22.

being called upon to recognize changes in international law which other states may have agreed upon by treaty; but their effect has been to encourage a general disposition to neglect the content of our treaty law in dealing with the law of nations. Just as the law schools tended a generation ago to ignore statutes in their exposition of the common law, so they tend still to ignore treaties in their exposition of international law. As a consequence, the many multi-partite conventions of the last half century which have greatly extended the field of international law⁷⁰ and under which so many of the daily contacts of states are organized, find little place in our treatment of the subject and are all but ignored by some writers. The omission not only widens the gulf between taught law and state action; it encourages the popular failure to accredit the progress which these treaties represent, and it strengthens a popular notion that our world society continues without any law. So many treaties are being negotiated since the World War⁷¹ that we must of necessity abandon this attitude, and with new means now available in the League of Nations Treaty Series⁷² for acquaintance with their texts we shall doubtless give greater emphasis to conventional law in the future.

The philosophy with which our generation must seek to endow the law of nations cannot be builded without reference to what is happening in other fields of juristic effort, nor may it ignore the achievements in other fields of social science. It has often been noted that "the work of Grotius has for its support all that the philosophers, the poets, the orators, and the critics of antiquity or of modern times" could furnish. "He penetrated into all the sciences between which and his own, he could discover any analogy; and he examined the opinions of all great men of whatsoever class."⁷³ But in modern times, our international law has been too largely a field by itself. In spite of the frequent borrowing of analogies, it has lagged behind the evolution of municipal law, especially in America. It is not surprising therefore that so little draught has been made on other social sciences. But the future law of nations must seek contributions from history, from political science, from economics, from sociology and from social psychology if it would keep

⁷⁰See Garner, "Limitations on National Sovereignty in International Relations," 19 *Amer. Pol. Sci. Rev.* 1, 17.

⁷¹Secretary Hughes is stated to have presented sixty-nine treaties for ratification while he was Secretary of State from 1921 to 1925; and in the first five years of the League of Nations over eight hundred treaties were presented to the Secretariat for registration.

⁷²The publication of the Treaty Series of the League of Nations was begun in 1920, and twenty-eight volumes have now appeared, containing the texts of 729 treaties and engagements.

⁷³Ward, *Law of Nations*, II, 373.

pace with the society which it serves;⁷⁴ and a sound philosophical basis for the international law of the twentieth century can only result from "a functional critique of international law in terms of social ends."⁷⁵

Now such a philosophy of international law is not to be constructed over night. It will not be the product of a single mind,⁷⁶ nor the outgrowth of a single nation's practice, nor the elaboration of any series of international conferences. The century will be fortunate if it produces a scholar whose work will compare even remotely with that of Grotius; it will be more fortunate perhaps if it sees begun a cooperation among scholars which will save the law of nations from the sterile methods which characterized so many juristic efforts during the last century. Happily, a legal order is not to be achieved in any generation for all time. It is not a goal but a process—it is not a destination but a method of travel. In building the philosophy of our law of nations, we seek not a set of ideas but a method of handling ideas. Progress will be made when we begin to free ourselves from the "tyranny of phrases" and to analyze some of our present assumptions; but creative effort will be under way only when we begin a conscious process of adapting our rules and principles and standards⁷⁷ more directly to the service of the live, current needs of our present-day society.

Where the nineteenth century sought the vindication of natural rights, it must be our task to ascertain and evaluate interests.⁷⁸ Where our predecessors attempted to reconcile the claims of states to be absolute sovereigns in their own domains, we must attempt to reconcile their local customs and desires with the social interests in peace and in the free development of civilization. Where earlier jurists set out to discover principles of eternal and universal validity, we shall be fortunate if we meet the demands of the time and the place. We cannot break the continuity with the nineteenth century, and we would not if we could; but not every concept that has come

⁷⁴"A rule of law is a rule of life. It is founded on the dogmas and experiences of life; and life's dogmas and experiences are recorded in a vastly wider library than the covers of law-books comprise." Wigmore, *Cases on Torts*, I, p. ix.

⁷⁵Pound, in *Bibliotheca Visseriana*, I, p. 89. For an example of such approach, see Judge Cardozo's opinion in *Techt v. Hughes*, 229 N. Y. 222, 241 (1920).

⁷⁶"There is just as truly a world-wide commerce in juristic ideas as there is a world-wide commerce in the goods produced by economic industry." H. D. Hazeltine in preface to Pound, *Interpretations of Legal History*, p. xi. But see Oppenheim, *The Future of International Law*, p. 63.

⁷⁷On standards as distinguished from rules in international law see Cardozo, J., in *Techt v. Hughes*, 229 N. Y. 222, 241 (1920).

⁷⁸For an interesting example from the point of view of method, see H. J. Randall, "Nationality and Naturalization," 40 *Law Quarterly Review* (January, 1924), p. 18.

down to us may serve our time, and we may have to reject as well as retain. If we prove to be unable to control all the forces which affect the growth and application of law in our day, we shall nevertheless abandon the notion that this law must be left to grow up as it will, independently of what we may do. But faith in the efficacy of effort will not alone equip us for making that effort productive. We must know the ends that our law is to serve. before we can hope to make it serve them.

III. METHODS OF DEVELOPING INTERNATIONAL LAW

If it be admitted that we need more adequate foundations for the international law of the twentieth century, it must not be thought that no steps can be taken for its improvement until such foundations have been laid. An attempt to construct a philosophy of law apart from its application in current life and affairs, would almost certainly prove futile. It would result in the very unreality from which we seek to escape. Induction and deduction must proceed fairly evenly along parallel courses; we must live and move in a turgid stream of international events, and juristic development must ever follow its current. Time will not wait for any re-examination of the philosophical assumptions underlying our law of nations, and scant results would be yielded if it would. Our attention must be given to the methods of current development, therefore, at the same time that we are seeking to control its direction and its purpose.

We generally define the law of nations to include the body of rules and principles and standards which various states recognize to be binding in their relations with each other. What these rules and principles and standards are we seek to ascertain from declarations and dispositions in treaties and conventions, from decisions of courts, from enunciations by foreign offices and from formulations by jurists. Now these sources of the law seem to offer little opportunity for the cooperation of various peoples in the conscious control of its development, and as a consequence a general pessimism dominated the thinking of the last century with reference to the fashioning of international law to serve the needs of peoples' common life. While it was insisted that no single nation, and even no small group of nations, could make international law, it was also emphasized that reliance had to be placed on sources which in their nature negated the possibility of efforts to promote common action. Law had to be found, not made. Most of the sources were national in character. Enunciations of foreign offices were frequently avowedly so, and generally the decisions of courts dealt with questions from a national point of view, reflect-

ing in large degree the attitudes of particular peoples. We followed a fashion of ascribing to prize courts a special international character,⁷⁹ but our experience in the past war has shown them to be effective agencies for serving national policy whenever their independence might be important.⁸⁰ The awards of arbitral tribunals have generally been free from national bias; but it was not until the establishment of the Permanent Court of International Justice that we came to have a source of international law freed from the national character of court decisions in the past,⁸¹ and with the growth of its jurisprudence we may hope that a new era will dawn for the judicial development of the law along truly international lines.

The formulations by jurists have similarly tended to express the national view-points of individuals. If there were outstanding exceptions, most writers have stated the general law in terms of local emphasis. It is perhaps a more serious thing, however, that law-writers frequently express not the ideas of their own time, but the ideas of some preceding generation. They tend to regard contemporaneous thought and contemporaneous practice as more ephemeral than the traditions received from their teachers, and hence they state as accepted that which a preceding generation thought and did.⁸² Imitation is a temptation to which they continually yield,⁸³ and it is only increased by their willingness to deal with doctrine as if it were always constant and consistent.

In taking the declarations and dispositions in treaties and conventions as a source of law, however, we may feel ourselves on firmer ground,⁸⁴ for treaties lack neither international character nor contemporaneous quality. They represent the view of more than one

⁷⁹"The court of prize is emphatically a court of the law of nations." Story, J., in *The Schooner Adeline*, 9 Cranch 244, 284 (1815). See also, Gray, J., in *The Paquete Habana*, 175 U. S. 677, 708 (1900).

⁸⁰See, however, *The Zamora* [1916] 2 A. C. 77, 91; Sir Erle Richards, "The British Prize Courts and The War", *British Year-Book of Int. Law*, 1920-21, p. 11.

⁸¹Cf. W. R. Bisschop, "International Interpretation of National Case Law" *British Year-Book of Int. Law*, 1923-24, p. 131.

⁸²For this reason, it is objectionable to take too literally the notion that writers should be treated as "trustworthy evidence of what the law really is" [was] in their own day. Gray, J., in *The Paquete Habana*, 175 U. S. 677, 700 (1900). An additional reason is given in *Hyde, International Law*, I, p. 7, note. See also *West Rand Central Gold Mining Co. Ltd. v. The King*, 2 K. B. 391, 401 [1905].

⁸³An interesting instance of this is Halleck's mistatement as to the *Dubois* incident in Washington in 1856. Halleck, *International Law* (1861), §21. This was copied in Calvo, *Derecho Internacional* (1868), §242; in Hall, *International Law* (7th ed., 1917), p. 194; in Pitt-Cobbett, *Cases on International Law* (2 ed. 1892), p. 114; and in Satow, *Diplomatic Practice* (1st ed. 1917), p. 272. It was corrected in Satow's second edition (1922), p. 282. See for similar instances Wheaton, *International Law* (2d Amer. ed. by W. B. Lawrence, 1863) note 133; Clarke, *Extradition* (4th ed., 1903), p. 4 note.

⁸⁴See Zitelmann, *Die Unvollkommenheit des Völkerrechts* (1919), p. 18.

people, and they reflect more accurately the period in which they are drawn. If there is a sense in which a treaty must be viewed as the concern of the parties only, if a bi-partite treaty cannot be said to work any modification of the law of nations, there is yet a sense in which every treaty may be said to be an act of international legislation. Unlike a court decision, unlike a foreign office's enunciation, unlike a jurist's formulation, a treaty applies more to the future than to the past. It prescribes a course of action for two or more peoples, and today there are relatively few fields in which the relations of the more active states are not governed in large degree by conventional law. Not only has the last half-century seen a great increase in the number of bi-partite treaties,⁸⁵ but the modern multi-partite treaty has now become a commonly accepted method of dealing with numerous world problems which was all but unknown to the international society of a century ago.⁸⁶

While we persist in the conventional statement that a legislature is lacking for the enactment of international law, we do have today a large body of international statute law governing the every day contacts of peoples in many fields. It has accumulated in spite of the fact that the nineteenth century possessed very little machinery for contributing to it. Important law-making conferences were both rare and casual during the earlier part of the nineteenth century. The Congress of Vienna in 1815 formulated a law for the navigation of international rivers;⁸⁷ the Conference of Paris in 1856 issued an important declaration concerning the seizure of goods at sea; the Geneva Convention of 1864 forbade the "useless aggravation of the sufferings of disabled men;"⁸⁸ the Conference at London in 1871 reaffirmed the binding nature of treaties; the Brussels Conference of 1890 effectively organized the world for the repression of the African slave trade. But great as such achievements must be conceded to have been, the method of approaching international legislative problems could hardly have been more unsatisfactory. Cooperation depended on the chance assembling of representatives of the Powers for some political purpose.⁸⁹ A conference was possible only as some political exigency

⁸⁵"The last century has produced more treaties than all the past". Denys P. Myers, "The Control of Foreign Relations," 11 *Amer. Pol. Sci. Rev.* 24, 31.

⁸⁶"We are not perhaps sufficiently appreciative of the unostentatious but immediately fruitful application of rules to a host of international relations which touch our daily lives in time of peace, and which have been put into successful operation by common agreement." David Jayne Hill, *World Organization* (1911), p. 126.

⁸⁷Kaeckenbeeck, *International Rivers* (Grotius Soc. Pub. No. 1, 1918), p. 37 ff.

⁸⁸It is notable that the United States did not become a party to this treaty until 1882. See 2 *Treaties and Conventions of the United States*, p. 1903.

⁸⁹See Oppenheim, *The Future of International Law* (1921), p. 33.

made it necessary; it did not precede but followed trouble; participation was not vouchsafed to any people; and a contribution to international law was only an incident in the progress of a political struggle. The family of nations had a family law, but no family council for shaping it;⁹⁰ each member had to steer its own course in the hope that others would take no offense and acquiesce or follow suit. Inter-state relations depended mainly on the contacts of governments, two by two.

It is not surprising that there should have prevailed during this period a general theory of helplessness, so far as the making of a law of nations was concerned. Law could not be builded, it had to be left to grow. Jurists were not social engineers, they were legal husbandmen. Men might be *legislateurs*, but not *legisfacteurs*. In the field of municipal law, numerous legislatures were grinding away year after year to keep abreast of changes in society; in many Western countries ambitious and embracing codes were drawn. Yet no similar process was thought to be possible in the international field. Many writers commented on the absence of any legislative agency, while few devoted themselves to its creation.

But a significant change was under way throughout the latter half of the nineteenth century. With the changes in transportation and communication, peoples became neighbors who had previously lived in different worlds, and the more frequent contacts called for a greater integration of world society. Conferences began to meet to deal with all kinds of subjects,⁹¹ although the attempts to legislate were isolated and were sometimes unsuccessful. Without dealing with the more significant political problems, they did introduce important changes into the juridical nature of international society. The international conference became a body which in function but not in form corresponded roughly to the municipal legislature. The legal profession remained reluctant to receive its product into international law; treaties were looked upon as arbitrary exceptions to the law of nations just as statutes had been inhospitably dealt with in America as derogations from the common law; but the influence of the change gradually came to be felt and to call for restatement of the nature of our law of nations.

As a method for the conscious adaptation of international law to meet the needs of international society, the conferences of the last century remained cumbersome in the extreme. In the first place, it

⁹⁰Mr. E. A. Harriman's view that "there is not, and there never has been, any such thing as the society of nations," seems extreme. 5 *Boston Univ. Law Rev.* 16.

⁹¹See the list of conferences in 1 *Amer. Jour. Int. Law.*, 808.

was difficult to get any conference assembled to consider possible legislation. No central authority existed to convoke it, no machinery existed to be availed of, no personnel trained in the work of such conferences was at hand. The initiative usually fell to some single state, requiring careful preliminary negotiations and involving onerous responsibilities. A restrictive agenda had to be agreed upon, and seldom was the necessary preparatory work done to assure successful collaboration.⁹² When once it was assembled, the issue of a single, spasmodic conference was often in doubt. Not until various unions were established, did periodicity begin to appear. Even after the inauguration of the Hague Conferences, their continuance remained very precarious; the second Hague Conference was possible only after delicate negotiations,⁹³ and in spite of its *voeu* it was still uncertain whether a third conference would be held when the clouds of 1914 enveloped all international cooperation in a haze of bewildering doubt.⁹⁴ The four International Conferences of American States in 1890, 1902, 1906, and 1910 succeeded in maintaining a degree of continuity, however, and at the Fifth Conference in 1923, plans were made for a sixth Conference within five years.⁹⁵

A new era seems to have been begun with the end of the war in 1919. The first five years following the Treaty of Versailles saw the establishment of a permanent and continuous machinery for general conference by fifty-five nations. An agency exists, at last, for assembling international conferences and for enabling them to work smoothly and effectively when assembled. Periodical meetings of representatives of the Powers have now become an accepted thing, and whereas only two conferences at The Hague resulted from a generation of effort, each of the annual conferences since 1919 has included the representatives of more Powers than were represented at either of the Hague Conferences. A revolution in method has occurred, and if it is designed chiefly for the ordering of the political relations of states, it promises also much greater cooperation in the moulding and developing of the law of nations as well. If the new method has not yet been accepted universally, its influence promises to be far-reaching and the consequences to international law may be very great. It has become possible, at last, for attention to be fixed on the legislative

⁹²See Higgins, *Hague Peace Conferences*, p. 523.

⁹³Note, for instance, the difficulty experienced in assembling the Second Hague Conference. Scott, *Hague Conferences*, pp. 88-106.

⁹⁴Negotiations for a Third Conference were hardly under way when the War began in 1914, though the conference had been proposed for 1915, and on June 22, 1914, the United States had proposed a postponement until 1916. See U. S. Foreign Relations, 1914, p. 10.

⁹⁵See Report of the Delegates of the United States, p. 230.

needs of world society; willingness and energy may be mobilized to meet them; and the cooperative legislative effort which is beginning may make over the international law of the twentieth century.

With this situation resulting from the creation of the League of Nations, it has become possible to approach the development of international law with renewed energy. Various methods of procedure which have previously been discussed only unofficially have now come into the realm of official planning. The new Conference machinery is in a sense successor to the Hague Conferences, and in five years it has realized their chief aim by establishing the Permanent Court of International Justice.⁹⁶ This Court offers promise that the judge-made part of international law will not be neglected in the future, and by the fifteen opinions which it has handed down in three years a valuable beginning has been made which has brought to the Court the confidence of foreign offices as well as of the legal profession throughout the world.

On the legislative side, however, the rôle of the new agencies which have been established has not been so clearly marked out for them. It has been insistently demanded that they be used for the "codification" of international law. The term "codification" has been a popular one, especially among laymen, since the days of Bentham,⁹⁷ and since the War it has served many uses. In fact, it has been so loosely used in recent years that the edge has been worn off its meaning, and in many minds the task of enacting an all-embracing code of the law of nations has come to appear as a simple expedient which must be realized as a condition to the functioning of the Permanent Court of International Justice.⁹⁸

As I have attempted to point out on another occasion,⁹⁹ "codification" is used in connection with international law in three senses,

⁹⁶The framers of the Statute of the Court took as the basis of their work the draft elaborated at the second Hague Conference. See Hudson, *Permanent Court of International Justice* (1925), p. 215.

⁹⁷On Bentham's proposal, see Nys, *Notes Inédites de Bentham sur le Droit International*, 1 *Law Quar. Rev.* 225; *Carnegie Endowment Year-Book*, 1923, pp. 242-247. On early discussion of codification in America, see Pound, "The Place of Judge Story in the Making of American Law", *Cambridge Hist. Soc. Proc.*, VII, p. 45.

⁹⁸Certain American advocates of the "outlawry of war" contain in their program a provision for the "codification of the international law of peace on a basis of equality and justice." Frances Kellor, *Security Against War*, (1924), pp. 780-794. Senator Borah, in a resolution introduced in the United States Senate on December 20, 1922, urged the "creation" of such a code. See also John Dewey, "War and a Code of Law," *New Republic*, October 24, 1923; W. G. Brown, "The Law That Will End War", in *The Forum*, June, 1923; Salmon O. Levinson, *Outlawry of War* (1921), p. 18.

⁹⁹In an address before the American Branch of the International Law Association, January 9, 1925, reprinted in 11 *American Bar Association Journal* (February, 1925), p. 18.

and the three are often confused. It is occasionally used to denote the harmonizing of the municipal law of various countries, by the preparation and enactment of uniform statutes covering certain fields of law in which divergence leads to difficulties. The "passion for uniformity" may be sometimes responsible for the insistence on codification of this sort,¹⁰⁰ but more frequently it results from appreciation of the practical disadvantages of differences. Between nations, these disadvantages are as great in certain fields as between the various states and provinces of North America. The importance of the work of the National Conference of Commissioners on Uniform State Laws in the United States since 1892¹⁰¹ and the Conference of Commissioners on Uniformity of Legislation in Canada since 1918¹⁰² can hardly be overestimated. Within limits, a similar service might be performed for the various states in international society, and some attempts are being made in this direction. The Inter-American High Commission, created by the First Pan-American Financial Conference in Washington in 1915,¹⁰³ has labored to build a uniform commercial law and uniform laws for the protection of literary and industrial property in the American hemisphere,¹⁰⁴ and its efforts have contributed to the ratification of various conventions¹⁰⁵ as well as to the work of the International Conference of American States which also concerns itself with uniformity of laws in American countries. Much has been accomplished in this way toward the unification of private law. The Conferences at The Hague in 1910 and 1912 wrestled with the unification

¹⁰⁰See Judge Moore's interesting paper on "The Passion For Uniformity", reprinted in *International Law and Some Current Illusions* (1924), p. 316 ff.

¹⁰¹This Conference holds annual meetings; it consists of commissioners from each of the states and territories of the United States, and in thirty-three states or territories these commissioners have official appointments under legislative authority. The Conference has already approved thirty-eight drafts of uniform acts, of which one—the Negotiable Instruments Act—has been enacted in fifty-one American jurisdictions. See the 1924 Handbook of the National Conference of Commissioners on Uniform State Laws, p. 28.

¹⁰²This Conference resembles the National Conference of Commissioners on Uniform State Laws in many ways. Nine provinces are represented, and the Conference has adopted eight uniform acts, two of which have been enacted in six provinces. See Proceedings of the Seventh Annual Meeting, 1924, p. 8.

¹⁰³U. S. Foreign Relations, 1915, p. 20.

¹⁰⁴When the Commission met in Buenos Ayres in April, 1916, it "included in its deliberations the question of international agreements on uniform labor legislation; uniformity of regulations governing the classifications and analysis of petroleum and other mineral fuels with reference to national development policies. . . and uniformity of laws for the protection of merchant creditors." John Bassett Moore, *The Work of the International High Commission*, Senate Document 261, 66th Congress, 2d Session, p. 5. The "Program of Activities" published by the Commission on October 22, 1923, is much more ambitious.

¹⁰⁵For instance, the Conventions on the treatment of commercial travellers which the United States has concluded with Colombia, Guatemala, Panama, Paraguay, Peru, Salvador, Uruguay and Venezuela. See 3 U. S. Treaties and Conventions, pp. 2541, 2670, 2780, 2791, 2800, 2826, 2862, 2867.

of the law of bills of exchange, for example; and the results have been so extensive that Judge John Bassett Moore reported in 1920, "We seem to be rapidly approaching the time when, so far as concerns bills of exchange, there will, in effect, be only two systems in use in the Western Hemisphere, based respectively, on The Hague rules of 1912 and the United States uniform negotiable instruments act."¹⁰⁶ The Comité Maritime International, a non-official body, has devoted itself since 1897 to the unification of maritime law, and it has seen some fruition of its efforts in the work of the International Maritime Conferences held at Brussels in 1905, 1910, 1922 and 1923.¹⁰⁷ But the most striking activity directed toward uniform laws in any field is that of the International Labor Organization which was created in 1919, under Part XIII of the Treaty of Versailles. Whereas before the War a whole generation of effort gave us but two international labor conventions, the new organization has already succeeded in putting into effect between various countries sixteen conventions relating to conditions of labor.¹⁰⁸

The importance of such unification cannot be exaggerated; but it is by no means possible for it to cover the whole field of the law of nations, and in the main such ambitious attempts must be confined to fields in which national legislation already exists in most countries.

In a second sense, "codification" is used to denote a systematic restatement of the existing customary law of nations, to which would be given formal legislative sanction. It is urged that such a restatement would simplify and clarify the content of the law, and introduce greater certainty into its application. The need is felt to be increased

¹⁰⁶Moore, *The Work of the International High Commission*, Senate Document No. 261, 66th Congress, 2d Sess., p. 6. For the progress of The Hague Rules in other countries, and the prospect of extending it, see the Report on Unification of Laws Relating to Bills of Exchange, made to the Economic Committee of the League of Nations, 1923.

Judge de Bustamante has recently published a very illuminating volume on the codification of private international law, *de Bustamante y Sirven, Proyecto de Código de Derecho Internacional Privado* (Habana, 1925).

¹⁰⁷The Conference of 1922 framed conventions concerning the limitation of the liability of ship-owners, maritime liens and mortgages, and bills of lading. These draft conventions were again considered by a sub-committee at Brussels, October 6-9, 1923. See the *Procès-Verbaux of Conference on Maritime Law* published at Brussels; *Trade Information Bulletin* No. 297 of U. S. Dept. of Commerce.

"The uniformity of principles and interpretation of maritime law" was also an item in the agenda of the Fifth International Conference of American States at Santiago, in 1923.

¹⁰⁸For the progress of ratifications of the Labor Conventions until February, 1925, see the bulletin published with "Industrial and Labour Information", February 23, 1925, vol. XIII, No. 8. The Hours of Work Convention of 1919 is the most important, on which see an important study by Herbert Feis, "The Attempt to Establish the Eight Hour Day by International Action," 39 *Political Science Quarterly* 373, 624 (September and December, 1924).

by the establishment of the Permanent Court of International Justice, and the desirability of enlarging its jurisdiction.¹⁰⁹ It would seem clear that no field of law is "ripe" for restatement in this sense unless it has reached a stage of maturity in which it is relatively free from important conflicts as to its provisions; and the query arises whether much of our law of nations can be said to have advanced to that stage. Such a restatement as that recently undertaken with reference to certain topics of American municipal law by the American Institute of Law, has been closely confined to topics which have reached an advanced stage, though it is not proposed that the results will be enacted in statutes.¹¹⁰ Certainly a concise statement of the law is always convenient, and if the law of nations could be "stated in a concise and accurate form and within the compass of a volume" it would be a boon to every scholar and jurist. Perhaps it is true that it would create new controversies,¹¹¹ and it might tend to some rigidity,¹¹² but it would also increase the "cognoscibility" of our law and possibly therefore increase confidence in its administration. Yet it would be unfortunate indeed if such a restatement were made to include matters as to which competition of important interests might still be operating, for the result would only be a prolongation of the struggle. Such a mistake was made by the London Naval Conference in 1909, when the Declaration of London,¹¹³ which was said to "correspond in substance with the generally recognized principles of international law," was made to contain so many new dispositions as to which no wide agreement existed.

Moreover, the acceptance of such a restatement by different countries should be based upon a uniform understanding of the juridical and philosophical bases of international law, and it may be questioned whether such an understanding exists today with respect to much of the content of our existing law. Dr. Scott has stated that "any standard treatise on international law, if abridged in the form of a statute, would be a fairly acceptable code of international law;"¹¹⁴ but there is such a wide difference between the standard treatises, they are so far from accepting any consistent theory, that it is difficult to see how such a course would add to our convenience. And to the extent that

¹⁰⁹See Dr. James Brown Scott's report in the Year-Book of the Carnegie Endowment of International Peace, 1923, pp. 236-7.

¹¹⁰"We are not seeking to formulate a code of law for enactment by legislatures." President George W. Wickersham, in the Minutes of the Second Annual Meeting of the American Institute of Law, 1924, p. 21.

¹¹¹Oppenheim, *International Law* (3d ed.), I, p. 43.

¹¹²P. J. Baker, in the *British Year-Book of International Law*, 1924, p. 48.

¹¹³U. S. Foreign Relations, 1909, p. 318.

¹¹⁴Carnegie Endowment Year-Book for 1923, p. 252.

these treaties are standard, they may serve our purposes without any enactment of their provisions into a code.

It is for these reasons that a global restatement of the existing law seems to many people undesirable, and that the very ambitious efforts of the International Conferences of American States may not promise the best results. It was at the Second Pan-American Conference in 1901-2, in Mexico, that such activities were first proposed,¹¹⁵ and the Third Conference at Rio de Janeiro succeeded in elaborating a convention creating an international Committee of Jurists to codify both private and public international law.¹¹⁶ Many difficulties arose before a meeting of this commission was held, and it was postponed from 1907 to 1912; a second meeting, postponed since 1914, is now in prospect for the current year. The six committees organized in 1912 were to cover a very wide range; their assignments included maritime war and the duties of neutrals, war on land and claims growing out of it, international law in time of peace, pacific settlement of disputes, status of aliens and domestic relations and successions, and other matters of private international law including penal laws.¹¹⁷

The Fifth Conference at Santiago has now carried the movement a step further by recommending the reestablishment of the committees appointed at Rio de Janeiro. It also recommended that "in the domain of international law, the codification should be gradual and progressive" based on a project of Señor Alejandro Alvarez entitled "The Codification of American International Law."¹¹⁸ In preparation for the 1925 meeting, the Governing Board of the Pan-American Union sought the cooperation of the American Institute of International Law,¹¹⁹ which proceeded to elaborate thirty or more projects of conventions.¹²⁰ On March 2, 1925, Secretary Hughes presented thirty-one projects to the Governing Board of the Pan-American Union, which transmitted them to the various American Governments. Mr. Hughes stated very sanguinely that "we are on the threshold of accomplishment in the most important endeavor of the human race to lift itself out of the savagery of strife into the domain of law breathing the spirit of amity and justice."¹²¹ These projects

¹¹⁵The Convention signed at Mexico on January 27, 1902, was not ratified. This convention provided for a "committee of five American and two European jurists." See Minutes and Documents of the second Pan-American Conference, p. 716.

¹¹⁶Actas, Tercera Conferencia Internacional Americana, p. 635.

¹¹⁷See the report of the American Delegates to the Meeting of the Commission at Rio de Janeiro, U. S. Foreign Relations, 1912, p. 26.

¹¹⁸See the report of the American Delegates to the Fifth Conference, p. 133.

¹¹⁹Carnegie Endowment Year-Book, 1924, p. 90.

¹²⁰Preliminary drafts in Spanish were published in 6 *Revista de Derecho Internacional*, 242 ff. (November, 1924).

¹²¹See the current press release of the Department of State.

seem to cover a very large field, and it may be doubted whether the American nations are ready to codify such subjects as the "fundamental bases of international law" and a general "declaration as to the rights and duties of nations." Such restatement is not likely to effect much clarification, and it might have the effect of fastening on the growing law of this century the dead hand of a discarded philosophy.

The third sense in which "codification" is used, and perhaps the meaning usually given to the term in America, has little in common either with the unification of national laws or with the restatement of existing law; it proceeds frankly on the basis of new legislation and the making of new law. The popular agitation for "codification" is based on dissatisfactions which only legislation can remedy; "codification" usually means therefore the enactment of a new law based upon some favorite principle, such as the outlawry of war, and few advocates get beyond the statement of such a principle. It is a special piece of legislation which is demanded, and the term "code" is used because of its general appeal. "Codification" in this sense is a violent misnomer, as Professor Baker has so brilliantly pointed out.

Now a great deal of legislation has been enacted during the past fifty years. It was only in 1875 that the Universal Postal Union was established, and its constitution is today a basis for a part of the law of nations. When David Dudley Field published his "Outlines of a Code" in 1872, many subjects were still untouched as to which legislation has since been achieved.¹²² It is not general legislation, most of it; it is not declaratory of basic principles; it is not primarily the work of lawyers. It represents the result of persistent attempts to meet specific problems of international society in a very practical way, and it has frequently been the work of the experts in various governments who were in closest touch with the international actualities which made legislation desirable. Multi-partite treaties have been entered into by the United States, covering a variety of subjects which were wholly outside the purview of the law of nations a half-century ago. These dispositions for ordering international life are perhaps a more significant part of the law than many of the doctrines which we have inherited from the seventeenth century.

If the world is to attempt any codification with the new methods and machinery which fifty-five nations have established, it would seem to be along this third line that most progress can be made. The

¹²²Field devoted Part III of his "Outlines" to what he called "Uniform Regulations for Mutual Convenience", the subtitles of which were: Shipping, Imposts, Quarantine, Railways, Telegraphs, Postal Service, Patents, Trademarks, Copyrights, Money, Weights and Measures, Longitude and Time, and Sea Signals.

League of Nations must be used to further legislation with respect to specific problems. It must continue the process inaugurated in the latter part of the nineteenth century. It must develop a functional law of nations to meet the demands which the dwindling of the world has created.

The proposal to use the League of Nations machinery for developing international law was made during the first year of the League's existence. The Advisory Committee of Jurists which drafted the Statute of the Permanent Court of International Justice, meeting at The Hague in 1920,¹²³ adopted the following recommendation:¹²⁴

I. A new inter-State Conference, to carry on the work of the two first Conferences at The Hague, should be called as soon as possible for the purpose of:

1. Re-establishing the existing rules of the Law of Nations, more especially and in the first place, those affected by the events of the recent War;
2. Formulating and approving the modifications and additions rendered necessary or advisable by the War, and by the changes in the conditions of international life following upon this great struggle;
3. Reconciling divergent opinions, and bringing about a general understanding concerning the rules which have been the subject of controversy;
4. Giving special consideration to those points which are not at the present time adequately provided for, and of which a definite settlement by general agreement is required in the interests of international justice.

II. That the Institute of International Law, the American Institute of International Law, the Union juridique internationale, the International Law Association and the Iberian Institute of Comparative Law, should be invited to adopt any method, or use any system of collaboration that they may think fit, with a view to the preparation of draft plans to be submitted, first to the various Governments, and then to the Conference, for the realisation of this work.

III. That the new Conference should be called the Conference for the Advancement of International Law.

IV. That this Conference should be followed by periodical similar Conferences, at intervals sufficiently short to enable the work undertaken to be continued, in so far as it may be incomplete, with every prospect of success.

The statement of purposes of the proposed conference was open to many objections. To reestablish the existing rules of the law of

¹²³The recommendation as proposed by Baron Descamps and Mr. Elihu Root was adopted after apparently little or no discussion in the Committee. See *Procès-Verbaux of the Advisory Committee of Jurists*, pp. 230-231, 497, 506, 519-520, 747-748.

¹²⁴*Records of First Assembly, Meetings of Committees, I*, pp. 422-464.

nations, affected by the events of the war, would have meant a re-affirmation of obsolescent rules which might have had serious consequences. Of course it was not then possible to re-state the laws of war as they had been understood prior to 1914, and certainly undesirable if possible. The formulation of modifications and additions rendered necessary by the War would have been a gigantic task, demanding all the detachment that could have been mustered; but 1920 was certainly no time for such an undertaking. The world sought to get away from thinking about war, and it is indeed questionable whether any revision of the rules governing the conduct of war which might then have been framed would have been worth the ink and paper expended on them.¹²⁵ For the victorious allies would most certainly have stated the new law in terms of their recent practice and contentions; the conferences would have been controlled by them, probably to the exclusion of Germany and Russia; and the prevailing psychology would have given scant consideration to the interests of neutrals, if indeed any powerful state which had remained neutral during the War would have been able to defend them. The reconciliation of divergent opinions involves the acceptance of some general philosophy of state relations, and seldom in the world's history has such a philosophy been so lacking as in 1920. "A general understanding concerning the rules which have been the subject of controversy" would probably not have been shared either by Germany or by Russia, and it might have expressed views which most nations will have repudiated a few decades hence.

What such a conference following so closely after the War might have been tempted to do was demonstrated in the work of the Washington Conference on Limitation of Armament in 1922. That Conference drafted a treaty "relative to the protection of the lives of neutrals and non-combatants at sea in time of war and to prevent the use in war of noxious gases and chemicals," which purported to state "established law" as to submarines and to forbid the use in war of "asphyxiating, poisonous or other gases."¹²⁶ The treaty was signed by five Powers, but it has not yet been ratified, and possibly may never be. It breathes all the hostility to Germany which has accumulated in allied countries during the submarine warfare. As to the prohibition of the use of gases in warfare, if ever any such attempt to abolish the use of weapons can succeed against the belief of military men in

¹²⁵Sir Henry Maine assigned as one of the reasons for the failure of the Brussels Convention of 1874 "that it was commenced too soon after one of the greatest of modern wars, which probably never had a rival in the violence of the passions which it excited." Maine, *International Law* (1888), pp. 128-129.

¹²⁶3 U. S. Treaties and Conventions, p. 3116.

their military efficacy, the preparations now under way in various countries seem to indicate that opinion today is not headed in that direction. The Washington Conference also created a Commission of Jurists to consider amendments in other laws of war,¹²⁷ and the states represented agreed to "confer as to the acceptance of its report;" but though the committee terminated its labors in 1923,¹²⁸ no announcement has been made of any such conferring.

These considerations would point to the extreme undesirability of such a course as the Advisory Committee of Jurists suggested.¹²⁹ In the Council¹³⁰ and Assembly¹³¹ respectful consideration was given to it, but neither body approved it. A resolution reported by a committee of the latter was limited to inviting the Council "to address to the most authoritative of the institutions which are devoted to the study of international law a request to consider what would be the best methods of cooperative work to adopt for the more precise definition and more complete coordination of the rules of international law which are to be applied in the mutual relations of states."¹³² But the First Assembly refused to go even so far,¹³³ and the Second Assembly in 1921 was no more favorable to it.¹³⁴ This reluctance to undertake any codification dealing with the laws of war expressed only a wise recognition of the unpreparedness of a war-weary world to foist its psychology and its philosophy on future generations. The new machinery of the League of Nations was to be employed for developing the law of nations, but in a wholly different direction.

Attention was given first of all to the general conventions which had issued from the Paris Peace Conference, and efforts were made to encourage their ratification.¹³⁵ Already in 1920, the attention of the

¹²⁷*Ibid.*, p. 3139, 3140.

¹²⁸The report of the Committee was published at The Hague in 1923.

¹²⁹Yet Secretary Hughes stated to the Governing Board of the Pan-American Union on March 2, 1925: "It is regrettable that there should have been such long delay in carrying forward this plan which had the full support of the Advisory Committee." See also Frances Kellor, *Security Against War*, II, 449 ff.

¹³⁰Records of First Assembly, Meetings of Committees, I, p. 480.

¹³¹*Ibid.*, pp. 326-8, 588-9.

¹³²Records of First Assembly, Meetings of Committees, vol. I, p. 589.

¹³³Viscount Cecil, representing the South African Union, opposed any such action on the ground that "we have not got to a stage yet where it is desirable to consider the codification of international law;" he considered the proposal a "very dangerous project at this stage in the world's history", for we have not "arrived at sufficient calmness of the public mind to undertake" such a step "without very serious results to the future of international law".

¹³⁴Records of Second Assembly, Meetings of Committees, I, 116, 308, 370.

¹³⁵The Paris Peace Conference drew up a Convention Revising the General Act of Berlin of February 26, 1885 and the General Act and Declaration of Brussels of July 2, 1890, a Convention Relating to the Liquor Traffic in Africa, a Convention for the Control of the Trade in Arms and Ammunition, and a Convention for the Regulation of Aerial Navigation—all of which were signed but not ratified on behalf of the United States. See 3 U. S. Treaties and Conventions, 3739, 3820.

Council and Assembly had been directed to certain inadequacies of the existing law with respect to particular fields of international contacts. The Labor Conferences inaugurated their work by adopting six labor conventions at Washington in 1919, and that work has been continued in annual conferences since.¹³⁶ A Passport Conference was held at Paris in 1920, and a Financial Conference at Brussels in the same year. A permanent organization was established to deal with questions relating to transit and communications, and the Conference at Barcelona in 1921 adopted three conventions and an important declaration,¹³⁷ to which the Conference at Geneva in 1923 added four more Conventions.¹³⁸ A Conference was held at Geneva in 1921 to consider the suppression of the traffic in women and children, and its recommendations were embodied in a convention drawn up by the Second Assembly in that same year, revising and bringing up to date the treaty of 1910.¹³⁹ Work was begun by the Economic and Financial Committee on various questions, including the unification of the law as to bills of exchange and the recognition of arbitration clauses in commercial contracts, and a protocol on the latter subject has now been signed by a number of states.¹⁴⁰ In 1922, a Conference devised an arrangement for issuing certificates of identity to Russian refugees.¹⁴¹ A special international Conference in 1923 drafted a new convention on obscene publications supplementing the treaty of 1910, which has since been quite generally signed and ratified.¹⁴² A Conference on Customs Formalities in 1923 succeeded in elaborating an important treaty on that subject.¹⁴³ After a great deal of preparatory work, two Opium Conferences were assembled in 1924, and a new agreement was signed on February 11, 1925, followed by the signature of a new opium convention on February 19, 1925. When it became clear that the St. Germain Convention on traffic in arms could not receive general acceptance, a new Conference was planned to deal with that subject and its convening is now set for May 4, 1925. In short, the first five years of the League of Nations were years of constant legislative activity,

¹³⁶Sixteen labor conventions have been adopted by the Conference. It has also pushed for the ratification of the Berne Convention Prohibiting the Manufacture of Matches with White Phosphorus. See the Report of the Director of the International Labor Office, 1924, p. 96 ff.

¹³⁷League of Nations Treaty Series, vol. 7, pp. 12, 36, 66, 74.

¹³⁸Second General Conference on Communications and Transit, Official Instruments approved by the Conference, pp. 3-43.

¹³⁹League of Nations Treaty Series, vol. 9, p. 416.

¹⁴⁰League of Nations Treaty Series, vol. 27, p. 157. The possibility of a convention on double taxation and tax evasion has been considered by a committee of technical experts which reported to the Financial Committee on February 7, 1925.

¹⁴¹League of Nations Treaty Series, vol. 13, p. 238.

¹⁴²League of Nations Treaty Series, vol. 27, p. 213.

¹⁴³League of Nations Document C. 678 M. 241. 1924. II.

the fruits of which far surpass those of any previous period of the same length in the world's history.¹⁴⁴ The process cannot be called "codification," unless that term is used solely with reference to legislative activity directed to meeting immediate needs; but it seems fraught with more important consequences for the future of a law-governed world society than any codification movement in the past.

It was the success of this approach over a period of almost five years which led the Swedish Government to propose to the Fifth Assembly in September, 1924, a course of action which might serve to make it certain that such activities would not neglect those fields of international life in which the situation might be ready for new legislation. Baron Marks von Würtemberg therefore offered the following resolution on September 8, 1924.¹⁴⁵

The Assembly:

Taking note of the report of the Council on the work accomplished by the League of Nations for the conclusion of agreements on matters of international law; and

Recognizing the desirability of incorporating in international conventions or in other international instruments certain items or subjects of international law which lend themselves to this procedure, such conventions or such instruments to be finally established by international conferences convened under the auspices of the League of Nations, after preliminary consultation with Governments and experts:

Requests the Council:

(1) To invite the Members of the League of Nations to signify to the Council the items or subjects of international law, public or private, which in their opinion may be usefully examined with a view to their incorporation in international conventions or in other international instruments as indicated above;

(2) To address a similar invitation to the most authoritative organisations which have devoted themselves to the study and development of international law;

(3) To examine, after the necessary consultations, the measures which may be taken with respect to the various suggestions presented in order to enable the League of Nations to contribute in the largest possible measure to the development of international law;

(4) To present a report to the next Assembly on the measures taken in execution of this resolution.

After a careful study of the Swedish resolution, in the First Com-

¹⁴⁴All of this activity is ignored, however, by certain American writers who are the last survivors of the movement for continuing the Hague Conferences. See Scott, "Should There Be a Third Hague Peace Conference?", *Advocate of Peace*, January, 1925, p. 27.

¹⁴⁵Records of Fifth Assembly, Meetings of Committees, Minutes of First Committee, p. 97.

mittee of the Assembly, the following version was adopted by unanimous vote on September 22, 1924:¹⁴⁶

The Assembly:

Considering that the experience of five years has demonstrated the valuable services which the League of Nations can render towards rapidly meeting the legislative needs of international relations, and recalling particularly the important conventions already drawn up with respect to communications and transit, the simplification of Customs formalities, the recognition of arbitration clauses in commercial contracts, international labour legislation, the suppression of the traffic in women and children, the protection of minorities, as well as the recent resolutions concerning legal assistance for the poor;

Desirous of increasing the contribution of the League of Nations to the progressive codification of international law:

Requests the Council:

To convene a committee of experts, not merely possessing individually the required qualifications but also, as a body, representing the main forms of civilisation and the principal legal systems of the world. This committee, after eventually consulting the most authoritative organisations which have devoted themselves to the study of international law, and without trespassing in any way upon the official initiative which may have been taken by particular States, shall have the duty:

(1) To prepare a provisional list of the subjects of international law the regulation of which by international agreement would seem to be the most desirable and realisable at the present moment; and

(2) After communication of the list by the Secretariat to the Governments of States, whether Members of the League or not, for their opinion, to examine the replies received; and

(3) To report to the Council on the questions which are sufficiently ripe and on the procedure which might be followed with a view to preparing eventually for conferences for their solution.

On December 11, 1924, the Council meeting in Rome set up this Committee,¹⁴⁷ and its first meeting has now been set for April 1, 1925.

It is not the task of this Committee to propose the substantive changes to be made in existing law; still less is it to draft any new provisions for a code. It is to "prepare a provisional list of the subjects of international law the regulation of which by international agreement would seem to be most desirable at the present moment," and after this list has been studied by the various Governments of the world, of members of the League and non-members of the League, "to report to the Council on the questions which are sufficiently ripe"

¹⁴⁶Verbatim Record of Fifth Assembly, Seventeenth Plenary Meeting, p. 5.

¹⁴⁷League of Nations Official Journal, February 1925, p. 143.

for legislation.¹⁴⁸ Future attempts to make adequate the law of nations of the twentieth century are not to depend on chance, therefore;¹⁴⁹ they will be the result of a deliberated and planned course of action. The world's intelligence is at last being focussed on the job of making our law of nations fit our time; conscious effort is to supersede our attitude of *laissez-faire* and our conception of automatic progress; and the twentieth century is to make a law, good or bad, according to its own lights.

Now the measure of success which will attend this new method will largely depend on the procedure followed, and the field is so unexplored that many problems of procedure may give difficulty. The Benthamites did not find it "difficult to devise how the nations of the civilized world might concur in the framing of a code,"¹⁵⁰ and many laymen seem to share that notion today.¹⁵¹ The task has been immensely simplified by the establishment of the machinery which we call the League of Nations, but it is by no means simple even with this new aid.

First of all, there is the problem as to how formulations will be initiated. Should they be begun by official conferences, or should such conferences await the action of unofficial bodies? President Coolidge recently declared that "we can look more hopefully, in the first instance, for research and studies that are likely to be productive of results, to a cooperation among representatives of the bar and members of international law institutes and societies, than to a conference of those who are technically representative of their respective governments."¹⁵² The work of the Institute of International Law since 1875,¹⁵³ of the Comité Maritime International since 1897, and of the American Institute of International Law has paved the way for some restatement of the existing law, which might be of value even if it

¹⁴⁸Cf. the provision in the Final Act of the Second Peace Conference at The Hague in 1907, suggesting that a preparatory committee to be created before the meeting of a Third Conference be charged with the task "of ascertaining what subjects are ripe for embodiment in an international regulation." 2 U. S. Treaties and Conventions, p. 2369, 2379.

¹⁴⁹"It has always hitherto been a more or less happy chance which has controlled international legislation. Of conscious legislative consideration and deliberation, based on far-reaching, thorough-going preparation, there is no trace." Oppenheim, *The Future of International Law* (1921), p. 33.

¹⁵⁰James Mill, *Essays on Government*, etc. (1824), p. 27.

¹⁵¹"It may take two years to prepare such a code. Senator Knox thought it would take five years." Levinson, *Outlawry of War*, p. 18.

¹⁵²Annual Message to Congress, December 3, 1924. *New York Times*, December 4, 1924, p. 8.

¹⁵³The resolutions of the Institute were collected in a very useful volume by Dr. James Brown Scott, published by the Carnegie Endowment for International Peace in 1916. The work of the International Law Association and of various national societies of international law should also be mentioned, though few of the latter are very effective.

were not given the sanction of a binding convention. But new legislation must proceed from official conferences. The Assembly of the League of Nations is such a conference, though it seldom takes any action which commits the Members of the League to new law. The statute of the Permanent Court of International Justice, for example, was drawn by the Assembly; but it was promulgated by a special protocol which all members and certain non-members of the League were free to sign or not to sign. More frequently, the Assembly has engineered the necessary preliminaries, set up bodies to do the preparatory work, and left final formulation to conferences called *ad hoc*. In such conferences, non-members of the League are frequently represented,¹⁵⁴ and conventions signed are usually opened to the signature or adhesion of states not represented.¹⁵⁵ The League machinery thus seems adequate for the purpose of assembling conferences, in spite of its lacking universal support; and it may greatly facilitate also the convoking by various governments of conferences not held under League auspices.¹⁵⁶

Such international conferences must inevitably lack many of the features of a national legislative assembly. Their distinguishing characteristic is the necessity for unanimity which, if it limits the sphere of possible agreement, also extends the range of possible acceptance of the results agreed upon. The Hague Conferences were much criticized because of the requirement of unanimity, and Professor A. Pearce Higgins thought that "the Third Conference will, if it desires to avoid the excessive waste of time of the Second, be com-

¹⁵⁴The United States was represented at the Conference on Obscene Publications and the Conference on Customs Formalities in 1923, and at the Opium Conference in 1924; and it will be represented at the Arms Traffic Conference in 1925. See also Hudson, *American Cooperation with the League of Nations*, World Peace Foundation Pamphlets, vol. VII, No. 1.

¹⁵⁵The following non-members were represented at the Conference on Customs Formalities in 1923: United States of America, Germany, Egypt. The Convention of November 3, 1923, was opened to signature or accession by any state represented at the Conference, by any Member of the League, or by any state invited by the Council. On December 10, 1923, the Council invited the following states to sign or accede: Ecuador, Mexico, Turkey and Russia.

The opium convention signed at Geneva on February 19, 1925, has been opened to the signature of Soviet Russia, Monaco, San Marino, Afghanistan, Ecuador, Hedjaz, Iceland, Lichtenstein, and the Sudan—all non-members of the League. *N. Y. Times*, March 16, 1925.

The restrictive provision in the Convention for the Pacific Settlement of International Disputes of 1899, as to the adhesion of states not represented at the Conference, was pretty clearly a mistake, and made unnecessary difficulty in admitting the South American countries to the Second Hague Conference.

¹⁵⁶For example, the Conference for the Revision of the Convention for the Protection of Industrial Property, convoked by the Netherlands Government for October, 1925, has been facilitated by the work of the Economic Committee and by a resolution of the Fifth Assembly. See *Verbatim Record of the Fifth Assembly*, September 25, 1924, p. 3. Report of the Economic Committee, September 5, 1924, p. 16.

pelled to abandon the principle of requiring unanimous votes, or to abandon entirely the principle of voting."¹⁵⁷ Judge John Bassett Moore, speaking in 1914, thought that the "requirement of unanimity" was the "chief obstacle to the efficacy" of establishing rules by legislative acts, and it seemed to him "altogether desirable that a rule should be adopted whereby it may no longer be possible for a single state to stand in the way of international legislation."¹⁵⁸ It was the same feeling that led the American League to Enforce Peace in 1915 to include in its program a provision that "conferences between the signatory Powers shall be held from time to time to formulate and codify rules of international law, which, unless some signatory shall signify its dissent within a stated period, shall thereafter govern in the decisions of the judicial tribunal."¹⁵⁹ The proposal has been put in even stronger terms by Professor Philip Baker who would have conventions adopted by law-making conferences to include provisions that "the ratification of every signatory Power would be assumed, unless within a certain fixed period it informed the other signatory Powers that it did not intend to ratify."¹⁶⁰

Such proposals may be thought to push too far the assimilation of international conferences to national parliaments.¹⁶¹ In the latter, a statute attains the force of law from the time of its enactment, and the necessity of agreement makes it essential that some kind of majority prevail; but in the former, a convention that is voted is to be signed *ad referendum*, and a state represented is not bound unless it signs and later ratifies. Each state has an interest in the drafting of the provisions of the convention which is to be open to its later acceptance, and in few cases where universality is desired is it advisable to determine upon those provisions without unanimous agreement. Since a later choice is open, a majority will only bind a majority. Indeed, voting has not the same significance as in national parliaments.¹⁶² Noses are seldom counted in an international conference, though important matters of procedure are frequently determined by

¹⁵⁷Higgins, *The Hague Peace Conferences (1909)*, p. 523. See also F. C. Hicks, "The Equality of States and The Hague Conferences", 2 *Amer. Jour. Int. Law*, 530, 560.

¹⁵⁸Moore, *International Law and Some Current Illusions (1924)*, p. 303.

¹⁵⁹Proceedings of the First Annual National Assemblage of the League to Enforce Peace (1916), p. 8.

¹⁶⁰Baker, "The Codification of International Law", *British Year-Book of International Law*, 1924, p. 63.

¹⁶¹See Scott, *The Hague Conferences (1909)*, I, p. 36; Scott, *Hague Conventions and Declarations (1915)*, p. x.

¹⁶²See Denys P. Myers, "Representation in Public International Organs", 8 *Amer. Jour. Int. Law* 81.

majority vote.¹⁶³ Most conventions provide for their coming into force between the states that ratify, even though some of the signatories fail to ratify, and a dissentient state sometimes prefers escape through non-ratification to voting against the clear majority.¹⁶⁴ On the whole, therefore, the requirement of unanimity does not greatly detract from the effectiveness of international conferences. Yet in some recent conferences it has been found possible to get away from it. The special composition of the International Labor Conferences led to the provision that a draft convention might be adopted by a two-thirds vote, a member being bound only to bring it "before the authority or authorities within whose competence the matter lies, for the enactment of legislation or other action."¹⁶⁵ The General Conference on Communications and Transit has followed the innovation of the Labor Organization, and requires only a majority of two-thirds "for the final adoption by the Conference of a proposal mentioned in the agenda."¹⁶⁶ The rules of the Fifth International Conference of American States provide that resolutions or motions may be approved by "the affirmative vote of an absolute majority of the delegations."¹⁶⁷

A second problem as to procedure in international conferences grows out of their size and the difficulty of their engaging in cooperative deliberation. Differences of language make their proceedings slow,¹⁶⁸ and it is essential that an experienced staff be assembled for it; but this seems possible only if permanent organization is maintained.¹⁶⁹ The Secretariat of the League of Nations meets a great want in this respect. The exchanges of delegates must also be preceded by careful preparatory work, and many have been the complaints in the past

¹⁶³See the rules of procedure of the Assembly of the League of Nations, rule 19. Record of First Assembly, Plenary Meetings, p. 240.

¹⁶⁴See Oppenheim, *The Future of International Law*, p. 30 ff.

¹⁶⁵Article 405 of the Treaty of Versailles. The labor conventions are not signed by representatives; for the controversy between the French Government and the International Labor Office over the ratification of unsigned conventions, see Report of the Director of the International Labor Office, 1924, p. 111. By the action of the Sixth Conference in 1924, a procedure is envisaged by which, before a draft convention is promulgated for action by the Members, it may receive the approval of two-thirds of two successive conferences. See Proceedings of Sixth International Labor Conference (1924), I, p. 223.

¹⁶⁶Article 12 of the rules for the organization of the General Conferences. League of Nations Document C. 15. M. 10. 1921. VIII.

¹⁶⁷Article 17 of the regulations. See Report of American Delegates, p. 38. The Second, Third and Fourth Conferences had a similar rule. See also the draft regulations of the International Commission of Jurists, which met in Rio de Janeiro in 1912. U. S. Foreign Relations, 1912, p. 32.

¹⁶⁸See Dr. Scott's discussion of "The International Language" in Carnegie Endowment Year-Book, 1923, pp. 285-289.

¹⁶⁹The American Delegates at the Fifth International Conference of American States reported that they "experienced much difficulty" at Santiago because of inadequate translation and interpretation. Report, p. 29.

that such preparation was lacking.¹⁷⁰ This was recognized at the Second Hague Conference in the recommendation that a "preparatory committee should be charged by the Governments" to arrange for the work of the proposed third Conference.¹⁷¹ The value of the new permanent agencies of the League of Nations for conducting such preparation—the Secretariat and the various permanent committees maintained—cannot be overestimated.¹⁷²

A third problem with reference to international legislation relates to the revision of international conventions and keeping them up to date. Some of the law-making declarations of the political conferences of the past century were made for all time to come. An enunciation of a fixed law of nature was not, before the days of Einstein at any rate, to be influenced by the passing of time.¹⁷³ According to the declaration of 1871, a state could only with difficulty escape from a declaration to which it had once subscribed. But recent treaties usually fix a time limit for their duration, and in most of the international legislation of the twentieth century it seems essential that the door be left open for periodical revision. "Municipal legislation can at any time be annulled or altered by the sovereign law-maker; but international legislation is not open to such treatment."¹⁷⁴ The provisions for possible denunciation in the Hague Conventions seem essential but insufficient. The recent labor conventions provide that at least once in ten years, the Governing Body of the International Labour Office shall report to the Conference on the working of each Convention and shall consider the desirability of placing on the agenda of the Conference the question of its revision or modification.¹⁷⁵ Other recent conventions such as the Customs Formalities Convention, the Obscene Publications Convention and the Conventions adopted by the Conference on Transit and Communications specifically provide for possible revision. But the process of keeping legislation up to date makes it essential that conferences be held regularly

¹⁷⁰Another reason why no results were reached on several of the subjects introduced [at the Second Hague Conference] was the absence of preparation on the part of many of the delegations." Higgins, *The Hague Peace Conferences*, p. 523. See, also, Scott, *Hague Peace Conferences*, p. 736.

¹⁷¹On efforts of the United States to have this committee constituted, see U. S. Foreign Relations, 1914, pp. 4-5, 10-11. On the importance of the Pan-American Union to the International Conferences of American States, see Reinsch, "The Fourth International Conference of American Republics," 4 *Amer. Jour. Int. Law*, 777, 785.

¹⁷²The Opium Conference in 1924 would have been impossible but for the work of the Advisory Committee on Traffic in Opium, beginning in 1921.

¹⁷³"There can be no prescription old enough to supersede the law of nature, and the grant of God Almighty." James Otis, *Rights of the British Colonies* (1765), p. 16.

¹⁷⁴Oppenheim, *The Future of International Law*, p. 32. Cf. Pillet, *Les Conventions De La Haye* (1918), p. 89.

¹⁷⁵See also Article 14 of the Industrial Property Convention of 1883. 2 U. S. Treaties and Conventions, pp. 1939, 1948.

or periodically, and until permanent machinery such as the Council and Assembly of the League of Nations had been established it was always questionable whether regularity of meeting could be counted upon. The various international public unions¹⁷⁶ and the International Conferences of American States helped to vindicate the practise of periodicity, and the establishment of the League of Nations has resulted in very frequent conferences. With the Assembly and the Labor Conference meeting each year, and with the Council meeting four times each year, it is possible both to expedite preparatory measures and to follow more closely the current working of international legislation.

Permanent machinery means also that agencies are at hand to encourage the ratification or other acceptance of an international convention after it has been promulgated by a conference. The adjournment of international conferences in the past has too frequently meant that interest in its achievements sagged; the particular government which called the conference grew discouraged; and its results were allowed to be forgotten. The Brussels Declaration of 1874 and the Declaration of London of 1909 were never ratified. The greatest difficulty was experienced in putting into effect the Opium Convention of 1912. Several of the treaties of the Washington Conference have not yet been ratified, though three years have elapsed since it adjourned. Judge Moore has pointed out that the International Conferences of American States have had "one capital defect. They lacked a permanent organization to carry on their work."¹⁷⁷ Hence, after they adjourned, the excellent and far-reaching plans which they had incorporated in treaties, conventions, and resolutions often lapsed and remained unexecuted for want of a continuous and permanent body to follow them up and attend to their ratification, application and development."¹⁷⁸ The permanent organization has now

¹⁷⁶The Universal Postal Union Convention of 1920 provides for a Congress at the demand of two-thirds of the governments, and in any case not later than five years after the entry into force of the acts concluded at the last Congress. See Article 27. See also Article 17 of the Pan-American Postal Union Convention of 1921. Each General Assembly of the International Institute of Agriculture fixes the date of the next session. The Conference on Weights and Measures meets once in every six years, according to Article 7 of the Regulations annexed to the Convention of 1875, and Article 7 of the Regulations annexed to the Convention of 1921.

Cf. Article 21 of the Treaty for the Limitation of Naval Armament, signed at Washington on February 6, 1922.

¹⁷⁷The Pan-American Union is maintained under a resolution of the Conferences, the Fifth Conference having postponed the preparation of a convention on the subject. See Report of American Delegates to the Fifth Conference, pp. 6, 125.

¹⁷⁸Moore, "The Work of the International High Commission", Senate Document No. 261, 66th Congress, 2d Session, p. 4 (1920). On the action of Governments with reference to treaties and conventions drawn up by the Conferences of American States, see the Handbook prepared by the Pan-American Union for the use of the Delegates to the Fifth Conference, pp. 6-20.

been supplied, and if some of the Conventions fathered by the League of Nations have not been brought into force promptly, our situation is a more hopeful one because it exists and functions.

All of these problems promise to give less difficulty in the post-war world than they gave prior to 1914, because fifty-five peoples are today maintaining the League of Nations. Cooperative efforts to legislate for world society can now be undertaken with far greater prospect of success than at any time in the past. Even the optimism of Professor Oppenheim did not enable him to envisage the progress which has been made in the five years since his death. With so much fresh impetus given to the conception that international law may be consciously made, we may sanguinely look forward to a generation of productive effort, and possibly the results will mean a complete rejuvenation of the law of nations. Much of the new legislation will not be the work of lawyers, but it must be incorporated into our legal system and our profession cannot stand aloof while it is being made.

What then may we say of the prospect for international law in the twentieth century? I doubt if there has been any other decade since 1625 when the prospect was so bright. The nineteenth century made the peoples of the world into an international community. The twentieth century must convert that community into an organized society. The law of nations which will serve such a society must be in large degree a law of the twentieth century's own making. It was not handed down to us by Grotius, it was not distilled for us by the eighteenth century naturalists, it has not sprung out of the social and industrial conditions of the nineteenth century. It must be the creature of our twentieth century thinking, it must grow out of our own efforts, blind though they may be, to meet twentieth century needs. The building of such a law of nations offers us a romantic opportunity for achievement. Our faith in ourselves and the patterns in our minds will condition our success in taking advantage of it. We cannot rest content with what has come down to us; we cannot simply lengthen and broaden; we, too, must do some building. The foundations of our law, its aims and its philosophic roots, must be re-examined. At the same time we must meet the legal demands of a work-a-day world which is as much in the throes of transition as was the world of 1625. If we cannot match Grotius' achievement, we may at least copy his method and share his daring, and I think we may hope to make the twentieth century as significant as he made the seventeenth.