

# THE DEVELOPMENT OF INTERNATIONAL LAW.

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*How is the League of Nations going to prevent War?* Various processes will join in contributing to this end, and people differ as to which will be the most efficacious.

Some think mainly of the police functions of the League. They look upon it as a machine for meeting such a calamity as that which befell the world in August, 1914; and they trust to the organisation under it of arrangements for the combined use of military, naval and air forces, and the combined application of an economic boycott.

The League, or its members, will necessarily be armed with the means of exercising compulsory force in the last resort, and the force should be always ready and efficient. But the League would function very inadequately if it stood by until aggression occurred and merely sought to meet aggression with a counter-acting force. It can be more effectively employed in counter-acting the causes that produce aggression.

Some rely upon the League's settlement for its members of a scheme for the reduction and limitation of armaments. When we can arrive at the stage that all the nations of the world are members of the League and there is such a reduction and proportioning of armaments that, while all are together strong enough to make the League's common will supreme, no one and no group is strong enough by itself to form a menace to the rest, we shall have developed by this means a considerable safeguard against war. But I fear that some time will elapse before we shall reach this stage, and, in the meanwhile, we shall have to trust a good deal to a common acknowledgment by all members of the League that their armaments are held for no aggressive or self-seeking purposes, but in trust for guarding the common interests, purposes, laws, and decisions of the League.

Some people trust to the acceptance by disputant parties of the decisions and recommendations of impartial and permanent tribunals of the League in regard to disputes that threaten war. It will be a great gain to have effective machinery for bringing about such decisions and recommendations, but it seems doubtful how far mere confidence in the personnel of the tribunals, without some added source of influence and authority, can be relied upon to secure acceptance of their conclusions in cases giving rise to the most acute national feeling.

Some people rely upon the co-operative work of the League to create a disposition inconsistent with war. But it must be remembered that, while on the one hand co-operation fosters

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friendship and creates ties which form an impediment to war, at the same time by extending the field of intercourse it multiplies the possible points of friction and jealousy between nations.

The analogy of national affairs suggests that a different line of procedure within the League is likely to prove the most effectual preventive of war.

#### LAW AS A CONTROLLING INFLUENCE.

*What is it that causes men and women in an organised political society for the most part to live at peace and to refrain from seeking, individually or in groups, to compass the destruction of their fellows?*

Surely the most potent cause is that their conduct, within certain limits, is regulated by laws which allow no scope for murderous or riotous action or anarchical association. The general level of conduct is constantly being screwed up to the minimum standard set by the prevailing laws, and upon the degree of strength with which the reign of law is rooted depends the degree of security enjoyed for internal peace.

The law is a guiding as well as a controlling influence. It provides a man with a compass by which to steer clear of the risks of collision with his fellows, as well as affording a standard according to which his conduct may be judged by others.

Nations, just as much as individuals, need definite principles to guide their conduct when circumstances bring them into risk of collision with other nations. For nations, as well as for individuals, it is necessary to provide definite standards to which appeal can be made when outside authorities have to step in to settle disputes. Let us try to realise, by means of an example, the advantages that might accrue from the control of international relations by a regular system of law.

A likely cause of future dispute and war is the immigration into a nation's territory of people of a different nationality, and especially people of a different colour. If this matter is not subjected to systematic regulation by international law, the danger is that it will give rise to sudden bursts of hostile feeling in such strength as to make it difficult for the mere influence or authority of individuals to resist the tide of war.

Assume, however, that in the leisure of peace the representatives of all the civilised nations have together in council faced the immigration problem and settled upon a common principle for its solution, and solemnly incorporated that solution in a definite law published and known to all men through every land and recognised as a law which every nation is bound to support and enforce. If then the sudden dispute and burst of feeling came there would at the same time arise among people in the disputant countries the consciousness that they were dealing with a matter for which a definite law was provided, and that the only proper course must be to have the application of the

law to the particular case impartially determined and the determination carried out. In other countries bound by the general law there would arise still more strongly the conviction that the law must be obeyed, and that for the sake of vindicating it and upholding its authority any necessary influence, pressure, or compulsion must be brought to bear upon the disputants.

The same sentiment of the necessity of obedience which men are accustomed to attach to the idea of law in connection with a single organised state would attach itself to the idea of law in relation to the League of Nations. This sentiment, resting as it does upon the habitual thought and long inherited experience of civilised mankind, would probably exercise sufficient power to resist the tide of war and to secure that at the critical moment the League of Nations should "work" and prove the real guardian of peace that every intelligent man desires it to be.

#### COMMON LAW AND STATUTES.

*But how is the reign of law to be inaugurated under the League of Nations? How is the League to generate the atmosphere of law and to create for itself a legal system which will be sufficient to answer all international needs?*

The sources of law lie partly in habit and custom; partly in reverence for tradition and precedent; partly in authority voluntarily acknowledged and obeyed; partly in authority imposing compulsory commands.

To some extent habits and customs have in fact grown up, and are continually growing up to regulate matters arising between nations. Laws based on such habit and custom are those most likely to be acceptable to the people concerned, for they represent in part the natural outcome of circumstances and in part the result of national choice. In regard to matters so regulated the main function of the League of Nations, as an instrument for the development of international law, should be to define and recognise customs when doubt or dispute arises with regard to them. A permanent Court of Justice of the League would be constantly examining, considering, sifting, reconciling, and adjudicating upon the customary practices of nations. The decisions of such a permanent court would be handed down and revered and followed as precedents, and thus the court would gradually build up a connected and consistent body of common law, just as the courts in this country, through recognition of custom and adherence to tradition and precedent, have built up the common law of England.

A body of common law thus arising, while on the one hand it usually possesses the merits of consistency, reasonableness, and flexibility, suffers from two defects. In the first place, it does not cover, and does not pretend to cover, with any degree of completeness, the range of human relationships, and as

population grows and the points of social contact multiply its deficiency in this respect becomes more marked. In the second place it tends in course of time and in certain directions to become antiquated and get out of harmony with changing conditions and circumstances.

#### AN INTERNATIONAL CODE.

A code of statute law therefore requires to be created for the purpose of filling blank spaces and changing outworn legal rules and forms. In our own history statute has thus come to the relief of common law, and in the international world the need will be the same. So far as such a code can be created by means of conventions agreed to by all the nations concerned, it will be sure of possessing the virtue of acceptability, and one of the great functions of the League of Nations should be to bring about such voluntary conventions and thus gradually extend the scope of accepted international statute law.

Some limited and spasmodic effort there has been in modern times to regulate international relationships by means of general conventions. The League of Nations will be able to proceed systematically with the negotiation of such conventions. It can make a continuous effort to procure agreement, upon defined principles and rules, to govern all such phases of international conduct and relationship, as are deemed most likely to give occasion for future wars.

But it is safe to predict that in spite of all the beneficent work of international judicial bodies in building up a body of common law, and of international administrative or conciliatory bodies in procuring agreed conventions for regulating international purposes there will remain a large field which can only be covered by compulsory legislation if the danger of war is to be effectually grappled with.

I do not suggest that the League of Nations should proceed forthwith to take upon itself supreme legislative power over every part of the world and all its inhabitants, and impose its laws by sovereign authority upon all nations whether consenting or not to acknowledge its sway. The civilised nations will, however, prove their intelligence if voluntarily, as members of the League, they combine together to create within the League an authority well designed for working out wise, just and acceptable laws, and if they willingly accept the obligation of conforming to the laws made (and from time to time revised) by that authority, for defined purposes and within defined limits.

#### UNANIMITY V. MAJORITY VOTE.

It does not necessarily follow that such a law-making authority must be trusted at the outset with the power of acting by a bare majority, or even by a majority at all. Some progress in legislative work might be achieved by a body whose powers are dependent on the unanimity of its members. It would be

difficult, however, to get any great way towards the abolition of war without breaking with what has been aptly described as the "fetish" of unanimity, and in my judgment the conservative instincts of mankind would be better employed in early days in limiting the field within which the principles of majority-decision should operate than in resisting the establishment of the principle itself.

It may be assumed that, if the nations are to be ruled by compulsory laws dictated by majority vote, the voting power will be so adjusted as to give a stronger voice to nations of large population than to those of small population. A system of compulsory law would hardly be consistent with the continuance of the fiction of the equality of states. It may probably also be assumed that the legislative body would be constituted on some sort of democratic principle; that, if its members be not actually elected by popular vote, their appointment would at least be made subject to approval by a popularly-elected national assembly; for it is difficult to imagine that the people of the democratic states of the world would be willing to leave the power of international legislation beyond the reach of popular control. They would be more likely to use the procedure for international legislation as a lever for bringing about the establishment of democratic methods of government in countries where they do not at present prevail.

#### THE EFFECTS OF A LEGAL SYSTEM.

What reason can there be for any nation to fear the regulation of international conduct by legal principles; or to fear the settlement of such principles by a majority fairly representing the combined voice of civilised peoples?

Is not even rough-handed justice and tolerable law of any kind better than mere anarchy and rule of violence? Is it not almost certain that the deliberate and conscious effort of a body of legislators chosen to represent the nations of the world would be at least tolerable to the great bulk of mankind? Is it not safe to go further and assert a strong probability that the common sense and common effort of the representatives of the majority of the civilised world would succeed in creating a code of law conspicuous upon the whole for fairness and wisdom?

Some people, as soon as proposals are suggested for international legislation, raise doubts as to whether the effort to enforce the laws when made would be certain to succeed. But one of the merits of a clear and definite law is that it is usually obeyed without any enforcement by compulsory authority being required, and particularly so if it is the product of a democratic constitution. A law, solemnly made after public discussion and with the sanction of an assembly representative of the people carries with it a great weight of public opinion. *There is little doubt that under a League of Nations wisely constituted and con-*

*ducting its proceedings in the full light of publicity, a world public opinion would develop which would be just as potent to support international law as is the public opinion of a democratic state to support the national laws of that state.*

#### LAW UNDER THE COVENANT.

The authors of the League of Nations Covenant have shown themselves unduly timid in dealing with the law-making function of the League. They have constituted an Assembly whose deliberations may facilitate the negotiation of international conventions which would partake of the character of laws, but they have not in any express manner recognised the legislative function as coming within the powers and purposes of that Assembly. They have not even ensured the growth of judge-made law by actually creating a permanent judicial court, although it is true they have imposed on the Council of the League the duty of propounding a scheme for the creation of such a court.

**The imperative duty of the present time is not so much to get the Covenant altered as to get it put into active operation.** It is, however, to be hoped, that without undue delay the peoples of the world will see that the constitution of the League is so expanded as to provide in the most efficient manner for this vital purpose of the development of international law.

Meanwhile the League should be formally and completely established at the earliest possible moment, and should be urged to undertake, among its first duties, the constitution of the permanent Court of International Justice contemplated by Article 14 of the Covenant, and the appointment under Article 24 of a strong commission to see how far agreement can be secured for the definition of principles to regulate international conduct and to explore the ground for a code of international law.

#### THE BRITISH ATTITUDE.

To the British people these aims should appeal with peculiar force. How much of our prosperity, and our great position in the world is due to our law! It has been the charter of our liberties, the guardian of our order and progress, the guide to our world-wide influence and power.

Who among us would regard his individual life as tolerable if it consisted of the medley of mortal combat, armed preparation, anxious crises, and uncontrolled struggle for place and power that has hitherto been the lot of nations? Law is the rule of the road by which for us as individuals life's journey has been made reasonably harmonious and peaceful. The time has come when nations, too, must have their rule of the road.

Let us British people see to it that the new world constitution is as firmly based on law as our own constitution has been; that all the world shall rest as safely and peacefully as we have rested under the protection of just laws, wisely made, publicly known, and freely altered as circumstances dictate.