

# THE SECOND HAGUE PEACE CONFERENCE

BY

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Members of the Conference

PRESENTED BY MR. LODGE

APRIL 14, 1908.—Ordered to be printed

WASHINGTON  
GOVERNMENT PRINTING OFFICE

1908

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# The Net Result at The Hague.

By DAVID JAYNE HILL.

[Reprinted from the Review of Reviews, December, 1907.]

There are two widely accepted theories with regard to the pacification of the world would tend to belittle the value of The Hague Conferences. One is that permanent peace between the nations is intrinsically impossible, because their vital interests and purposes are in essential conflict, and the love of domination is so strong in human nature that war is certain always to recur in the future as it has in the past. The opposing theory is that universal peace is at once attainable by the mere resolution to abolish war, and that governments have only to agree to maintain peace by referring all their differences to third parties for settlement, binding themselves to abide by their decisions, whatever they may be.

Those who hold the first theory regard international conferences like those that have been held at The Hague as nugatory and superfluous, for the reason that such congresses can add nothing to the motives to refrain from war or to the power to prevent it. On the other hand, those who accept the second theory regard as sterile and derisory all discussions and agreements that do not go to the root of the matter and by one decisive act render war impossible.

Between these two ways of thinking, The Hague Conferences have been saluted with contempt on the one hand, and satire on the other; and have found their friends chiefly among those who consider that education, the perception of the practical value of law, and the gradual subjection of impulse to reason are progressive elements of national development under the laws of social evolution; and who, therefore, simply ask that, as in other spheres of political growth, there may be found in international relations a reasonable rate of progress toward the realization of the great ideals of peace, cooperation, and good will.

Leaving aside the merely theoretical aspects of the subject, let us modestly inquire what are the results of the Second Peace Conference at The Hague?

It is not without significance that, for the first time in the history of the world, the representatives of forty-five independent powers—diplomats, jurists, and experts in military and naval science—have been able to meet together in a friendly manner and to discuss without animosity some of the most delicate international questions during more than four months without a rupture of personal or national amity. When it is considered that the Second Peace Conference at The Hague has included nearly every sovereign state—and all of the greatest importance—that in many instances the truth has been

spoken clearly, earnestly, and sometimes with vivacity; that some of the delegates were but recently arrayed against each other in the heat of battle on sea and land, that others held or represented opinions diametrically opposed, that they were all largely occupied with considering what they might or might not do to one another in the event of a future struggle in which their lives and those of their countrymen would be the pawns, the courtesy, the reasonableness, and the agreement of these gentlemen regarding certain great principles present a commentary on our contemporary civilization and an exposition of its tendencies most gratifying to the moralist and the philanthropist as well as to the jurist and the publicist.

But what has the Second Conference done? It has demonstrated, first of all, not only that a universal congress of this character is possible, but that certain great principles—or postulates of constructive action, as we may call them—are now beyond dispute. Among these are the propositions that peace is the normal and war the abnormal condition of civilized nations; that the relations of sovereign states are properly based on principles of justice, and not upon force; that really sovereign states should have equal rights before the bar of international justice, independently of their size or military strength; that disputes between governments should be settled, as far as possible, by judicial methods, and not by war; and that war, if inevitable, is an evil whose disastrous consequences—especially as regard neutrals, noncombatants, the sick and the wounded—should by general agreement be reduced to a minimum.

What then has the conference done to give practical effect to these principles? It has concluded thirteen conventions, made two declarations, passed one resolution, emitted five *voeux*—which the irreverent characterize as “pious wishes”—and offered one special recommendation.

As the conventions have not yet been ratified, and the action which the different governments may take regarding them is unknown, it would not be appropriate for a recent delegate to do more than describe them in the most objective manner. It is impossible, therefore, at this time and in this article to attempt an analysis of the motives and policies of the different governments—interesting as this might be—in fixing the limitations that have been imposed. It is important to note, however, that, whatever may be the fate of these treaties as respects ratification and subsequent execution, they accurately register the degree of progress which an international conference, seriously and conscientiously aiming at the task of pacification, is now ready to accept.

The work of the conference not only serves to indicate the exact stage that has been reached in international development—which has a considerable value for students of the subject—but it renders apparent what remains to be done in order to carry forward the movement of which it forms a part. That movement can not be promoted by heaping reproaches upon those powers whose conservatism has prevented a further advance in making definite engagements. Each sovereign state has its own peculiar problems of government, is the rightful judge of its own interests and responsibilities, and can not justly be placed in the pillory of public condemnation for the attitude which it regards as appropriate to the discharge of its obligations to its constituents. It is by solid argument and by good example, and not by

censure, therefore, that international progress is to be promoted. However dear our theories and ideas may be to us as individuals or as nations, the first principle of all harmonious international development is that no sovereign state is to be coerced, and that each shall be permitted to act freely in the light of its interests and responsibilities as it sees them. Progress, therefore, can be made no faster than the powers will consent to make it; and that consent will depend in the future, as it has depended in the past, upon educational influence and wise diplomacy. What, then, is the stage of progress actually attained by the Second Peace Conference?

The first convention is a careful revision of the treaty of 1899 for the pacific settlement of international disputes. With regard to good offices and mediation, a slight step forward was taken by the acceptance of the American proposition that the initiative of powers foreign to the controversy in offering them is not only "useful" but "desirable." Greater precision has been given to the operation of commissions of inquiry, whose great utility has already been tested, but it was decided that the functions of such commissions should be confined to a determination of facts and should not extend to fixing responsibility. As regards arbitration, while it was reasserted that "in questions of a legal character, and especially in the interpretation or application of international conventions, arbitration is recognized by the contracting powers as the most efficacious and at the same time the most equitable means of settling differences that have not been adjusted by diplomacy," and, "in consequence, it would be desirable that, in contentions, of this character, the powers should resort to arbitration," it was not found possible to render this resort an obligation.

It is necessary to state, however, that while unanimity upon this proposal was not obtainable—even for a convention that omitted all questions affecting "the vital interests, independence, or honor" of the contestants and included only a meager list of mainly unimportant subjects—32 powers voted in favor of it, only 9 were opposed, and 3 abstained from voting. As practical unanimity was held to be necessary for the inclusion of a convention in the final act, even this very moderate attempt at obligatory arbitration was unfruitful. Still, as this strong manifestation of a disposition to make a definite engagement could not conveniently be nullified without being in some measure recognized, it was resolved, with four abstentions, that the first commission was:

Unanimous (1) in recognizing the principle of obligatory arbitration; and (2) in declaring that certain differences, notably those relative to the interpretation and application of conventional stipulations, are susceptible of being submitted to obligatory arbitration without restriction.

Regarding this resolution as a retreat from the more advanced position that had been taken by 32 powers, the head of the American delegation clearly explained its attitude and refrained from voting.

It must, in justice, be added that some of the powers voting against an obligatory arbitration convention probably did so chiefly for the purpose of avoiding the isolation of others, and that some of the powers most earnest in opposing the project not only have negotiated special treaties of obligatory arbitration, but declare their intention of negotiating many more. The state of the question, then, is this: All accept the principle of obligatory arbitration in certain classes of

cases, 32 powers are prepared to make definite engagements with all the rest, 9 prefer to make them only with states on whose responsibility they can rely, and 3 decline at present to commit themselves.

The second convention relates to the limitation of the employment of force for the collection of contractual debts. The form which this American proposition finally took is sufficiently shown by citing the text of its first article:

The contracting powers are agreed not to have recourse to armed force for the recovery of contractual debts claimed of the government of one country by the government of another country as due to its nationals.

Nevertheless, that agreement will not be valid when the debtor state refuses or leaves without reply an offer of arbitration, or, in case of acceptance, renders impossible the conclusion of a protocol, or, after arbitration, fails to comply with the judgment rendered.

It is also provided that the judgment shall determine the question whether or not the claim is well founded, the amount of the debt, and the time and mode of payment.

It is hardly necessary to point out that this convention is not only a very substantial gain in the process of substituting justice for force in international dealings, but demonstrates a spirit of conciliation and regard for equity in the treatment of the weak by the strong that promises well for the future. Its deep significance for the financial credit and the political security of the smaller states, especially on the American continents, does not require emphasis. Although accompanied with several reserves by certain states which hold that force should in no case be employed for the collection of debts based on contract, and the abstention of six of the smaller European states, the proposition was adopted by the conference by 39 votes with 5 abstentions.

The third, fourth, and fifth conventions relate to the opening of hostilities, the laws and customs of war on land, and the rights and duties of neutral powers. The provisions are, in general, in the interest of humanity, and a wider recognition of the world's brotherhood. The sixth, seventh, eighth, and ninth conventions relate to the prosecution of naval warfare.

The acceptance of the American proposition for the immunity of private property of belligerents at sea—which received 21 favorable votes in the fourth commission against 11, and 1 abstention—would, no doubt, have radically affected the substance of this group of conventions; but, being opposed by several of the most important naval powers, it was impossible to obtain for it the necessary support.

As several of these conventions rest upon no general principle whatever, but consist merely of concessions based upon the maritime interests of the powers, no attempt will be made to explain them here; for, in order to comprehend them, it is necessary to refer to the text of articles as interpreted by the *procès-verbaux* of the conference. The sixth and seventh conventions the American delegation did not sign, partly because they seem to be more oppressive to the rights of private property than the present customary law of nations, and partly because they appear to affect the rights of self-defense, which the United States, as a peaceful nation, has always maintained as correlative to customs of naval warfare which have not yet been abolished. If, on the other hand, the restrictions

upon submarine mines do not seem to humanitarians as radical as they would desire it, it must be remembered that nations with long and distant coast lines exposed to the attacks of powerful navies can not safely forego the right of self-protection even at considerable risk to peaceful commerce. As respects the bombardment of unfortified places by naval forces, the ninth convention prohibits such forms of attack, except when they contain military material for which surrender has been demanded and refused.

The tenth convention applies the principles of the revised Geneva convention to maritime warfare. The eleventh exempts from capture all postal correspondence, official or private, found at sea on any vessel, neutral or belligerent, as well as the boats of fishermen. The twelfth establishes an international prize court, to which appeal may be made from the decision of a belligerent prize court, under certain conditions, either by a neutral power, a neutral private person, or even a private individual belonging to a belligerent power, if the decision of the national tribunal concerns merchandise carried by a neutral ship. The thirteenth convention presents a code of thirty-three articles concerning the rights and duties of neutral powers in case of maritime war. It has not been signed by the American plenipotentiaries, for the reason that it imposes upon neutrals obligations which it might be practicable for them to discharge.

Such are the conventional engagements which the second peace conference at The Hague has proposed to the nations. In addition, it has adopted by 28 votes to 8, with 7 abstentions, a declaration prohibiting the throwing of projectiles and explosives from balloons. In a resolution stating that it is "highly desirable" to see the governments take up the serious study of the continued increase of military charges, it has merely absolved itself from the discussion of a question which it would be powerless to settle, and has thrown the responsibility for examining it upon the separate governments. As no one of them has made a definite proposition to diminish its military strength, it is difficult to see how the conference could take any other than this purely advisory attitude.

There remains the *voeu*. These unfulfilled aspirations are confessions that the conference has had hopes that it could not realize. Foremost among them is the proposed adoption of an elaborate project for the establishment of a court of arbitral justice, not to supersede but to supplement the present tribunal of arbitration. Originally suggested in the instructions of the American delegation, its present form is due to the collaboration of the delegates of the United States, Great Britain, and Germany. It is appended textually to the final act, and requires for completion nothing but an agreement for the choice of judges. The serious labor expended upon it is not lost, though its fruits may be late in maturing. It only remains for the powers to take up the project at the proper time through diplomatic channels, and thus carry to completion a great international institution.

The second *voeu* invites the competent authorities, in case of war, to consider it a special duty to assure and protect pacific relations between the populations of belligerent states and neutral countries. The third proposes that the situation of strangers established in the territory of the powers with regard to military burdens be made the subject of special conventions. The fourth urges the elaboration of

a code regarding the laws and customs of naval warfare by the next conference. Finally, the Third Peace Conference at The Hague is foreshadowed in the recommendation that, after an interval similar to that which has elapsed between the preceding and the recent meeting, a date be fixed for another by common agreement between the powers, that a sufficient notice be given in advance, and that two years before it is convened a special committee shall prepare its programme, and be charged with the proposal of its mode of organization and procedure.

Until that time the promotion of the peace and good understanding of the nations will probably be left to the methods of diplomacy. If the task remains difficult and delicate, it should certainly be less so than it was before the Second Peace Conference convened; but the experience of that assembly has made it more clearly evident that, as the work of schools and churches does not consist chiefly in educational and ecclesiastical congresses but in the steady, careful, and faithful performance of duty by the rank and file of the teachers and the clergy, so international conferences in the interest of peace and justice owe their fruits mainly to the care, the fidelity, and the competency of statesmen and diplomatists who maintain the daily relations between sovereign states. That this is, in truth, a serious business, affecting the welfare of all mankind, is becoming more evident as the interests of great nations are more and more closely intertwined by the growth of individual and commercial intercourse. Without the previous preparation for the recent conference by the action of the eminent Secretary of State of the United States, and the ripe experience and high prestige of the ambassadors whom the President sent to The Hague to head the American delegation, it would have been difficult to hold the place there which that delegation has held. If the results of the conference do not seem brilliant, it is not because noble ideals were not held steadily aloft, but because it is the function of an international conference simply to register the general average of progress that has been attained. However, this may be estimated, it represents the materials with which the diplomacy of the future has to deal.

# The Results of the Second Hague Conference.

By Baron d'ESTOURNELLES DE CONSTANT.

[Reprinted from *The Independent*, November 21, 1907.]

During the first two months of the conference I was continually saying and writing that it would be a great deception, that it would consecrate the largest portion of its time to the amelioration rather than to the prevention of war. In this way I tried to recall to the conference the requirements of public opinion; it was my duty and it was in the interest of our work. The conference had, in fact, begun with the discussion of things relatively secondary, in accordance with the instructions the delegates had received from their governments. But, later on, during the last two months, it awoke, emancipated itself, was in every respect worthy of admiration—this justice I am bound to render to it. Gradually its ambition was aroused, and at length it devoted its energies spontaneously to the second part of its task—that is to say, to the principal programme, which it had not anticipated and which it was now obliged to improvise in its conscience. In order to arrive at this stage it was necessary that it should become, in some sort, a new assembly, a more independent assembly, a true moral person, living not only by virtue of the orders which each delegate received from his distant government, but also living its own proper life; it was necessary that it should become not solely an assembly of official representatives from all the states, but the collective representation of humanity.

I can not in a few lines explain this important phenomenon. I have spoken elsewhere of the potent and benevolent action exercised by M. Léon Bourgeois. I shall have something more to say of it, but to-day I can only direct attention to the fact that certain functionaries, certain ambassadors who had attained the summit of their career, found at The Hague an opportunity of rising still higher and of bettering and improving one another by the most generous and fruitful of rivalries. And for this very reason, after four months of intense and often excessive and ungrateful labor, all the delegates separated with a mixture of joy and sorrow, glad to be free to see again their country and their homes, but deeply affected by the thought that they were leaving a field of new action in which the seed had been so well sown. The seed, it is true, is still under ground, to the great satisfaction of the skeptics, but it will germinate even quicker still than that which was a subject of such mockery in 1899, and which did not at that time appear to have a better chance of successful growth.

The general deception of public opinion is explained by two motives, both to the honor of the conference.

First, it was not able to discuss the limitation of armaments. This question was not, in fact, on its programme. The conference could not study it, and no international assembly will ever be able to study it until it is the object of preliminary and national study in all the countries interested. A national study first, an international discussion afterwards. I have never ceased for a moment to insist on this, and notably in my report to the Interparliamentary Conference of London in 1906. If the conference had gone beyond this natural order it would have come to nothing; it therefore did well to recall to governments their duty and then pass on to other questions.

I will add that, whatever may be said to the contrary, the discussion on this question of limitation has not been useless, and, as far as I am concerned, my conscience is tranquil on this subject, for the more it is discussed, as long as it is declared that arbitration must first be organized, the more must the cause of international justice be necessarily served; it is a means of emphasizing more strongly the urgency of this organization. If the conference had not been obliged to put aside the limitation of armaments it would have been less energetic, perhaps, in seeking a compensation in the study of arbitration.

Secondly, the conference lasted four months, and yet the results it has achieved have been hardly apparent. That is its greatest merit. An assembly representing the world must surely be congratulated on having preferred the ungrateful preparation of durable solutions to delusive immediate solutions. Who is there, then, that can believe this labor of four months to be lost labor? The conference has preferred the satisfaction of duty accomplished to the eulogies of the press, always on the lookout for sensational news, and, in the present case, disappointed. Its confidence in the future was so well assured that it did not fear to dictate to the governments themselves the line of conduct they should have to follow. Enlightened by the difficulties of its own task, it has given them its experience as an example. It declared by a solemn decision that it limited its rôle to an action purely transitory, and that a Third Conference was necessary, and that after the Third Conference many others should ensue. Thus, of its own volition, it transformed its exceptional reunion into a simple session—the normal, regular, automatic session of a parliament of humanity. It did not fear to add to this declaration a recommendation not less essential—it demanded that the next session should be prepared at least two years in advance.

Is not this a brilliant testimony of confidence? A step forward on the road of universal progress?

How is it possible, moreover, not to admire, as a true revelation, the fact that three hundred delegates from all the states of the world have been able to discuss during four months the gravest, the most delicate questions, questions which no one ventures to touch upon even in a national assembly, and which for this reason were absolutely new? Yet they discussed them in all their details, discussed them thoroughly, with all the vivacity, all the passion, which such subjects entailed, but, nevertheless, without at any time the slightest disorder, the slightest difficulty arising during the discussion. What a clinching argument this is to the objections of those so-called statesmen who claim that the greatest interests of the world are exactly those which must be most carefully excluded from public discussion!

But, outside the great moral and preparatory results of the Second Conference of The Hague, I could cite a very large number of immediate results that are appreciable. Among the fourteen conventions elaborated and finally signed will be found very numerous dispositions tending to render war at once rarer and more difficult, and at the same time less inhuman. That is something, and I will return to it some other day.

The plan of a court of arbitration was studied at great length and finally elaborated. In the course of the discussion an entirely new principle, that of the moral equality of states, was brought forward. Now, it must surely be admitted that this principle would of itself have merited the examination of a peace conference. If it has not been entirely resolved, it is, at least, of great consequence that it has been freely and openly discussed. The governments will in their turn have to study it and, as a logical result, to name the judges of the court. The conference could not and ought not to take upon itself the solution of this problem. It has laid it down in all its terms; the governments will, in their turn, have to take action.

As to obligatory arbitration, is it nothing, then, to have affirmed its principle as an incontestable progress discussed only in its application? And does anyone think that this solemn affirmation is to remain negligible in the eyes of the world, and that the different peoples will not have it recorded, so that they may be able to recall it to their governments at the proper moment? And, besides, as to the question of application itself, thirty-five states out of forty-four have declared themselves ready to favor a general treaty of obligatory arbitration. Quite a mechanism of admirable simplification has been provided and accepted which permits all the states to be inscribed on a central tableau, and to replace by this simple formality an entire inextricable multitude of treaties, all differing from one another. This alone constitutes an innovation in every way worthy of the twentieth century. Who, then, will dare to claim that this agreement of the thirty-five liberal states of the world is without importance, on the pretext that a minority of the conference refused to accept it, or, at least, to affirm it by a general convention which that minority would alone have refrained from signing?

What does this prove? Simply this fact: The majority exists; it reckons more than three-fourths of the states. The minority took upon itself to prevent this agreement, but, in doing so, it has emphasized and strengthened it; on the other hand, it has laid bare the opposition of some states—or, more correctly, of a single state, Germany—dragging along with it in its resistance a great power, Austria, with Turkey, Roumania, Greece, Bulgaria, Belgium, Luxembourg, and Switzerland.

Yet, and I wish to repeat it, the representative of Germany was careful to state that he stood apart only with regard to the application, but that, as to the principle, he was a partisan of obligatory arbitration.

Thus the world was divided into two camps of very unequal importance. On one side was the mass of the states of the world, great and small, representing progress; on the other, Germany, representing the opposition, but an opposition already hesitating and pleading extenuating circumstances. If we recall the Germany of 1899 and if we note its progress since that epoch, we shall not be very much mis-

taken in predicting that, between now and the Third Conference, its progress will be even still more rapid and remarkable. Certainly, Germany has advanced very far from her position in 1899; she is still backward in relation to the other powers, but she will soon wish to catch up with the majority. This will be the result of the Conference of 1907, and particularly the work of the majority, which will have determined the general progress. But for it we should be absorbed in the platonic adoration of the memories of 1899. To-day we have thirty-five states out of forty-four demanding the convention of obligatory arbitration which we have drawn up and voted, and which we have only to sign. Even that is something, is it not?

The Americans, in that fine and peaceful discussion of several months, have been splendid, and the youngest of all was certainly my eminent friend, Mr. Choate, who defended, with all the force of his authority and talent, the work of the majority against the criticisms of Baron Marschall. He lost his case, say the ignorant, since the opposition triumphed. Not so; he won it, since he reduced the opposition to its simplest expression, not to say to a simple question of ciphers. "We are thirty-five," he said, "and you? I could count your numbers on a single hand." These words told and will remain. Humanity will not let itself be stopped by a minority of a few votes; or, rather, the minority will be converted.

General Porter, as a faithful soldier, has fought valiantly also: "I have enlisted for the war," said he, "and I will go on even to the end." He had the satisfaction of obtaining an almost unanimous vote from the conference and of preventing governments from having recourse henceforth to force for the recovery of debts from a state. It is a result that reflects much honor on the United States and that must give satisfaction to everybody.

I should have liked to say something of the services of Mr. Scott, Mr. Hill, Mr. Buchanan, Mr. Butler, and also of the able representatives of the other republics of America—Mexico, Brazil, Peru, Chile, Argentina, etc., but time does not permit it. I must content myself with declaring that America, as I have been constantly predicting for many years, has, beyond any doubt, saved the conference. But for America the conference was lost, cut in two, or, rather, would never have existed.

Thanks to America, a very important article was voted—article 48, which authorizes governments, in case of disputes, to address the bureau of The Hague directly and demand or propose arbitration. This mechanism has not been even noticed by the press, and yet it will be amply sufficient to put all the resources of arbitration in motion. Previously, when two states had a ground of quarrel, they were obliged to agree together to submit the question to arbitration, and such an agreement between two governments whose relations have become envenomed is almost impossible. To-day it is in the power of one of them to make its offer openly and thus force the second state to accept or decline that offer in presence of public opinion. It is a very great progress, although it may appear almost imperceptible, and henceforth a state that sincerely wishes to avoid war can reply to its aggressor: "I appeal to the judges of The Hague!"

Do you believe that the aggressor will be able to answer, "I care nothing for justice," without raising against him the entire public opinion of the world?

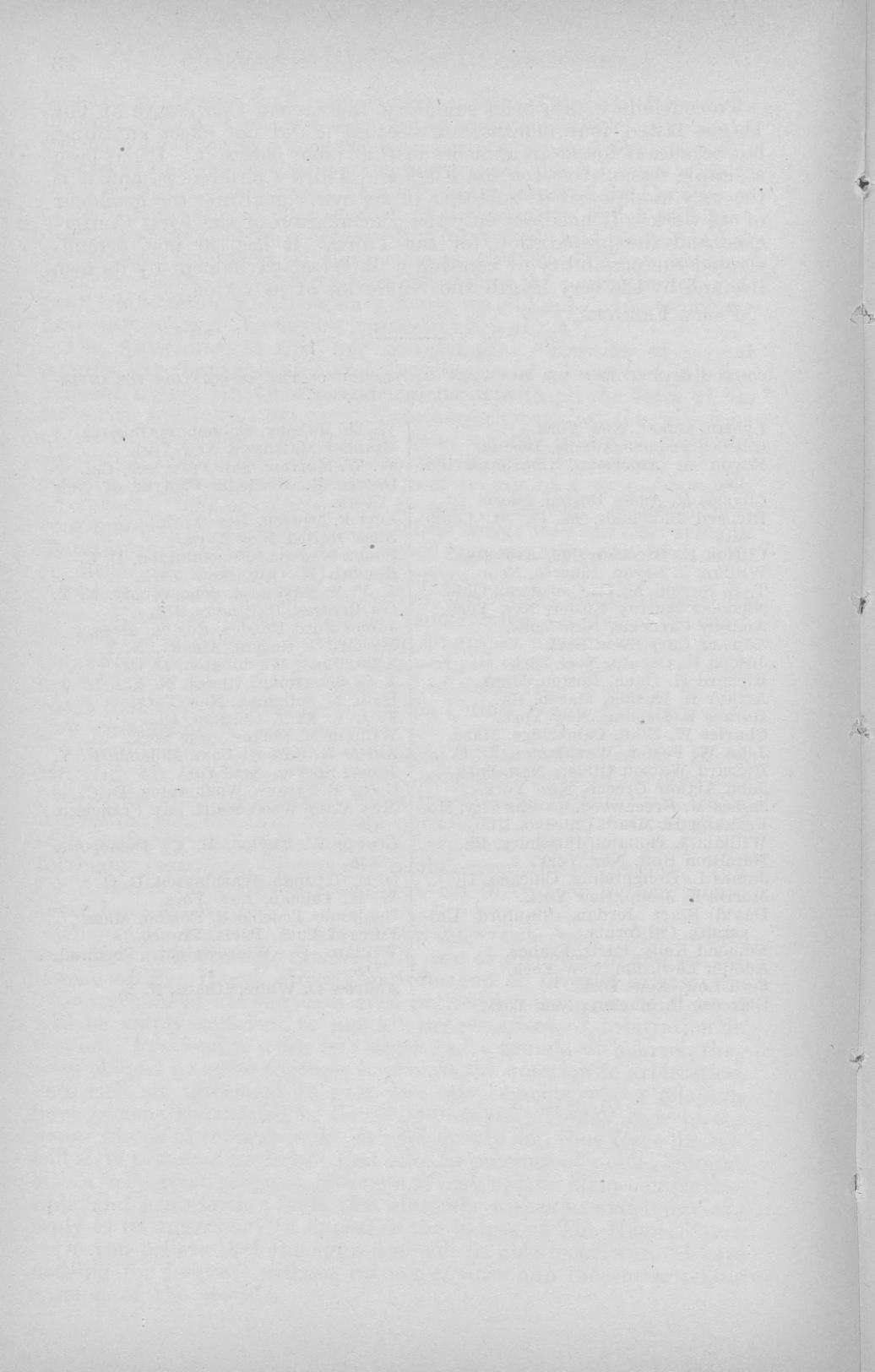
To conclude with a brief summary, the Second Conference of The Hague lasted four months, not because it did not effect anything, but because it found an immense field of labor before it. It has been a simple session between the First and Third Conferences, and it is the very modesty of its rôle that in my eyes constitutes the grandeur of its work. It has been only the continuation of the First Conference and the preparation for the Third. It has, in fine, demonstrated the possibility of creating a universal parliament by its own life and by the very length and regularity of its action.

PARIS, FRANCE.

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# The Work of the Second Hague Peace Conference.

By JAMES BROWN SCOTT.

[Reprinted from the American Journal of International Law for January, 1908.]

The Second International Peace Conference, like its predecessor of 1899, endeavored to humanize the hardships necessarily incident to war and to substitute for a resort to arms a pacific settlement of international grievances, which, if unsettled, might lead to war or make the maintenance of pacific relations difficult and problematical. The conference of 1907, no more than its immediate predecessor, satisfied the leaders of humanitarian thought. War was not abolished, nor was peace legislated into existence. Universal disarmament was as unacceptable in 1907 as in 1899, and some few nations were still unwilling to bind themselves to refer all international disputes not involving independence, vital interests, or national honor to a court of arbitration.

Deeply interested in the success of these projects, the great public felt that their failure necessarily involved the failure of the conference, notwithstanding that many wise and humanitarian measures falling short of the goal were incorporated into the law of nations. But we should not in our disappointment, and perhaps bitterness of soul, overlook positive and beneficent progress, and if we could not take the advanced position outlined by the friends of peace, we should nevertheless rejoice that many a milestone has been passed. We must not forget that an international conference is different from a parliament; that independent and sovereign nations are not bound by majorities, and that positive results are obtained by compromising upon desirable but perhaps less advanced projects. The aim of a conference is to lay down a law for all, not for the many, much less for the few; to establish a law which will be international because it is accepted and enforced by all nations.

## DEVELOPMENT OF INTERNATIONAL LAW.

The work of the conference concerned the modification of existing international law; international differences of opinion and interpretation were adjusted; doubt gave place to certainty, and, after much consideration and reflection, principles of international law were fortified, modified in part, or wholly discarded. A complete code was not established—it is doubtful whether custom and usage are ripe for codification—but important topics of international law were given the symmetry and precision of a code.

It may be maintained that international law is law in the strict sense of the word, or it may be contended that it lacks an essential

element of law, because there is no international sheriff; that it is international morality or ethics, or that finally a law of nations is the occupation of the theorist and the hope of the dreamer. However opinions may differ as to the nature of international law, there can be no doubt of the existence of certain rules and regulations which do by common consent control the conduct of independent nations; nor can there be any reasonable doubt that enlightened people of all countries take a deep and abiding interest in international law, and share the hope of the dreamer, not only that greater precision may be given to its principles, but that the principles themselves may be developed and applied with the certainty and precision of a municipal code.

From the cell of the cloister international law passed into the study of the philosopher, the jurist, and the scholar; from the study it entered the cabinets of Europe, and for two centuries and more a recognized system of international law has determined the foreign relations of nations; from the cabinet to courts of justice, where the rights of nations as well as individuals have been debated and enforced, and, finally, from the court room international law has made its way to the people, who, in last resort, dominate court and cabinet, and enlist in their service scholar as well as priest.

It was a wise remark of Sir James Mackintosh that constitutions are not made; they grow; for history demonstrates that unnatural unions dissolve; that unnatural alliances have little permanency; that constitutions struck off at the heat of a moment in times of excitement disappear with the causes to which they owe their origin. Constitutions are, in a large and broad sense of the word, codifications. They put into written and permanent form the usages and customs of the past, and they last because the spirit underlying these usages and customs is wrapped up with the existence and destiny of the people. The Constitution of the United States has lasted because it was based upon the usages and customs of England, as modified by the experience in the colonies, and the Constitution will last as long as it answers the needs of its framers, and no longer. To understand, however, the Constitution English customs and usages must be studied, and to predict the lines of development we must interpret the language of the Constitution in the light of its origin, as well as in the concrete case under investigation. It is the same with law. Law is not imposed as a system upon the people. Isolated usage develops into habit; the habit becomes crystallized into custom, and to custom there is given, consciously and unconsciously, the force of law.

The common law of England is not due to the wisdom of any one person or of any one age. It grew to meet a need; it changed with that need, and disappeared when it could no longer subserve a useful purpose. It is a growth, an organism, not a crystallization.

When, however, the process of development did not keep abreast of the age, or when new and unsuspected needs required special treatment, statutes made their appearance to supply the lack or to correct the evil. The statute would be special if a special point were involved. The statute would be general in its terms if the evil to be corrected were general, or the need of the statute was of a general, widespread nature. The more rapid the development of the country, the greater and more diversified become the needs of an enterprising

and progressive community, and consequently the more frequent would be and must be the resort to statutory enactments, in order to safeguard the rights and interests created as the result of changed conditions. Hence it follows that a system of law in its early stages springs directly out of the needs of the people. If the needs be simple, the law, of which custom is the very life, is simple. It is said to be unwritten in the sense that no custom is at once the law and the evidence, although in process of time the customs are naturally reduced to writing by people learned in customary law, and it is given precision by decrees of courts of justice. Complex situations give rise to a complex system of law, and the natural development of custom not being sufficient, the legislature steps in by statute to accelerate the development and to give to the system of law the precision, the solidity, and the refinement necessary for a complicated and progressive civilization. In this development, then, we have the local usage, the custom, and the statute.

If we turn from the common law to international law, we find that the course of development of the common law of nations has been singularly like that of the common law of England.

We first have the usages of enlightened nations. These usages spread, gain weight and influence by repeated application. We next find that the usages have taken on the form of custom, and nations from isolated or frequent usage regard the custom as binding upon them. That which is claimed as a right on the one side becomes a duty on the other, for right and duty are correlative. The demand in itself is a consent to the rule of law. The yielding to the demand is an acknowledgment of the rightfulness of the custom.

We thence have customary rules and regulations binding nations in their mutual intercourse, because the nations, either by enforcing the custom or yielding to the custom sought to be enforced, have given to the custom the weight of law. But just as the common law of England grew slowly, indeed imperceptibly, so have the usages of nations developed slowly and imperceptibly. When nations had little intercourse with one another, the need for a system of law regulating such relations was of little moment. As nations have grown, as they have come into closer contact, as no nation lives and can live in the modern world in a state of isolation, it necessarily follows that the usages and customs of nations must be developed in order adequately to meet changed conditions. The independence of the state is the very postulate of international law; but the solidarity of interest has made itself felt to such a degree that nations have yielded and must in the future yield something of their absolute liberty and independence, just as a citizen yields his absolute freedom for the benefit of society, of which he is a part.

We see, then, from this brief and imperfect sketch of the origin and nature of the common law of one particular jurisdiction, an analogy between the common law of nations, namely, the usages and customs of many nations. We find, or at least we can assume, that when only one nation existed there could be no international law. Two nations existing would have comparatively little intercourse, and the rules and regulations governing their intercourse would therefore be simple. As the two gave place to the many, and as intercourse become very frequent, the need of a more elaborate code would

become evident. Usage and custom would grow to meet the need, and in the course of time, insensibly and imperceptibly, usage and custom would take the dimensions of a code. But while that is entirely true generally, it is true with much greater force in the present and, indeed, in the immediate past; for the discovery of the New World, North and South America, and the contest for the possession of this world; the establishment of colonies with the various colonial systems, and the conflicts of interest that necessarily arose, would require a system of law adequate to settle them; and when nation became more closely connected, more intimately and frequently involved, it followed that the simplicity of the earlier usages and customs would either give place to a more complicated code or would themselves be developed in order to meet the growing needs.

#### CONGRESSES AND TREATIES.

Now, how could this be done? In this way. As nations became more closely united or related, previous usage or custom was found to be inadequate; but the spirit pervading the usage or custom was discovered and developed, precisely as the spirit in the common law was developed in order to meet a changed condition of affairs. Just as in appropriate cases the municipal legislature stepped in and corrected an abuse or covered a field by statute, conferences were held between rulers, treaties were negotiated to regulate a specific concrete controversy, and finally congresses, usually not at the beginning but at the end of the controversy, composed of many states, because the interests of many were concerned, were convened in order that that might remain settled in peace which had been established in war. The conference or congress is, it would seem, not far removed from an international legislature, whose acts are submitted *ad referendum* to the participating nations.

We therefore find that treaties mark the first general step in the development of the law of nations as between nations in recent years, for it is only in the modern world that treaties have gone far to correct inequality and to establish a system of international relations. The special or individual treaties will be comparatively simple in the principles of law announced or defined, although complicated in other respects. When the many were involved, a congress or conference came naturally into being, with the result that in this conference the questions causing the conflict would be considered and regulated, in the hope to prevent a recurrence of the conflict. The conferences and congresses were at the conclusion of a dispute. The appeal was indeed to reason, but it was unfortunately belated. Interesting examples of the post-mortem appeal to reason are furnished by the Treaty of Westphalia (1648), the Congress of Vienna (1814-15), the Congress of Paris (1856), the Congress of Berlin (1878). The Treaty of Westphalia was negotiated by representatives of the states engaged in the Thirty Years' War and the state of affairs established was hoped to be durable.

Passing over the conference and treaties concluding the wars of Louis XIV, of which the various treaties of Utrecht of 1713-14 were the most important and far-reaching in detail as well as in principle, we come to the Congress of Vienna, which attempted, by a rigid and thorough application of the principle of legitimacy, to

reconstruct Europe upon permanent lines after the crash of the French Revolution and the downfall of Napoleon. The great powers agreed among themselves and legislated for the rest of Europe. The work, therefore, was largely political, but as all were concerned all were present or bound by the determinations of the congress. It was preeminently a war conference, but it established peace—a peace which lasted for many years. At the same time its deliberations took the form of a general statute concerning river navigation, the rank of ambassadors, and the slave trade. Criticise the Congress of Vienna as we may, its work was not only of fundamental importance, but pointed the way to a better and brighter day.

Although it can not be denied that the Congress of Paris in 1856 was a war conference, its work was not wholly taken up with the issues of war. The Declaration of Paris, for example, was much more general and touched interests which, while involved in the conflict, were of wider importance than the immediate interests that led to the war or were safeguarded by the conclusion of peace. It is also true that the Congress of Berlin, in 1878, was a war congress, but it dealt particularly and largely with the Balkan Peninsula and set up a state of affairs which, while changed in part, is nevertheless the basis of order in Eastern Europe.

But alongside of these larger gatherings there were smaller meetings that have profoundly influenced the future. For example, an enthusiast in Switzerland interested countries in the treatment of sick and wounded and produced the first Geneva Convention of 1864—the Red Cross Convention, as we call it—to ameliorate the condition of the sick and wounded upon the field of battle. The convention did not come at the very end of a war; it was assembled by reason of the horrors of the war of 1859 between France and Italy against Austria. In 1868 the additional articles of the Convention of Geneva were drawn up in conference, and there was no immediate war that had caused the conference to assemble. The purport of these articles was to apply to naval warfare the principles of the Geneva Convention of 1864.

In 1868 the Czar of Russia, Alexander II, called a conference in order to consider whether or not the means of warfare might not be humanized; whether the use of certain instruments in warfare, or instruments of a certain kind, should be prohibited; whether bullets of a certain weight, of a certain explosive quality, should not be prohibited, and there was drawn up the Declaration of St. Petersburg. It is true that the declaration contemplated but was not preceded by war.

The conference that met in Brussels in 1874 upon the invitation of the Czar, and which drew up a project of an international declaration concerning the laws and customs of war, was not immediately preceded by a war; and although the project was not adopted by the powers represented, it was nevertheless the basis of the "convention dealing with the laws and customs of war" framed by the First Hague Peace Conference. The Brussels Conference undertook the codification of the laws of war—and in so far it can not be considered a peace conference—but it furnished the precious precedent of an international statute.

The various congresses and conferences referred to were summoned by the rulers and nations of Europe, and both in their calling

and in their results indicated an advance in public opinion. Public opinion, however, was not content to intrust itself wholly to nations and their rulers, but sought expression in individual and cooperative lines.

In 1873 the Institute of International Law was established at Brussels, composed of distinguished jurists and authorities on international law. Their purpose was not merely to study the problems of international law, but to advance the science by an appeal to reason. They considered the field of international law from the standpoint of theory and sought by example and precept to aid the codification of a rational system of international law. International law had thus a society whose proceedings should appear annually. It already had a journal, for in 1869 three enthusiasts, Rolin-Jaequemyns, Asser, and Westlake, established the *Revue de Droit International et de Législation Comparée*. The institute met annually and issued its annual. The Review discussed scientifically and at length important questions of international law, and, little by little, the influence of the institute and the review extended beyond the immediate country of publication and beyond the language in which the proceedings and the articles were written. A great movement looking toward advance in international lines was begun, and in reality the call of the Czar for the great conference of 1899, the First Hague Conference, was simply, paradoxical as it may seem, the substitution of national or international effort for the individual or socialized effort of the founders of the Institute of International Law.

#### FIRST HAGUE CONFERENCE.

In 1898 the Czar Nicholas called the First Peace Conference, designed chiefly, it would seem, to free nations from the burden of the constantly increasing armament by bringing about disarmament. The circular astonished the diplomats; it was not favorably received in many quarters. Thereupon a new circular was prepared enlarging the scope, relegating disarmament to a less important position, but enlarging the scope of the programme, or of the invitation, by including the consideration of various methods by which arbitration might be advanced and the peaceful solution of international difficulties made the rule. This second circular was much better received, and on the 18th day of May, 1899, the First Peace Conference of this modern world, without a war as its immediate cause, met at the House in the Woods at The Hague for the purely academic consideration of very great and important international questions.

As an understanding of the work of the First Conference is necessary to an appreciation of the recent Second Conference, the results of the deliberations of the First Conference are briefly set forth.

The work, then, of this conference took shape in three great conventions. The first was the convention for the peaceful settlement of international conflicts, which convention established, first, the right of nations to offer their good offices and mediation without having the offer or mediation considered as an unfriendly act by either or any of the contending parties; second, a commission of inquiry to ascertain the facts of an international difficulty of great and serious importance, so that the facts involved might be found impartially by a commission composed of neutrals as well as nationals. We all re-

call the Dogger Bank incident in Admiral Rojesvensky's remarkable tour of the world. Japanese vessels were supposed to be lying in wait in the North Sea. The Russian squadron opened fire. It is not related that any Japanese vessels were sunk, but certain English fishing smacks were injured and lives were lost. It is difficult to appreciate the state of mind of the Russian admiral, because one would not expect to find Japanese cruisers in the North Sea, or if one did find such cruisers, the fact of their presence would be well known. However, the Russian authorities maintained that they felt the presence of the enemy, whether through a mistake of signaling or not; fire was opened and lives were lost. Were it not well established, this would be unbelievable; but it happened. And the next step was not an unbelievable one—the next step was war. Wars have arisen for less cause than that. The national honor of both countries was involved. Great Britain could not allow its subjects to be shot with impunity; Russia could not well consent to discipline its naval authorities without an investigation. Now, an investigation to be valuable must be impartial, must be conducted more or less by neutrals, and for the first time the provisions of the convention for the peaceful solution of international conflicts in the matter of commissions of inquiry were used. A report was made by this board finding the attack unjustified, and Russia settled the damages. Rulers of nations and their responsible governments often seek to avoid war, but are frequently unable to do so. Therefore this machinery was a godsend by which a bitter dispute between two countries concerning a matter of fact might be referred to an impartial board for examination and report. Without expressing any opinion, let me call your attention to the causes, at least to an incident if it were not a cause, which preceded the Spanish-American war—the blowing up of the *Maine* in Habana Harbor. Was it blown up from within or without? An international board never considered the question. An American board did consider the question. The public passions were inflamed, and we rushed headlong into war. If this international commission had existed at that time, the President of the United States would have been in an intrenched position, for he could have insisted that this matter, being a question of fact, be submitted to a commission of inquiry ready for constitution under rules of procedure accepted by civilized nations. I can not say that the Spanish-American war would not have taken place. I am not a prophet either as to future events or as to events of the past, but I do maintain that those clauses would have made the outbreak of war much more difficult, and that therefore the establishment of a commission of inquiry is a great advance for the cause of peace.

Third, the convention for the pacific solutions of international conflicts provided a court of arbitration. Perhaps I would better say, provided for a court of international arbitration, because that court was to be created when the international controversy arose. Each nation was to select and appoint and notify to a board created at The Hague not more than four persons of good moral character and competent in international law. In case of a conflict each party was to select two from this list of judges. The judges were to elect their umpire, their presiding officer, or the nations were to provide otherwise for the selection of the umpire. In order that the tribunal thus constituted might be of service and in order that litigants might

know the exact procedure to be followed before it, an elaborate system of procedure was drawn up and approved. Since the meeting of the First Hague Conference four great and important cases have been submitted to The Hague Tribunal, have been adjudicated, and the judgments cheerfully and promptly accepted by the litigating nations. Nations appeared before the bar as suitors and resorted to law instead of force. The court has not, however, been so successful as its framers hoped, largely because it is not a court permanently in session composed of judges or jurists acting under a sense of judicial responsibility. The fear of partiality in a court constituted by the suitors for a particular purpose, with judges chosen and paid by the litigants, would seem to account for the partial success, if not failure, of the institution.

The second great convention of the First Conference was the convention for the adaptation of the Red Cross to maritime warfare. That, of course, is a technical subject, but even the layman can see what a great advance it was to have the humane principles of the Geneva Convention of 1864 and the additional articles of 1868 applied to maritime warfare as well as land warfare.

The third great convention was the codification of the laws and customs of land warfare, which, composed by experts, assumed the proportions of an elaborate code. While based upon the laws and customs of war adopted by the Conference of Brussels (August 27, 1874), the declaration of Brussels drew its life and spirit from Dr. Francis Lieber's Instruction for the Government of Armies in the Field, known in army circles as General Orders, No. 100, of 1863. The United States may therefore claim not a little proprietary interest in this great convention of 1899.

Such is, in brief, the outline of the work of the First Hague Conference. Misunderstood at the time, subjected to ridicule by reformer as well as reactionary, the conference is now looked upon at once as the starting point and the center of international progress.

#### TWOFOLD WORK OF SECOND CONFERENCE.

The work of the Second Conference, for which the year 1907 will be remarkable, was twofold. First, it revised and enlarged the conventions of 1899 in the light of experience, in the light of practice as well as of theory, and put them forth to the world in a new and modified form. In the next place the conference did not limit itself to these subjects. To the three conventions of 1899, revised in 1907, were added ten new conventions. This simple statement shows the enormous field covered and the positive results achieved by the Second Conference within the comparatively short period of four months. Tried by the standards of results, the conference clearly justified its existence, but it would have been a success had it demonstrated nothing more than the possibility of the representatives of forty-four nations to live in peace and quiet during four months. If it had done nothing more than to bring these representatives into close contact to learn to understand one another's needs by understanding one another, the conference would have been a success.

But we can not content ourselves with a mere statement of results, for the conference must rise or fall, not by the amount accomplished, not by the number of conventions negotiated and signed, but by their

value and importance. As the various conventions, declarations, resolutions, and *voeux* of the conference have been incorporated in the Final Act and arranged in what seemed to the conference their order of importance, it appears advisable to discuss the various results of the conference in the order established by the Final Act. Perhaps a word of explanation is necessary as to the Final Act itself. It states the calling of the convention, enumerates the countries and their delegates taking part in the conference. But the Final Act is not a convention; it is rather a solemn statement of what was done, a summary or résumé of results indicated by the names and titles of the conventions, to be followed by the text in separate form.

The preamble of the Final Act states:

"The Second International Conference of Peace, proposed by the President of the United States of America, having been, upon the invitation of His Majesty the Emperor of All the Russias, convoked by Her Majesty the Queen of the Netherlands, met, on the fifteenth day of June, nineteen hundred and seven, at The Hague, in the Hall of Knights, in order to give a further and new development to the humanitarian principles which served as a basis for the first conference of 1809. The powers hereafter enumerated took part in the conference and designated as their delegates the following: Germany (arranged according to the French names of the countries), the United States of America," etc. The Final Act then continues:

"In a series of reunions held from the fifteenth day of June to the eighteenth day of October, nineteen hundred and seven, in which the delegates have constantly been animated by the desire to realize in the largest measure possible the generous views of the august initiator of the conference and the intentions of their Governments \* \* \*," the conference adopted "to be submitted to the signatures of the plenipotentiaries the texts of conventions and of the declaration hereinafter enumerated and annexed to the present act."

An examination of the text of the preamble of the Final Act clearly indicates that the conference was called by President Roosevelt. It is common knowledge that Russia was not in a position to call the conference during two eventful years. Time was slipping by and those who believed in conferences were anxious that a new conference should meet in order to take up the work outlined but left undone at the First Conference. Therefore President Roosevelt sent a circular to the various powers outlining a programme and requesting an expression of opinion as to the advisability of such a conference and assent to participation in it. The responses were favorable and it seemed not unlikely that the conference would meet under the auspices of President Roosevelt. However, a representative of Russia waited upon the President and requested that the initiative be transferred from the United States to the Czar, inasmuch as the Czar had called into being not merely the First Conference but the idea of the conference. With that chivalry which is characteristic of the President, he immediately yielded the initiative to the Emperor of Russia, the "august initiator," as he is called, and the conference was convoked by the Queen of Holland upon the invitation of the Czar. The United States was, however, unwilling that only a part of the world should be represented. Appropriate steps were therefore taken for the admission of Latin America, and assent was obtained by diplomatic correspondence. Two of the three conven-

tions of 1899 were open; that is to say, the nonsignatory states were invited to sign, and upon signing, to assume the obligations and benefits under the conventions. The convention for the peaceful settlement of international conflicts was a closed convention and the assent of the powers was necessary in order that the Latin-American States might be permitted to sign. The reason for this was that while the powers represented at the First Conference were willing to arbitrate and to enter into certain relations with the states represented at the First Conference, they were unwilling to contract generally. As one of the delegates said at the second convention, he was unwilling to open his door to any newcomer who chose to knock. No objection was made, however, to the admission of the Latin-American States, and on the 14th day of June, 1907, consent to their adherence was formally given.

In all, forty-four states were represented at the conference and forty-four states answered the roll call. Two states of Latin America were not represented, Costa Rica and Honduras. The former approved of the conference and adhered to the conventions of 1899, but was not represented. The absence of Honduras was explained by the recent revolution, which paralyzed its efforts. The restoration of peace led to an application to be admitted and the application was favorably acted upon. Delegates were appointed, but they did not arrive in time to participate in the work of the conference.

#### FIRST CONVENTION.

Following then the order of the Final Act, the first is the convention for the pacific solution of international conflicts, the nature of which has been sufficiently explained.

It should be said, however, that the commission of inquiry was much enlarged in the light of the experience—experience gained in the Dogger Bank incident, previously referred to. The language of the convention was carefully revised, provisions were given greater clearness, and a few sections added on summary procedure. The great framework of 1899 was untouched; for the additions of 1907 do not change the nature of the structure, although the architects of 1907 would doubtless pronounce the additions to be undoubted improvements.

#### SECOND CONVENTION.

The second is the convention restricting the use of force for the recovery of contract debts. This was introduced by the American delegation, loyally and devotedly seconded by Doctor Drago, who has battled for the doctrine to which he has given his name. Without the support of Doctor Drago, it is doubtful if Latin America—for whose benefit it was introduced—would have voted for this very important doctrine. The proposition is very short; it consists of but three articles, but we must not measure things by their size. In full it is as follows:

In order to avoid between nations armed conflicts of a purely pecuniary origin arising from contractual debts claimed from the government of one country by the government of another country to be due to its nationals, the contracting powers agree not to have recourse to armed force for the collection of such contractual debts.

However, this stipulation shall not be applicable when the debtor state refuses or leaves unanswered an offer to arbitrate, or, in case of acceptance, makes it impossible to formulate the terms of submission, or after arbitration, fails to comply with the award rendered.

It is further agreed that arbitration here contemplated shall be in conformity, as to procedure, with Title IV, Chapter III of the convention for the pacific settlement of international disputes adopted at The Hague, and that it shall determine, in so far as there shall be no agreement between the parties, the justice, and the amount of the debt, the time and mode of payment thereof.

In commenting upon the convention, President Roosevelt wisely and truly said that "such a provision would have prevented much injustice and extortion in the past." It is emphatically a peace measure, for the creditor renounces force and binds himself to submit his claim to arbitration. Pressure is thus brought upon the debtor to accept arbitration or take the consequences of a refusal. It should not be overlooked that these three paragraphs will banish foreign fleets from American waters, and American ports are not likely again to be blockaded, as in the past, for the collection of contract debts due from one government to citizens of the blockading nation. The Monroe doctrine has made its first and formal entry into the public law of Europe as well as America.

#### THIRD CONVENTION

The third convention relates to the opening of hostilities and provides, in Article I, that the contracting powers recognize that hostilities between them should not commence without notice, which shall be either in the form of a formal declaration of war or of an ultimatum in the nature of a declaration of conditional war. This is to protect belligerents from surprise and bad faith. Article II is meant to safeguard the rights of neutrals. The state of war should be notified without delay to neutral powers, and shall only affect them after the receipt of a notification, which may be sent even by telegram. However, neutral powers can not invoke the benefit of the absence of notification if it is established that the neutral powers know that war actually exists. Those two articles mean that while the nations should declare war, although they may perhaps rush into war without notification, neutrals are not to be subjected to the burdens of war until they have been fully notified and are, therefore, able to take the proper steps and measures to preserve their interests.

#### FOURTH CONVENTION.

The fourth convention concerns the laws and customs of land warfare. This has been previously stated to be a revision of the convention of 1899. It is highly technical and codifies in a humanitarian spirit the warfare of the present.

#### FIFTH CONVENTION.

The fifth convention attempts to regulate the rights and duties of neutral powers and of neutral persons in case of land warfare. Short, but important, its guiding spirit is expressed in the opening paragraph of the preamble, namely, to render more certain the rights and duties of neutral powers in case of warfare upon land and to regulate the situation of belligerent refugees in neutral territory. The framers

of the convention felt that although a fragment, it would at least define neutrality until it might be possible to regulate as a whole the situation of neutrals in their relation to belligerents. The nature of the convention is thus evident. Its further definition would involve us in technical details.

#### SIXTH CONVENTION.

The sixth is the convention concerning enemy merchant ships found in enemy ports or upon the high seas at the outbreak of hostilities. Custom forbids the capture of enemy vessels within the port of the enemy on the outbreak of hostilities and allows them a limited time to discharge or load their cargo and depart for their port of destination. The attempt was made to establish this custom or privilege as a right. The proposition, however, met with serious opposition and, instead of the right, the convention states that it is desirable that enemy ships be permitted freely to leave the port. The convention, therefore, was restrictive rather than declaratory of existing international practice. The same might be said of another provision of the convention concerning the treatment of enemy merchant ships upon the high seas. It may be said that the expression of a desire is tantamount to a positive declaration, but, strictly construed, the convention is not progressive. It lessens rights acquired by custom and usage, although it does, indeed, render the privilege granted universal. The American delegation, therefore, refrained from signing the convention.

#### SEVENTH CONVENTION.

The seventh convention deals with the transformation of merchant ships into ships of war, and it must be said that the positive results of this convention are of little or no practical value. The burning question was whether merchant ships might be transformed into men-of-war upon the high seas. As the transformation of merchant vessels into war vessels upon the high seas caused an international commotion during the recent Russo-Japanese war, Great Britain and the United States insisted that the transfer should only be allowed within the territorial jurisdiction of the transforming power. Some of the continental states, on the contrary, refused to renounce the exercise of the alleged right. The great maritime states were thus divided, and as the question was too simple and too plain to admit of compromise, it was agreed to drop it entirely for the present. In order, however, that something might remain of the careful and elaborate discussions of the subject, a series of regulations was drawn up regarding the transformation of merchant ships into vessels of war, declaratory of international custom. For example: The vessel transformed should be placed under the direct and immediate control and responsibility of the power whose flag it bears; that the vessel must bear the outward signs of a man of war; that the commander should be in the service of the state and duly commissioned; that his name should appear upon the list of officers of the navy; that the crew should be submitted to military discipline; that the vessel in its operations should conform itself to the customs of war, and that the transforming nation should notify, as soon as possible, the transformation of

the merchant vessel. It will be seen that all reference to the place of transformation was thus carefully eliminated and a series of unobjectionable and unquestionable resolutions declaratory of the international custom and practice was adopted. Indirectly, the rightfulness or wrongfulness of privateering was concerned, and inasmuch as the United States would not consent to abolish privateering unless the immunity of private property be safeguarded, the American delegation abstained from signing the convention.

## EIGHTH CONVENTION.

The eighth convention relates to the placing of submarine automatic mines of contact, a subject of present and special interest to belligerents; while the interest of the neutral is very general. Warfare permits belligerents to attack and to destroy each other in order to bring about a state of calm and repose which we call peace, but the action of the belligerent should be confined to the belligerents themselves. Neutrals should be, as far as possible, unaffected. Mines break from their moorings and endanger neutral life and property. The conference, therefore, desires to regulate the use of mines in such a way as not to deprive the belligerents of a recognized and legitimate means of warfare, but to restrict, as far as possible, the damage to the immediate belligerents. The following articles were therefore agreed to:

ARTICLE 1. It is forbidden: (1) To use unanchored automatic contact mines, unless they are so constructed as to become innocuous at the latest one hour after control over them has been lost; (2) to place anchored automatic contact mines which do not become innocuous on carrying away their moorings; (3) to use torpedoes which do not become innocuous when they have missed their target.

ART. 2. It is forbidden to place automatic contact mines in front of the coasts and ports of the adversary with the sole object of intercepting commercial navigation.

ART. 3. When anchored automatic contact mines are used, all possible precautions should be taken for the safety of public navigation.

The belligerents engage, as far as possible, to provide that these mines shall become innocuous after a limited period of time, and in case they cease to be guarded, to give notice of the dangerous localities, as soon as military exigencies permit, by a notice to shipping which will also be communicated to the governments through diplomatic channels.

ART. 4. Any neutral power which places automatic contact mines in front of its coasts must observe the same rules and take the same precautions as those which are imposed upon belligerents.

The neutral powers must make known to shipping by previous notice, the regions where automatic contact mines are to be moored. This notice must be communicated speedily, as urgent, to the governments through diplomatic channels.

ART. 5. At the close of the war, the contracting parties engage to do everything in their power to remove, each for himself, the mines which it has placed.

As to anchored automatic contact mines which one of the belligerents has placed along the coast of the other, their situation shall be indicated by the power that has placed them to the other party and each power shall proceed in the shortest possible time to remove the mines which are found in its waters.

ART. 6. The signatory states which are not yet provided with improved mines, such as are required by this regulation, and which consequently can not actually conform to the rules established by articles 1 and 3, agree to transform, as soon as possible, their mines, so as to comply with the prescriptions mentioned above.

ART. 7. The stipulations of the present regulation are concluded for the duration of seven years or until the end of the Third Peace Conference, if this date is prior.

The contracting powers engage to consider again the question of the use of submarine automatic contact mines six months before the expiration of the period of the seven years, in case it has not been again taken up and decided by the Third Conference of Peace at a previous date.

In the absence of the stipulations of a new convention, the present regulation shall continue in force, unless this convention is denounced. The denunciation shall not take effect (with regard to the notifying power) until six months after the notification.

It was sought, notably by Great Britain, to prevent any nation from placing submarine mines beyond its territorial waters, namely, the 3-mile limit. It was objected to this that while the offensive use of mines might be limited, it was inadvisable, perhaps unreasonable, at the present time to limit the defensive use of mines. In one case the mines would be used as a means of attack; in the second place as a defense against aggression. The latter view commended itself to the conference, and, after much discussion, it was agreed not to introduce into the convention any provision upon the subject.

#### NINTH CONVENTION.

The ninth convention forbade the bombardment by naval forces of undefended harbors, villages, towns, or buildings. The presence, however, of military stores would permit bombardment of such ports for the sole purpose of destroying the stores, provided they were not destroyed or delivered up upon request. Notice, however, should be given of the intention to bombard. In like manner, the convention permitted the bombardment of such undefended places if provisions were not supplied upon requisition to the naval force. Bombardment, however, was not allowed for the collection of mere money contributions. It should be said that unoffending property was not to be bombarded or destroyed, and buildings and institutions devoted to a religious, scientific, or charitable purpose were expressly excluded from attack.

This convention will undoubtedly subserve a useful purpose and clear up a doubt which seems to have existed. The weight of opinion forbade the bombardment of undefended ports. The fear, however, that such ports might be attacked and held in order to enforce submission, rendered a convention on this subject, even although declaratory of international usage and custom, of no little moment. We all remember the Spanish-American war and the constant fear, however unfounded, that the Atlantic coast might be bombarded by the Spanish fleet.

#### TENTH CONVENTION.

The tenth convention adapted to maritime warfare the principles of the Geneva Convention of 1906. It is not necessary to describe this admirable document in detail. We are familiar with the Red Cross and its work, and there exists absolute unanimity of opinion that the sick and wounded upon the battlefield or upon the high seas should be cared for, irrespective of nationality. Humanity demands it and this demand has been carefully complied with. A word of history may, however, be permitted. The first Geneva Convention, dealing with land warfare, was drawn up in 1864. The additional articles of 1868, extending the principles of land warfare to naval warfare, failed of adoption. In 1899 the additional articles were

made the basis of a convention dealing with this question adopted at the First Hague Convention. Warfare, however, had changed since 1864 and it was felt that the provisions of the Geneva Convention of 1864 should keep pace with the changed conditions, so in 1906 the Geneva Convention of 1864 was revised and the present conference adapted the provisions of this revised convention of 1906 to naval warfare. It is not necessary to enlarge upon the importance of this convention. We understand it and are proud of the progress it marks, in succoring the sick and the wounded and mitigating in their extreme rigor the evils necessarily incident to war.

#### ELEVENTH CONVENTION.

The eleventh convention relates to certain restrictions in the exercise of the right of capture in maritime war. It is a modest document, but is all that was saved from the wreck of the immunity of private property. The American delegation urged the abolition of the right of capture of unoffending enemy private property upon the high seas, but great maritime powers such as Great Britain, France, Russia, and Japan were unwilling to relinquish this means of bringing the enemy to terms. A convention negotiated by powers having no great maritime interest might be a moral victory; it would not be of practical importance except as embodying in conventional form the advanced and radical views of this subject. But to return to the present convention. Chapter 1 frees from capture mail upon a vessel if not directed to or coming from a blockaded port. Chapter 2 frees from capture fishing smacks devoted solely to coastal fishing and small vessels engaged in local navigation. It is pleasing to note that the conference made the basis of its action the decision of the Supreme Court of the United States in the well-known case of *The Paquete Habana*, 1899 (175 U. S., 677). Chapter 3 regulated the legal condition of the crew of an enemy merchant vessel by providing that subjects of neutral states were exempt from capture and that subjects of the enemy state were likewise exempt from capture, provided they gave an oath not to serve during the continuance of the war. These provisions are indeed modest when we consider the vast subject involved. They are, however, humanitarian, and therefore to be commended.

#### TWELFTH CONVENTION.

The twelfth convention sought to establish an international court of prize, and there only remains the ratification of this convention by the contracting powers in order to call into being this great and beneficent institution. For years enlightened opinion has protested against the right of belligerents to pass final judgment upon the lawfulness of the capture of neutral property, and it is a pleasure to be able to state that the interests of the neutrals in the neutral prize are henceforward to be placed in the hands of neutral judges with a representation of the belligerents, in order that the rights of all concerned may be carefully weighed and considered.

It is understood that Norway intended to present a project for the establishment of a court of prize. It is a fact that both Germany and Great Britain presented a project for the establishment of a prize court at the first business session of the conference. The proj-

ects, however, were widely divergent. In one, the continental idea prevailed; in the other, the Anglo-Saxon idea dominated. It was impossible to convince either of the advantage of the other plan. Matters were at a standstill, when the American delegation, through Mr. Choate, proposed a basis of compromise which, accepted by both, resulted in the establishment of the court.

The provisions of this convention are technical and detailed as must be the case in which an institution is to be created and its jurisdiction and procedure defined within the compass of a single document. It is impossible, therefore, to discuss it at any length, but it would be an unpardonable omission if mention were not made of its salient features. In the first place, national prize courts are to officiate as in times past. One appeal is allowed from a national court to a higher court of the captor's country. Thereupon, at the expiration of two years an appeal may be taken directly from the national court and the case transferred from the national court to the international prize court at The Hague. This court thereupon becomes seized of the law and the facts involved in the case and the decision pronounced becomes final and binding upon the litigant parties.

It should be stated that while the prize court is chiefly a court for nations instead of for individuals, still the individual suitor, unless expressly prohibited by his country, may himself appeal and transfer the case, should his country be indisposed to appear before the bar as his representative. It may not be inappropriate to state that the institution of the court is in itself a recognition of the fact that the individual is not without standing in modern international law.

In discussing the matter of the prize court, President Roosevelt aptly said, in his recent message:

Anyone who recalls the injustices under which this country suffered as a neutral power during the early part of the last century can not fail to see in this provision for an international prize court the great advance which the world is making toward the substitution of the rule of reason and justice in place of simple force. Not only will the international prize court be the means of protecting the interests of neutrals, but it is in itself a step toward the creation of the more general court for the hearing of international controversies of which reference has just been made. The organization and action of such a prize court can not fail to accustom the different countries to the submission of international questions to the decision of an international tribunal, and we may confidently expect the results of such submission to bring about a general agreement upon the enlargement of the practice.

#### THIRTEENTH CONVENTION.

The thirteenth convention concerns and seeks to regulate the rights and duties of neutral powers in case of maritime war. This is an elaborate codification of the rights and duties of neutrals in which the conference essayed to generalize and define on the one hand the rights of neutrals and the correlative duties of the belligerents, and in the second place to set forth in detail the duties of neutrals, thus safeguarding the rights of belligerents in certain phases of maritime warfare. The belligerents are forbidden to commit hostilities within the territory or the territorial waters of neutrals and are forbidden to make a neutral port or neutral territory the basis of naval operations. The neutral is likewise forbidden to permit such conduct; the belligerent is forbidden to equip, provision, or to procure ammunition for a warlike purpose within neutral ports, and the neutral is required to

prevent such use of its territory. The enemy men-of-war are forbidden to remain beyond a certain period in neutral harbors. If vessels of the other enemy be present, the order in which the vessels shall leave is prescribed, so that hostilities may not begin within neutral jurisdiction. There are other and important provisions in the convention which aim to codify existing custom, with the addition of provisions thought to be necessary or highly desirable. The result, however, was unsatisfactory to some of the larger maritime powers, which prefer their present regulations on the subject of neutrality or which were unwilling to accept the modifications proposed. The United States was not satisfied with certain provisions of the convention and reserved the right to study the project in detail before expressing a final opinion. It therefore abstained from voting and signing.

#### FOURTEENTH CONVENTION.

The fourteenth convention is a reenactment of the declaration of 1899 forbidding the launching of projectiles and explosives from balloons. The original declaration was agreed to for a period of five years, and as this period had expired the powers were without a regulation on the subject. The reenactment provided that the present declaration shall extend, not merely for a period of five years, but to the end of the Third Conference of Peace. It is difficult to say whether the declaration is important or not. It is, however, evidence of the fact that the conference believed that land and water offer a sufficient field for warfare without extending it to a newer element, the air.

#### SUMMARY OF THE CONVENTIONS.

Such is, in brief, the content of the fourteenth convention, including a declaration previously enumerated. The Final Act then passes to the less formal results: "The conference, inspired by the spirit of compromise and reciprocal concession which pervades its deliberations, adopted the following declarations which, reserving to each of the represented powers the benefit of its votes, allows them to affirm the principles which they consider as unanimously recognized.

It is unanimous: (1) In accepting the principle for obligatory arbitration; (2) in declaring that certain differences, and notably those relating to the interpretation and application of international conventional stipulations, are susceptible of being submitted to obligatory arbitration without any restriction.

It was a matter of great regret to the 32 powers voting in behalf of a general treaty of obligatory arbitration, against which there were only 9 votes recorded, that the opponents of this great and beneficent measure stood upon the rights of the minority to block the will of the majority; but as Germany and Austria refused to yield to the majority, and as an attempt to sign a special convention dealing with the subject, to be binding only on those who voted for it, would have created bitterness of feeling within and without the conference, it was deemed in the interest of international peace and good understanding to adopt the principle in the abstract without seeking to incorporate it in the concrete form of a convention. The future, however, is very bright. There is no reason to prevent the 32 powers from negotiating individual and separate treaties and thus accomplish indirectly and

beyond the confines of The Hague what might and would have been accomplished but for the determined opposition of two great but unconverted powers.

#### RESOLUTION REGARDING MILITARY BURDENS.

In the next place, to continue the reading of the Final Act, the conference adopted unanimously the following resolution:

The Second Conference of Peace reaffirms the resolution adopted by the conference of 1899 regarding the limitation of military charges, and considers that these military burdens have considerably increased in almost all the countries since the last date. The conference declares that it is especially to be desired that the governments should undertake again the serious study of this question.

The friends of peace regarded the failure to limit the burden of armaments as a misfortune. There is much, however, to be said for the haste that makes slowly. The problem of disarmament or limitation of armaments is a very serious one. It is much more serious than the pacifists would have us believe. Shall all disarm at one and the same time? If that were possible we could solve the question at once; but the fear that some may not disarm while others do, and the further fear that the large powers have not really lost the appetite for the weaker, must make one pause. Germany consented to the passage of the resolution, Great Britain supported it, and, in accordance with direct instructions from the Secretary of State, the American delegation voted for the measure.

#### RECOMMENDATION OF ESTABLISHMENT OF COURT OF ARBITRATION.

The Final Act then proceeds to enumerate five recommendations, the first and last of which should be discussed.

The conference recommends to the signatory powers the adoption of the project hereunto annexed of a convention for the establishment of a court of arbitral justice and its putting into effect as soon as an agreement shall have been reached as to the choice of the judges and the constitution of the court.

The project referred to as annexed and made a part of the recommendation is a careful convention consisting of thirty-five articles, providing for the organization, jurisdiction, and procedure of a permanent court of arbitration, composed of permanent judges, versed in the existing systems of law of the modern civilized world. The conference was unable to agree upon the precise method of appointing the judges for the court, but recommended that this court be established upon the basis of the project approved by it and annexed to the recommendation as soon as the signatory powers should agree upon the method of appointing judges. The number of powers necessary is not specified, nor is the number of judges determined, as in the court of prize. It therefore follows that any number of powers may agree to make the project the basis of the court and the court is established. It would thus seem that we are in the presence of the realization of centuries of hope.

The fate of the court was long in suspense. The opposition to it was bitter at times. It was more difficult to carry than the prize court, because there was no international court of prize whereas there is a permanent court of arbitration—The Hague Court—although permanent in name only and constituted from a list of judges for

each case submitted to it. The existence, however, of the permanent court made it more difficult to establish the new one, and it was not until the last day but one of the Conference that the project was adopted and referred to the powers by the unanimous vote of the nations present and voting. Perhaps it would be advisable to quote the first paragraph of the project in order that the exact nature of the court may be evident. It is as follows:

In order to further the cause of arbitration, the contracting powers agree to organize, without injury to the permanent court of arbitration, a court of arbitral justice, free and easy of access, composed of judges representing the juridical systems of the world and capable of assuring the continuity of arbitral jurisprudence.

It is proper to state that the project was essentially an American project, although presented conjointly by Germany and Great Britain, and the establishment of the court in the near future will be an American triumph. President Roosevelt, in his recent message to Congress, commented as follows upon this recommendation:

Substantial progress was also made toward the creation of a permanent judicial tribunal for the determination of international causes. There was very full discussion of the proposal for such a court and a general agreement was finally reached in favor of its creation. The conference recommended to the signatory powers the adoption of a draft upon which it agreed for the organization of the court, leaving to be determined only the method by which the judges should be selected. This remaining unsettled question is plainly one which time and good temper will solve.

I believe you will search in vain for any work of a more far-reaching nature accomplished within the past centuries. The dream of Henry IV, the hope of William Penn, both of whom prepared projects for a court of nations, seem, if not wholly to have been realized, within the very grasp of our generation.

#### THIRD PEACE CONFERENCE.

The friends of peace and arbitration had wished to make the conference at The Hague a permanent institution, meeting at regular and stated intervals known in advance. The American delegation had the honor to urge the adoption of such a resolution or recommendation and succeeded in substance, although the language is not so clear and crisp as one would like to see it. The exact wording of the recommendation follows:

Finally, the conference recommends to the powers the reunion of a third peace conference to take place within a period analogous to that which has elapsed since the preceding conference (eight years) at a date to be fixed by common agreement among the powers, and the conference call their attention to the necessity of preparing the programme of the Third Conference far enough in advance in order that its deliberations may take place with indispensable authority and rapidity.

In order to reach this end, the conference considers it very desirable that two years before the probable reunion of the conference a preparatory committee be charged by the governments with the duty of collecting the different propositions to be submitted to the conference, of discovering matters susceptible of future international regulation, and of preparing a programme which the governments shall determine so that it may be attentively studied in each country. This committee shall propose a mode of organization and procedure for the conference.

The meaning of this recommendation is obvious. Whatever power may call the conference, the interested governments are to prepare the

programme and devise rules for the organization and procedure of the conference. In other words, the conference ceases to be Russian in becoming international.

A LANDMARK IN INTERNATIONAL DEVELOPMENT.

Enough has been said to show that this conference, which lasted four months, and which was subjected to criticism in all parts of the world and to misrepresentations in the journals, has not only justified its calling, but that it is a landmark in international development.

Our great concern must be, as far as possible, to humanize war as long as war exists. The greater task is to remove the causes of war so that nations may not be hurried into war, or that friction, developed by the failure to solve or adjust conflicts, may not permit nations slowly but surely to drift into war.

Leaving out minor matters, this conference did four things:

1. It provided for a meeting of a third conference within an analogous period—namely, eight years, to be under the control of the powers generally, instead of the control of any one of them.
2. It adopted a convention for the nonforcible collection of contract debts, substituting arbitration and an appeal to reason for force and an appeal to arms.
3. It established a prize court to safeguard neutrals, and
4. It laid the foundations of, if it did not put the finishing stone to, a great court of arbitration.