

means as that above proposed, this greatest of all world forces would have an opportunity to prevent it.

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#### THE INSTITUTE OF INTERNATIONAL LAW

The Institute of International Law held its first regular session in eight years in Rome, October 3rd, to October 10th, 1921. The choice of Rome was a happy augury for the future, for in the past the law of the world has proceeded from that city, and it is well to begin building up the new surrounded by the memories and traditions of the past.

Those who believe that we live in a new world, merely because there has been a World War, will be grievously disappointed with the new rules of law based upon old principles of justice. Those who believe, on the contrary, that we live in the same old world, chastened, it may be, by a World War, will, without disappointment, elation or pessimism, take up the world's work interrupted by war, as previous generations have done. We may dream of a brighter and a better future—we should, indeed, strive for it,—but we cannot break with the past.

The last regular session of the Institute was held in Oxford, August 1st to 9th, 1913, under the presidency of Doctor, now Sir Thomas Erskine Holland. It adopted a code of maritime warfare, incorporating more than one of the provisions of the Declaration of London. It decided to meet in September, 1914, in Munich, under the presidency of Mr. Heinrich Harburger. Arrangements of a very elaborate nature had been made for this meeting, but, to use a homely expression, Mr. Harburger "reckoned without his host." The late German Emperor had plans which were inconsistent with the meeting of the Institute. During the ensuing four years the minds and thoughts of men were bent on winning the war, not on reforming the law of nations. If the members of the Institute could have met even in a neutral place—which they could not, as the law of nations forbids citizens and subjects of enemy States from holding intercourse of any kind—their labors would have been fruitless from a scientific point of view.

After the armistice, a conference composed of representatives of the victorious Powers met at Paris on January 18, 1919. A goodly number of members and associates of the Institute of International Law were connected with the delegations of the nations participating in the conference. The members and associates met twice informally in the spring of 1919, and decided that it would be in the interest of the Institute to hold a special session or an extraordinary meeting of its members and associates in Paris during the session of the conference, which assured the attendance of a sufficient number to justify the meeting.

The governing board, called the Bureau of the Institute, consists of the President, the First Vice-President, and the Secretary-General. Mr. Har-

burger, the President, had died February 28, 1916. Sir Thomas Barclay, the First Vice-President resides in Paris, and Mr. Albéric Rolin, the Secretary-General, in Brussels. Both of these gentlemen attended the informal meetings of members and associates in Paris and, at the request of the members and associates, decided to act in the name of the Bureau, of which they form the majority, to call a special meeting for Thursday, the 8th of May, 1919. Twenty-four members and associates therefore met in the Law Faculty of the University of Paris, which was graciously placed at the disposal of the Institute by Professor Larnaude, Dean of the Faculty of Law.

Sir Thomas Barclay, as First Vice-President, opened the session and acted as President during the session. Professor André Weiss of France was elected Second Vice-President, and Mr. Albéric Rolin as Secretary-General was present and acted as such.

It was decided that the Institute, meeting in special session, should devote itself to the special purposes for which it had been called—that is to say, that it should make preparations for a formal meeting of the Institute, which it was hoped might be held in 1920. It was proposed that this session should be held in the City of Washington. The members of the Institute accepted the invitation, which was formally extended by Mr. Scott on behalf of the American members, and the Honorable Elihu Root was elected President for this session. It was decided that Sir Thomas Barclay, First Vice-President, should continue as First Vice-President until the formal meeting.

The members and associates wisely postponed the discussion of scientific questions as such until the formal session. They confined themselves to administrative matters and to those only which it was necessary to decide in advance of the formal session. There were in all some twenty commissions which had been formed from time to time for the consideration of questions which the Institute had decided to have examined before they should be taken up by the Institute at the formal session. Many of the members of these commissions had died. In some cases the subject once important and considered timely, was so no longer, and new questions required new commissions for study and report. The list of commissions was revised—one suppressed, two added, and the necessary changes of membership made. The Institute adjourned Saturday afternoon, the 10th of May, with the intention of meeting in the City of Washington on or about the 1st day of October, 1920. The usual banquet at the close of the session was held, given by Sir Thomas Barclay, at which President Wilson, the guest of honor, delivered an admirable address.

The United States did not ratify the Treaty of Versailles. Therefore, while the Powers which did ratify it were at peace with Germany from the deposit of ratifications on January 10th, 1920, the United States was technically at war. Indeed war has only been ended between the United States and Germany by a separate treaty of peace signed August 25, 1921 and proclaimed September 14, 1921, between the United States and Austria by a treaty

signed August 24, 1921 and proclaimed November 17, 1921, and between the United States and Hungary by a treaty signed August 21, 1921 and proclaimed December 20, 1921. The American members therefore believed it necessary to postpone the proposed meeting in Washington in 1920, and the European members reluctantly concurred in this decision.

The first, and the very great step had been taken for a formal meeting. There was another administrative matter of importance which could be attended to in a special meeting,—the election of members and associates; for the ranks of the Institute had been sadly depleted since the Oxford session. The members of the Bureau, after consultation with the members and associates of the Institute, suggested that a meeting should be held in Paris on the 28th of May, 1921, to elect honorary members, regular members and associates. Elections are regarded as administrative matters, and as such are determined by the members of the Institute, who alone decide matters of administration in administrative meetings. These the associates do not attend, although they take part on a footing of equality in all scientific discussions. As absent members may send their ballots, and as elections of honorary members, members and associates require a majority of those votes of members absent but voting as well as of members present and voting, it is obvious that elections could be held under these circumstances at such a special meeting without prejudicing the rights of members or affecting the prestige of the Institute. Two honorary members were elected:

M. Charles Lyon-Caen, of France, a member and formerly President of the Institute, and, from the outside, Tomasso Tittoni, formerly Ambassador to France and Minister of Foreign Affairs of Italy.

The following members were elected from the associates:

<i>Belgium</i>	<i>Chile</i>
Paul Errera	Alejandro Alvarez
<i>Costa Rica</i>	<i>France</i>
Manuel M. de Peralta	Jean Barthélemi Charles de Boeck Albert de Lapradelle Alexandre Mérignhac
<i>Germany</i>	<i>Great Britain</i>
Félix Meyer Walther Schuecking	Sir Sherston Baker Sir H. Erle Richards
<i>Greece</i>	<i>Italy</i>
Nicolas S. Politis	Dionisio Anzilotti Prospero Fedozzi
<i>The Netherlands</i>	<i>Norway</i>
Charles Daniel Asser	Frédéric Waldemar Nicolai Beichmann
<i>Poland</i>	<i>Russia</i>
Comte M. dé Rostworowski	André Mandelstam

*Spain*

Rafaël Conde y Luque  
Don Ramon Pina y Millet  
Aniceto Sela

*Sweden*

Carl Louis Axel de Reuterskjöld

*Switzerland*

Eugène Huber  
André Mercier

*United States*

Elihu Root  
George G. Wilson

The following publicists were elected associates:

*Argentine Republic*

Luis M. Drago

*Austria*

Hans Sperl

*Belgium*

Charles de Visscher

*Brazil*

Rodrigo Octavio de Langgaard Menezes

*Chile*

S. E. T. Miguel Cruchaga

*China*

Sintchar Tcheou

*Colombia*

S. E. Francisco José Urrutia

*France*

Jules Basdevant  
Alphonse Gidel  
Louis Erasme Lefur  
Ernest Lémonon  
Francis Rey

*Germany*

Hans Wehberg

*Great Britain*

Thomas Baty  
Hugh Bellot  
Lord Birkenhead  
A. Pearce Higgins  
Lord Phillimore  
Sir Ernest M. Satow

*Italy*

Scipione Gemma  
Marquis R. Paulucci dé Calboli  
Arturo Ricci-Busatti

*Japan*

Mine-ichiro Adatci  
Sakutayo Tachi

*Mexico*

Francisco León de la Barra

*The Netherlands*

Bernard C. J. Loder

*Norway*

Johan Henrik Wallebach

*Spain*

Joaquin Fernandez Prida

*Switzerland*

Eugène Borel  
Max Huber

*United States*

Simeon E. Baldwin  
Philip Marshall Brown  
Frederic R. Coudert  
David Jayne Hill  
Theodore S. Woolsey

*Venezuela*

Simon Planas Suarez

The Institute may have but sixty members and sixty associates. The new members elected from the associates at the special session brought the number of members to fifty-eight; the associates elected from the outside brought the number to fifty-eight. Since the date of the special meeting one member, Lord Reay, and one associate, Dr. Drago, have unfortunately died, so that at present there are three vacancies among members and three among associates; that is to say, three associates may be elected members at the next meeting, and three publicists chosen associates, as there are six vacancies in the Institute.

As has been mentioned in the opening sentence of this brief comment, the first regular session of the Institute of International Law since the war was held at Rome, October 3rd–10th, 1921. The attendance was the largest in the history of the Institute. Ninety-three members and associates attended—which the President of the Institute for the Rome session, the Marquis of Corsi, and the Secretary-General, M. Albéric Rolin, attributed to the subvention of twenty thousand dollars which the Carnegie Endowment for International Peace grants the Institute of International Law, the adviser to the Endowment's Division of International Law, in order to cover the expenses incurred by members and associates in attendance at each session of the Institute.

It was not expected, indeed it could hardly have been hoped, that the members and associates, of whom most of the latter attended the session of the Institute for the first time, should adopt projects for which there had not been adequate time for preparation. The Declaration of the *Rights and Duties of Nations*, adopted by the American Institute of International Law at its Washington session in 1917, was the subject of a report by Professor de Lapradelle. As, however, this report was not prepared sufficiently in advance of the meeting to be printed, and was not printed and distributed, the discussion was formal, and this item of the program was very properly referred to the forthcoming meeting of the Institute. In the same connection, the project of the *Union Juridique Internationale*, based upon that of the American Institute, was presented. The two projects will be considered conjointly at the next meeting.

The question of the Permanent Court of International Justice figured in the program, but of the two reporters, Mr. Scott, of the United States, was unable to attend, and Lord Phillimore, of Great Britain, was able to remain in attendance only one day. The question of obligatory jurisdiction of this court, as proposed by the Advisory Committee of Jurists at The Hague in the summer of 1920, was rejected by the Assembly of the League of Nations on December 13, 1920, due chiefly, it is believed, to the opposition of Great Britain and Japan. The question of the jurisdiction of an international Court has occupied the minds of jurists of many countries, and the Advisory Committee meeting at The Hague merely put into acceptable form the consensus of enlightened opinion. The question is largely

one of expediency, and until the "big" Powers are as willing as the "small" Powers to allow their disputes to be settled by principles of justice expressed in rules of law administered by an international court of justice, there will be no difference between the Permanent Court of International Justice and the Permanent Court of Arbitration at The Hague in the matter of jurisdiction. The chief difference, although it is a very great and important one, will be that the Permanent Court of International Justice has a permanent board of judges chosen in advance of and without reference to the cases to be decided, whereas the judges of the so-called Permanent Court of Arbitration are chosen by the parties in issue for particular conflicts and generally after they have broken out.

Recognizing the importance of this subject, the Institute placed it upon the program of its next meeting and appointed as its reporter Philip Marshall Brown, Professor of International Law at Princeton. Other subjects doubtless will be proposed, and the next session of the Institute will be one of discussion and friendly suggestion.

The next session of the Institute will be held in the latter part of August, 1922, under the presidency of André Weiss, member of the Institute of France, Professor of International Law at the University of Paris, member of the Permanent Court of Arbitration at The Hague, member and Vice-President of the Permanent Court of International Justice at The Hague.

Held in the city of Grenoble in the south of France, under such auspices, the next session of the Institute should be a success.

James Brown Scott.

#### THE TREATY AS TO YAP AND THE MANDATED NORTH PACIFIC ISLANDS

In the July number of this *Journal* (Vol. 15, pp. 419 to 427) this writer stated somewhat in detail the facts of the dispute as to the "Mandate over Yap." He further briefly submitted some principles of law as well as some authorities, which, in his opinion, fully upheld the attitude of the United States in the matter.

After the lapse of only eight months he is asked to analyze and outline the treaty happily adjusting the matter between the United States and Japan. It was negotiated and signed at Washington on February 11 by Mr. Secretary Hughes for the United States and Baron Shidehara for Japan. It was laid before President Harding by the Secretary of State on the same day and on that date transmitted by the President to the Senate for advice and consent to its ratification. This was duly accorded on March 1 by a vote of 67 to 22.

The document is brief, covering less than four pages. It devotes nearly one and a half pages to a preamble reciting and "considering" the facts. This shows the surrender by Germany under the Treaty of Versailles to "the Principal Allied and Associated Powers" of "all her rights and titles