

THE INSTITUTE OF INTERNATIONAL LAW

The thirty-third session of the Institute of International Law was held at The Hague from Wednesday, July 29, to Wednesday, August 5, 1925. The Hague had been chosen the year before, with reference to the celebration of the three hundredth anniversary of the publication of Grotius' *De Jure Belli ac Pacis*, the first systematic and practical treatise on international law as a science. No place could have been more appropriate than The Hague, in which Grotius had practised law, national and international, with success, and, indeed, distinction. No building could have been more appropriate than the Peace Palace of The Hague, and in the very room in which the Permanent Court of Arbitration meets, and in which are also housed the Academy of International Law and the Permanent Court of International Justice. No President could have been more appropriate, and none could have presided more acceptably, than Dr. Loder, of Holland, first President of the Permanent Court of International Justice, which may be looked upon as the culmination of the labors of his distinguished countryman. And the meeting, appropriately, given the place and the circumstances, was one of the largest in the history of the Institute, some eighty being in attendance and coming from no less than twenty-six different foreign countries.

The members met in the very shadow of Grotius; his name was on every lip, and his spirit guided its deliberations. At the formal opening on Wednesday afternoon, July 29th, Dr. Loder treated the session as a homage to the memory of Grotius. But although Grotius honored The Hague with his presence, he belonged to Delft, where he was born in 1583, and where, after his death in 1645, his body was laid to rest in the Nieuwe Kerk, almost alongside that of William the Silent. During the First Peace Conference of 1899, at the request of the American delegation, its members, on July 4th, repaired to the church and placed a silver wreath on the grave of Grotius. Its chairman, the late Andrew D. White, delivered an extended and much-admired address. The Institute of International Law followed in the footsteps of the conference. It repaired to the church and, on Thursday afternoon, July 30th, laid a bronze palm close to that of the American delegation upon the tomb of the great exemplar of international law. Baron Descamps, who had been a member, and not the least important, of the First Peace Conference, delivered an address in behalf of the Institute of International Law commemorating, as did Mr. White on the earlier occasion, the services of Grotius to international law.

The first session of the Institute is administrative. On this occasion a second and third Vice-President are selected for the session. They were Mr. Charles Dupuis, of France, and Mr. Walther Schücking, of Germany. Certain associates are elected members if, unfortunately, vacancies exist through the death of their colleagues, and the vacancies in the ranks of the associates are filled. At this session, Sir Cecil Hurst, of the British Foreign Office, Baron Boris Nolde and Baron Michel Taube, both of Russia, were

elected members. Five associates were chosen: Mr. Ake Hammarskjöld, registrar of the Permanent Court of International Justice, was selected in his own right, not out of compliment to his father, a distinguished member of the Institute and a former Premier and Minister of Foreign Affairs of Sweden: Mr. Charles Cheney Hyde, formerly Solicitor of the Department of State of the United States, and who resigned this post in order to accept the Hamilton Fish Chair of International Law and Diplomacy at Columbia University in succession to Professor John Bassett Moore; Mr. Yorosu Oda, a distinguished professor of Japan, and a judge of the Permanent Court of International Justice at The Hague; Mr. Stylianos Sepheriadis, Professor of International Law at the University of Athens, and Mr. Fernand de Visscher, Professor of Roman Law in the University of Ghent and a brother of Mr. Charles de Visscher, a recent associate of the Institute and Dean of the Faculty of Law of the University of Ghent.

The election of a member or of an associate implies a vacancy; on rare occasions, however, the Institute honors itself by raising one or more of its members to honorary membership. At this time, five members were thus honored, making ten in all: Mr. Gregers Gram (Norway); Sir T. Erskine Holland (Great Britain); Mr. John Bassett Moore (United States); Mr. Ernest Roquin (Switzerland); and Mr. Elihu Root (United States). The number of honorary members is not fixed, and they may be chosen from the outside, as well as from the Institute. Of the other five, two were members, Baron Albéric Rolin (Belgium), Honorary President of the Institute, and Mr. Charles Lyon Caen (France); three were chosen from the outside, Marquis Manuel García Pietro de Alhucemas (Spain), Mr. Léon Bourgeois (France), and Mr. Tommaso Tittoni (Italy).

The administrative session determines the program. It decided that the following two questions of public international law should be given precedence: the report of Messrs. Politis and de Visscher on "Limitation of Actions in Public Law" and that of Sir Thomas Barclay on "Questions of Territorial Seas and Arbitration"; then, if time would permit, two reports on private international law should be considered: one of Baron Nolde on "Determination of Law which should govern contractual obligations as mandatory law", and the other of Baron Albéric Rolin on "Application of the rule *Locus regit actum*."

From a general exchange of views, it was evident that an agreement upon the resolutions proposed on territorial waters could not be reached at that session, inasmuch as the differences apparent in previous sessions still subsisted. Therefore, the question was reserved for a future session.

The report of Mr. Mandelstam on the protection of minorities was received during the course of the session, and its consideration referred to a subsequent meeting.

Baron Nolde's report gave rise to an animated debate, and there was too

great a divergence of opinion to justify its consideration without further conference.

The report of Messrs. Politis and de Visscher was more fortunate. The resolutions proposed were discussed and, with amendments, adopted in the following form:

LIMITATION OF ACTIONS IN PUBLIC INTERNATIONAL LAW

Preamble

The Institute of International Law,

Having examined the value of the principle of the limitation of actions in international relations,

and noted with satisfaction the retention of its study by the Committee of Experts instituted by the League of Nations for the progressive codification of international law;

Although it refrains at present from drawing up a detailed set of rules which it would be premature to recommend to the governments for adoption;

Considers that the general rules formulated below should influence international arbitrators and judges in rendering their awards, and that these rules may be elaborated to advantage, especially in the matter of delays and cases involving suspension and interruption, by particular agreements specially included in obligatory arbitration treaties or in treaties of settlement, of commerce, of navigation, or regarding literary, artistic or industrial property, and in general in conventions of an economic, social or financial nature;

GENERAL RULES IN THE MATTER OF LIMITATION OF ACTIONS IN INTERNATIONAL RELATIONS

I. Practical considerations of order, of stability and of peace, long accepted in arbitral jurisprudence, should include the limitation of actions for obligations between states among the general principles of law recognized by civilized nations, which international tribunals are called upon to apply.

II. In the absence of a conventional rule in force in the relations of the litigant states, fixing the limit of the prescription, its determination is a question left entirely to the decision of the international judge, who, in order to admit the plea based on the lapse of time, should recognize in the circumstances of the case the existence of one of the reasons which impose the prescription.

III. Among the elements to be taken into consideration by the international judge, are the following:

1. The public or private origin and the contractual or tortious character of the debt which forms the object of the litigation. As a general rule it is more difficult to admit prescription for public debts than for debts of a private origin, for contractual debts than for tortious debts;

2. Whether the delay in the claim applies to its original presentation or simply to its renewal, as prescription ought to be excluded in the second hypothesis except if it is established as a fact that the subsequent inaction of the claimant state is not imputable to the adverse party or to a case of *force majeure*;

IV. The prescription of a debt of private origin, in conformity with competent internal law, renders inadmissible the international claim, unless the grounds of this prescription itself can be put in issue according to the rules of international law.

V. The international judge can not apply prescription unless it is pleaded.

It had been the intention of the members to take up Baron Rolin's report, thus dividing the session between public and private international law. There was, however, a desire to hear the report of the committee appointed at Vienna at the session of 1924, upon the list of commissions to be retained, and the method to be followed in the future labors of the Institute. This

was the report of Messrs. Politis, Scott and de Visscher on the commissions and the procedure of the Institute. It would, under ordinary circumstances, be considered in an administrative session composed only of the full members; but the importance of the subject, affecting, as it did, the past labors and indeed the future activities of the Institute, suggested that the conclusions reached should be those of the associates as well as of the members, that is to say, of the Institute as a body. Therefore, it was decided to submit the question, in first instance, to an administrative session, and to report the results of its deliberations to the entire Institute for final action. This consumed more time than was anticipated. The recommendations of the committee were adopted with sundry amendments. Nine of the commissions were discontinued, due to the fact that the subjects, which they had in charge, had lost their timeliness or were not now so important as they were when the commissions were appointed; twelve were preserved, dealing with the following subjects:

(a) *International public law of peace*:—Commission No. 1 (Arbitration); No. 2 (Occupation and Mandates); No. 4 (Territorial Seas); No. 18 (Conciliation); No. 19 (Minorities);

(b) *International public law of war*:—Commission No. 13 (Aerial Warfare);

(c) *International private law*:—Commission No. 5 (Form of legal instruments); No. 7 (Checks); No. 10 (Companies); No. 11 (Penal law and law of persons); No. 16 (Nationality). There is also a commission having as its object the conflict of law in contractual matters—Baron Nolde, reporter.

In order to aid the officers of the Institute, an advisory committee was appointed for the program of the coming session, the constitution and composition of commissions, the designation of reporters, and the rapid progress of the necessary preparatory work. The committee was especially directed to submit to commissions in existence or to be formed, the revision of all the resolutions adopted by the Institute since its foundation relating to the international law of peace. The members of the committee were selected in such a way as to represent not only different countries, but the various continents. They are Messrs. Rolin, Honorary President (Belgium); Adachi (Japan); Alvarez (Chile); Loder (Holland); Politis (Greece); Scott (United States); de Visscher (Belgium). The committee is advisory, as its name implies, and it is temporary, as its mandate expires with the next session.

There was a very strong feeling on the part of many members that the next session should be two years hence (1927), in order that the reports should be prepared and in the hands of the members before the approaching session, to the end that the discussion might, as in the days before the war, not only maintain the prestige of the Institute, which was threatened by the war, but that it might also advance the cause of international law, for which the Institute was created. It was therefore decided that the final reports should be in the hands of the Secretary General four months before the open-

ing of the session, and should be sent to the members and associates two months before this date.

As regards the revision of the resolutions of the Institute concerning the law of peace, it was decided that the reports of the commissions should be in the hands of the members and associates at least six months before the session, in order that they might transmit to their reporters at least three months before the approaching session such observations as they might care to make upon the subject-matter of the reports.

It was further provided that a meeting might be had during the course of 1926, of any commission or commissions which, in the opinion of the officers, upon the advice of the consultative committee, would be profited by an oral exchange of opinion.

To aid the Secretary General in the performance of his duties, because of the increased labor involved in carrying out these various provisions, Mr. Charles de Visscher was appointed Assistant Secretary General.

The feeling was so general in favor of increased activity on the part of the members, especially in favor of the trend toward codification evident at the present day—a committee was appointed at the request of the League of Nations to advise it in the matter of codification—that the resolutions proposed by the Executive Committee were, with slight modifications, unanimously accepted.

The meeting of 1925 was fruitful in results, and it is to be hoped that the next session, to be held in 1927, will be even more fruitful, because of the ample time for preparation. There were teas, garden parties, and dinners, as on former occasions, but they were not allowed to interfere with the scientific program. It is usual for the members of the city in which the Institute meets to provide one elaborate excursion. This was a visit by boat of the canals and lakes, which required and amply repaid the Sunday devoted to it.

There has been a desire on the part of the Institute to meet in the New World. In 1919 the Institute accepted the invitation of the American members to meet in Washington in October, 1920, but the presidential elections of that year seemed to render a meeting in Washington in that month less enjoyable than on some other occasion. The American members, therefore, suggested a postponement and the meeting was held at Rome, instead. The Institute, was nevertheless anxious to hold the meeting in the United States, and delicately inquired whether the political conditions which had prevented the meeting still obtained. Being informed that they did not, the Institute thereupon decided, without a further invitation, to meet in Washington, in October, 1927. Mr. James Brown Scott was elected President, Mr. Pillet, first Vice-President, leaving, as is the custom, the second and third Vice-Presidents to be selected at the time of the meeting.

JAMES BROWN SCOTT.