

properly influenced by motives of national policy or considerations of humanity or justice.

Thus, in this war we could not permit our territory to be used as a base of direct political or military activity in the interest of any belligerent, for that would involve a breach of neutral obligation as well as a violation of sovereign rights. Nor would motives of national honor and self-respect allow us to permit the massacre of those of our nationals who are non-combatants while on board common carriers on the high seas or to accept a mere money indemnity as compensation for the loss of our murdered dead.

But when we come to consider the questions involved in Great Britain's straining of the law of contraband, blockade, and continuous voyage, the case stands far otherwise. Mere property rights on however large a scale are here involved, and the case is not complicated by considerations of national honor or a violation of sovereign rights.

Questions relating to our rights as traders or property owners should be decided primarily from the standpoint of the national interest. In their decision we must, however, consider not merely the temporary or even the material interests involved, but problems of present and future policy. Of these the main problem relates to our future relations with that Power, which it is almost certain will remain the "Mistress of the Seas" for many years to come and with whom we have enjoyed close cultural and social relations for several centuries.

AMOS S. HERSHEY.

THE AMERICAN INSTITUTE OF INTERNATIONAL LAW

The *JOURNAL* has devoted several editorial comments to the American Institute of International Law, stating the reasons which suggested its foundation, the progress made towards its permanent organization, and the services which it is expected to, and believed by its partisans that it can, render to the development of international law in the Western Hemisphere.¹ Without seeking to cover this ground again, it is proper to state that, with the approval and co-operation of a publicist in each of the twenty-one American Republics, such progress was made that on October 12, 1912, the Institute was declared founded. It was the hope, however, of its founders that it might have in the near future a formal

¹ See comments in the *JOURNAL* for October, 1912, p. 949; January, 1913, p. 163; and October, 1915, p. 923.

meeting at which the necessary measures could be taken to complete its organization, to draft the program of its future activities, and to enable it to take its place among the scientific societies of the Americas. The American Institute is not the creation of a few enthusiasts to be imposed upon the publicists of America. It rests upon a national society established in the capital of every American Republic. On the 25th day of December, 1915, the last of the national societies to be formed in the twenty-one American Republics was founded, and on December 29, 1915, the American Institute was formally opened in connection with and under the auspices of the Second Pan American Scientific Congress. It was welcomed by the Honorable Robert Lansing, Secretary of State of the United States, and a member thereof, on the part of the Government of the United States; it was formally welcomed by His Excellency Eduardo Suárez-Mujica, Ambassador of Chile and the President of the Congress, a member thereof, on the part of the Congress; and it was formally welcomed by the Honorable Elihu Root, a member thereof and its honorary president, on behalf of the American publicists. After its *opening session*, it completed its organization by electing the five members recommended by each of the twenty-one national societies, and it adopted its constitution and the by-laws.

It is worth while to consider for a moment the relation between the national societies and the Institute, because when that is understood, it will be seen that the Institute, instead of being created from above and superimposed upon the publicists of different countries, in reality is nothing more nor less than a scientific body composed of a committee of five members of each national society and is in this sense their representative. This is clearly stated in the third article of the constitution, which reads as follows:

The American Institute of International Law is composed of committees or delegations of national societies of international law, established in the different American Republics and which it receives as affiliated with it, and of which national societies it is the perpetual representative.

The relation again is indicated in Article 4, devoted to national societies, which says that

The affiliated national societies propose the members to be elected by the Institute. The members of the national societies forming part of the Institute constitute in their country a committee of direction of the said society. This committee forms the international bond of union between the national society and the Institute.

The committee communicates either directly or indirectly by means of the Sec-

retary General of the national society with the Secretary General of the Institute, sending him the reports of the said national society, or indicating the progress of the work undertaken by the national society.

The Secretary General of the Institute communicates the said reports to the different national societies.

From this it is apparent that the American Institute is the agent of the different national societies in which each national society is represented by five of its members recommended by the society itself, and that these five members regard themselves as a bond of union between the Institute, on the one hand, of which they are members, and the national society on the other hand, of which they are likewise members. The Institute is thus composed of five members from each national society, making 105 in all. The governing board consists of the officers and two members, forming the Council of Direction, which is thus composed:

Honorary President, Elihu Root.

President, James Brown Scott.

Secretary General, Alejandro Alvarez, Chile.

Treasurer, Luís Anderson, Costa Rica.

Elected Members, Antonio Bustamante, Cuba; Joaquin de Casaus, Mexico.

The members are for the most part former ministers of foreign affairs, diplomats, members of the Permanent Court of Arbitration, delegates to the Hague Peace Conferences, professors of international law, judges, and publicists.

Many projects were presented at the recent meeting by the members, and they will be assigned for study and report by different committees, and in many instances they will be considered by the national societies. It is interesting in this connection to note that Honorable Robert Lansing, Secretary of State, requested the Institute, composed exclusively of publicists from neutral nations, to take up, consider and report upon the question of neutrality, as appears from the following memorandum, which, in virtue of its importance, is given in full:

MEMORANDUM

January 3, 1916.

At the first meeting of the Institute I had the honor to direct attention to the imperfect code of rules which define and govern the relations between belligerents and neutrals. These rules, which have grown up during the past one hundred and twenty-five years and have been in some cases differently interpreted by courts of different

countries, have been frequently found inadequate to meet new conditions of warfare, and as a result every war has changed, modified or added to the rules, generally through the process of judicial decisions. The prize courts of belligerents have thus become the interpreters of belligerent rights and neutral obligations, and their interpretations evidence an unconscious prejudice arising from over-appreciation of the needs of the belligerent. Writers on international law have relied upon these prize court decisions in dealing with the subject of neutrality so that they have laid down rules formulated indirectly from a belligerent's point of view. In addition to these influences affecting a code to govern the conduct and treatment of neutrals, international conferences and congresses have generally confided the drafting of rules relating to belligerent and neutral rights to military and naval experts who naturally approach the subject from the belligerent's standpoint. Thus, judicial decisions, text writers, and international agreements have given all the advantage to the belligerent and have shown little regard for the rights of neutrals.

It would appear that it is time to reverse this process of treatment of the subject of neutrality and to deal with it from the point of view of the neutral.

I would, therefore, suggest that a committee be appointed to study the problem of neutral rights and neutral duties seeking to formulate in terms the principle underlying the relations of belligerency to neutrality rather than the express rules governing the conduct of a nation at war to a nation at peace.

I would further suggest that the subject might be advantageously divided into two parts, namely, the rights of neutrals on the high seas, and the duties of neutrals dependent upon territorial jurisdiction.

In view of the past year and a half of war the present time seems particularly opportune to study this question and this Institute being composed of members from neutral nations is especially fitted to do this from the proper point of view and with the definite purpose of protecting the liberty of neutrals from unjustifiable restrictions on the high seas and from the imposition of needless burdens in preserving their neutrality on land.

ROBERT LANSING.

The Institute accepted the proposal of Mr. Lansing, and will consider and report at a later date upon the subject.

It adopted a statement, to be known as its declaration of the rights and duties of nations, for the guidance of its members in stating the point of view from which it approaches questions, and the principles which will guide its conduct. The declaration adopted January 6, 1916, follows:

DECLARATION OF THE RIGHTS AND DUTIES OF NATIONS ADOPTED BY THE AMERICAN INSTITUTE OF INTERNATIONAL LAW AT ITS FIRST SESSION IN THE CITY OF WASHINGTON, JANUARY 6, 1916

WHEREAS the municipal law of civilized nations recognizes and protects the right to life, the right to liberty, the right to the pursuit of happiness, as added by the Declaration of Independence of the United States of America, the right to legal

equality, the right to property, and the right to the enjoyment of the aforesaid rights; and

WHEREAS these fundamental rights, thus universally recognized, create a duty on the part of the peoples of all nations to observe them; and

WHEREAS, according to the political philosophy of the Declaration of Independence of the United States, and the universal practice of the American Republics, nations or governments are regarded as created by the people, deriving their just powers from the consent of the governed, and are instituted among men to promote their safety and happiness and to secure to the people the enjoyment of their fundamental rights; and

WHEREAS the nation is a moral or juristic person, the creature of law, and subordinated to law as is the natural person in political society; and

WHEREAS we deem that these fundamental rights can be stated in terms of international law and applied to the relations of the members of the society of nations, one with another, just as they have been applied in the relations of the citizens or subjects of the states forming the Society of Nations; and

WHEREAS these fundamental rights of national jurisprudence, namely, the right to life, the right to liberty, the right to the pursuit of happiness, the right to equality before the law, the right to property, and the right to the observance thereof are, when stated in terms of international law, the right of the nation to exist and to protect and to conserve its existence; the right of independence and the freedom to develop itself without interference or control from other nations; the right of equality in law and before law; the right to territory within defined boundaries and to exclusive jurisdiction therein; and the right to the observance of these fundamental rights; and

WHEREAS the rights and the duties of nations are, by virtue of membership in the society thereof, to be exercised and performed in accordance with the exigencies of their mutual interdependence expressed in the preamble to the Convention for the Pacific Settlement of International Disputes of the First and Second Hague Peace Conferences, recognizing the solidarity which unites the members of the society of civilized nations;

THEREFORE, THE AMERICAN INSTITUTE OF INTERNATIONAL LAW, at its first session, held in the City of Washington, in the United States of America, on the sixth day of January, 1916, adopts the following six articles, together with the commentary thereon, to be known as its DECLARATION OF THE RIGHTS AND DUTIES OF NATIONS:

I. Every nation has the right to exist, and to protect and to conserve its existence; but this right neither implies the right nor justifies the act of the state to protect itself or to conserve its existence by the commission of unlawful acts against innocent and unoffending states.

II. Every nation has the right to independence in the sense that, it has a right to the pursuit of happiness and is free to develop itself without interference or control from other states, provided that in so doing it does not interfere with or violate the rights of other states.

III. Every nation is in law and before law the equal of every other nation belonging to the society of nations, and all nations have the right to claim and, according to the Declaration of Independence of the United States, "to assume, among the powers

of the earth, the separate and equal station to which the laws of nature and of nature's God entitle them."

IV. Every nation has the right to territory within defined boundaries and to exercise exclusive jurisdiction over its territory, and all persons whether native or foreign found therein.

V. Every nation entitled to a right by the law of nations is entitled to have that right respected and protected by all other nations, for right and duty are correlative, and the right of one is the duty of all to observe.

VI. International law is at one and the same time both national and international: national in the sense that it is the law of the land and applicable as such to the decision of all questions involving its principles; international in the sense that it is the law of the society of nations and applicable as such to all questions between and among the members of the society of nations involving its principles.

The declaration is accompanied by the official commentaries adopted at one and the same time, stating the sense in which each right and each duty is to be understood, based upon decisions of the Supreme Court of the United States and upon statements of Latin-American publicists. It is too long to be printed in this place, and too important to be summarized.

During the meeting an invitation was officially presented by the Government of Cuba, inviting the American Institute to hold its next session in the City of Havana as the guest of the Cuban Government. This invitation was accepted, and the date provisionally agreed upon for the second session was the middle of January, 1917.

The American Institute of International Law has barely begun its labors and, without predicting either their nature or their value, it is perhaps sufficient to say that such men as Dr. Ruy Barbosa, of Brazil, Dr. Luis Drago, of Argentina, Dr. Joaquin Casasus, of Mexico, and Hon. Elihu Root, of the United States, would not consent to be members of an organization, lending their names and pledging themselves to unlimited co-operation, if they do not believe that it is calculated to succeed and to render services to the cause of international law, which will justify its creation.

JAMES BROWN SCOTT.

A RECENT DEPLOYMENT OF THE LATIN AMERICAS IN SUPPORT OF A DIPLOMATIC AND HUMANITARIAN POLICY INITIATED BY THE AMERICAN GOVERNMENT

Those of us who were interested listeners to the clear exposition of the final resolutions of the Second Pan American Scientific Congress were somewhat disappointed that reference was not made in the Resolutions