

## I

### A REPUBLIC OF NATIONS

**T**HE premiers of Great Britain and France, as well as our own President, having given their adhesion to the formation of a league of nations, I shall not undertake to argue the need of it. The field of discussion is thus limited to the form the league ought to assume.

One of the plans proposed is that the nations unite in an association or league the three essential principles of which would be: (1) the organization of a court of arbitration for the adjudication of all international disputes that are of a legal or justiciable nature; (2) the organization of a council of reconciliation with jurisdiction of all political or non-justiciable controversies; and (3) an obligation imposed upon the members of the league to exert their united force against any nation making war on another for any reason without having first offered to submit the controversy to arbitration or conciliation.

To this plan several serious objections may be urged. In the first place, even had such a league been operative in 1914, it may be doubted if it would have sufficed to prevent the war. It certainly would not had the Central Alliance felt itself strong enough to withstand the league in arms. In any event, to escape the penalties of the league, it would only have been necessary for Austria to submit its controversy with Serbia to arbitration (as Serbia suggested) and, upon a decision unfavorable to Austria, then to have declared war. For the plan demands that the united force of

the league be used only to compel a submission of the dispute to arbitration or conciliation, not to compel an acceptance of the decision. In the case, therefore, of an alliance like the Teutonic, or even of a single strong nation, resolved on war, the net result of this plan would seem to be at most only to postpone hostilities for the six months or year required for the process of arbitration or conciliation.

In the next place, since warfare will in large measure hereafter depend upon the whole-hearted consent of the peoples concerned, it would appear difficult to guarantee in advance that one nation would be willing to plunge into war with another merely because the latter, for reasons satisfactory to itself, had failed to submit to arbitration some controversy with a third nation, and had instead resorted to immediate war. If we may judge from the past, to drive a nation to arms something more is needed than a technical violation of a right in which that nation has no direct interest.

For example, let us assume the league to exist and America, Germany, and Russia to be members of it. A dispute arises between the two last named, and Russia, without waiting for arbitration or unwilling to submit to it, declares war upon Germany. If the disputed point were of no intrinsic interest to America, as would be likely, it would be difficult to secure warm support by the American people of a war with Russia merely because of her refusal to arbitrate. There might be grave danger that we would look upon Russia as having violated a mere technical rule of procedure, the substantial justice of the dispute being unknown to us, especially if we were on peculiarly friendly terms with Russia, or on unfriendly terms with Germany.

In the last place, this plan treats only the symptoms and does not remove the cause of the disease. To leave the

nations in their recent state of rivalry, antagonism, and suspicion and merely to propose that when the inflammable materials burst into flames efforts will then be made to extinguish them, is a much less satisfactory measure of precaution than would be the elimination of the danger of conflagration. It is eminently desirable to give to the league such a form that, by reason of its own inner structure, it will aid in the substitution of international coöperation, confidence, and good will for international rivalries, jealousies, and suspicions. It is to such a league, as I believe, that I wish to direct your attention briefly this morning.

The nations may consent to the creation of an international federal league, conferring upon it legislative and executive as well as judicial powers over matters of international concern, while leaving the individual nations in plenary control of all domestic and national affairs. The constitution of such a league would in some respects be more complicated than the first, but if successfully achieved it would be more effective.

International controversies arise either over legal rights and duties (these we shall call "legal disputes") or over conflicting policies (which we shall term "political disputes").

Legal disputes are usually settled with little difficulty by arbitration or international courts, because they present merely questions of law or fact. But political disputes are not justiciable. They cannot be determined by courts of law and not always by conciliation or mediation.

For instance, under present conditions it would be difficult to conceive of the United States consenting to submit to arbitration or conciliation the question whether a great power shall be permitted to violate the Monroe Doctrine and forcibly to acquire territory in Mexico, let us say. This would not be a question of law at all, but of self-preserva-

tion. There is no rule of international law by which the United States may prohibit to European nations the acquisition of territory in Mexico or South America. Not being a question of law, it could not be settled judicially, and, on the other hand, being a policy vital at present to the protection of the United States, that government would be unwilling to leave it to an alien board of conciliation.

Again, under present conditions Great Britain would doubtless take the same attitude touching the balance of power in Europe, and both countries would probably assume it with regard to the "open door" in China. Instances could be multiplied of such policies which might cause war and yet are altogether beyond the realm of law.

As international disputes are classified into legal and political, so may the powers exercised by nations with respect to other nations be similarly classified. Out of the exercise of alleged legal rights arise legal disputes; out of the exercise of political powers arise political controversies. And as legal disputes can always be judicially determined by an international court, all that is needed to prevent wars upon such grounds is to provide a properly constituted international court for the trial of these cases.

But with regard to the second class of disputes—the political questions—it is far otherwise. So long as the nations are at liberty to exert political powers the exercise of which gives rise to political controversies, the organization of international courts is of little avail. Occasions will arise when self-preservation or vital interests will demand that a nation resort to arms, not to courts.

The political powers the exercise of which leads to political disputes, and thus to war, may be enumerated as follows:

1. The regulation and control of international (as op-

posed to domestic) commerce, without consulting the wishes of other nations interested in the same commerce.

2. The acquisition of the territory of other nations to their detriment or that of other states.

3. The tyrannical or oppressive treatment of the citizens of other countries.

4. The keeping of armies or navies limited only by the desires of the state keeping them.

5. The making of alliances.

6. Secret diplomacy.

7. The unlimited exercise of the war power and its accompaniments, such as spying.

These are the powers the exercise of which keeps alive suspicions, jealousies, and antagonisms among the nations. They are the war-breeders. If, then, we would have permanent peace, it would seem essential that the nations be induced to forego their extreme sovereignty to the extent of surrendering these powers so far as is needful to assure sister nations that they will not be abused.

A few of these powers ought not to be exerted at all, and might well be surrendered in any event, with or without a league of nations—for example, secret diplomacy and the tyrannical treatment of citizens of other states. But the majority of them could not wisely be given up by the nations individually unless the power to control and regulate them were assumed by them all, acting jointly; that is, unless a league were organized in which all would be properly represented, and which, in order to the exercise of such powers, must be clothed with legislative, executive, and judicial functions.

Thus, if America should surrender her right to control the international commerce in which she is specially interested,—for instance, the Panama Canal,—she must first be

assured that no other nation will assume control of it. It must be placed under control of the league, in the decisions of which she will have proper representation—the same representation she would have in the league's control of the Dardanelles, the Danish Sound, or the Suez Canal. Or if by an accident of geography a nation is cut off from seaports, the league's control of international commerce would suffice to prevent undue advantage being taken of her unfortunate situation by neighboring countries.

If America surrenders the right to acquire the territory of another state to its detriment or that of other states, she may yet acquire it with the assent of the nation concerned and of the league.

Should Great Britain surrender her unlimited right to keep armies and navies, she must still be empowered to keep enough of each adequately to police her extensive territories and her merchant marine.

If the members of the league are not to possess the unlimited right to wage war, the protection they have thus surrendered must be supplied by the forces of the league. If, contrary to covenants, the citizens of one state are badly treated in another, it would be the duty of the league, through its international courts or otherwise, to protect them.

These illustrations suffice to point out the league's need of governmental powers, legislative, executive, and judicial, at least within the limited spheres already mentioned.

The existence of such powers implies a corresponding organization of the government of the league into legislative, executive, and judicial departments, respectively. Here we encounter difficulties, some of which will be briefly examined.

## LEGISLATIVE DEPARTMENT

FOR a century or more the nations have been accustomed to assemble in congress and conference for the purpose of enacting international legislation. The Hague Conferences would even suggest a more or less permanent legislative assembly of the nations. In these conferences and congresses it has been customary to give to each state represented one vote, and no more, and to enforce the principle that no measure, though receiving a majority of the votes cast, should be binding upon any state without its assent. In other words, each has possessed an absolute veto upon any measure.

But for that very reason these assemblies have been able to accomplish comparatively little in the way of legislation. No law-making body wherein unanimous consent is needed for the passage of every measure can function efficiently. The rule of the majority must be recognized, unless in special cases. Especially would this be true in respect of the complex measures dealing with international commerce, banking, currency, and other international affairs that might, under the covenants creating the league, be submitted to its legislative department.

The two principal forces that would clamor for control of the league would be the great powers, representing great populations and influence in world affairs, on the one side, and the equal sovereignty and rights of all states, represented by the majority of all the members of the league, on the other.

Should the legislative body of the league be organized on the principle that each nation shall have an equal vote in virtue of equal sovereignty, regardless of population or world influence, that would be to subject the great powers

to the will of the majority of small nations. To this these powers would never consent. On the other hand, were population or influence made the measure of the vote each nation would cast in the Congress, then the great powers would preponderate and the small nations, though in a majority, would be powerless against a combination of these. This would be equally unfortunate.

A way out might be found, however, if every measure were required to be passed twice in the Congress (whether in the same chamber or in two separate chambers is not very material), the one vote being in accordance with the unequal populations or influence of the several states, the other according to the equal sovereignty of all the states, each having an equal voice. Thus a measure that might pass on the first vote through the preponderant voices of the great powers would be halted on the second vote if opposed by a majority of all the states, and *vice versa*. This would seem sufficient to insure a balance between the great powers on the one hand and the majority of the states on the other. Each would have a veto on the acts of the other.

But there would yet remain the possibility of a conjunction of great powers and a majority of the nations that might pass legislation oppressive to the minority, beyond the powers conferred upon the league, and violative of the rights reserved by the individual states. To avert this danger a stipulation might be inserted to the effect that whenever any nations are convinced that the legislative body is exceeding the powers granted to it, they may, under reasonable conditions of time and notice, veto the measure, in which event it would not become binding.

A law-making body organized on such a basis, while sufficiently elastic to pass legislation appropriate to its jurisdic-



tion, would seem to afford adequate protection to the various interests concerned.

#### EXECUTIVE DEPARTMENT

THERE have been created in past years certain international bureaus, like those of the Postal Union and Agriculture, for the purpose of carrying into effect the comparatively simple regulations of certain international conventions; but their organization and structure would in no way fit them, or others like them, to execute the complex and precise legislation that might be expected from a properly organized legislative body. The executive arm of such a government must be ever alert, clothed with adequate powers, and responsive to the wishes and demands of the nations composing the league.

There are two principal types of governmental executive organization, which are well represented by the British on the one side and the American on the other. In the former the executive power of the state is vested in a ministry responsible at all times to the legislative body and liable to recall by it at any moment. In the latter it is vested in one man chosen by the people for a definite term and responsible to them only, save that he may be impeached by the legislature during his term of office for high crimes and misdemeanors.

The latter presents fewer chances, perhaps, of sudden political crises, and its single-man power enables it more easily to command the united support of the country in great emergencies, as in time of war; but the former is marked by greater and more immediate conformity to the wishes of constituents—a quality very desirable in a league of nations.

The mutual jealousies of the nations might be expected to veto any executive organization for the league that would

give to a single man (and more or less to the nation to which he would belong) the vast power and influence that would inhere in such an office as that of president of the league, he not being subject to recall during a fixed term of office save by impeachment alone.

A prime minister, chosen by the nations acting through the international legislature and subject to recall at any time by a vote or resolution of that body, presents a more feasible plan that might prove acceptable to the nations, since each nation would have complete control of its legislative representatives.

#### JUDICIAL DEPARTMENT

TOUCHING the judicial department, it would be necessary to establish a court possessing jurisdiction of all legal disputes that might arise between the several members of the league. No other than legal disputes could arise if we suppose the nations to have surrendered those political powers the abuse of which would lead to political controversies between them.

Moreover, if the states of the league are to surrender their power to wage war upon other states and to compel a proper regard outside their own limits for the personal and property rights of their citizens, it would be essential that the league itself guarantee those rights and protect them through the agency of judicial tribunals established in each state, having jurisdiction not only to enforce those rights but to compel obedience to the enactments of the league on the part of individuals in each state that might seek to violate them.

The methods of appointing and removing these international judges might well be a subject of discussion, did time permit. Perhaps the best plan would be to call for their

appointment by the executive authority of the nation in whose territory they would be expected to perform their functions, and for their removal for bribery or other misdemeanor by the legislative body of the league.

From the international courts sitting in each state appeals must often be allowed to a Supreme Court so that uniformity might be attained throughout the league in the interpretation of its enactments. To this Supreme Court might also be assigned the task of adjudicating the controversies arising from time to time between the several states.

To procure the proper performance of these most important functions it is suggested that this court ought to be so organized that each nation would be equally represented thereon. Its membership would doubtless be large enough to permit this. The cases coming up to this tribunal from all over the world would be numerous. It would probably be necessary to divide the court into sections, one to deal with disputes between nations, one with appealed civil cases, and a third with appealed criminal cases.

The justice and propriety of an equal representation on this court appear from the following considerations. The court is established in part for the adjudication of national rights, wherein all the nations would be equal. The questions it would be called on to decide ought not to be determined by the weight of influence or wealth of the litigants, but by the weight of justice and reason only, in which respects also the nations would be equal, whatever their size or resources. The custom of nations in arbitration proceedings has been to submit their disputes to tribunals consisting of an equal number of representatives of the contending nations, regardless of their respective populations, wealth, or influence, with an impartial umpire. In every litigation between two of the nations or between the league and a state

or its citizens, each nation, though no actual party to the controversy, would possess an interest in the decision and in the precedents thereby established almost equal to that of the litigants themselves.

Time does not permit of the presentation of other problems that would arise in the formation of such a league as is here advocated. They are many and difficult, but with patient investigation would doubtless prove capable of solution.

One more observation, however, before I conclude. The organization of any sort of league of nations to secure permanent peace is a grand experiment in world government. The best hope that the nations may enter into it would seem to lie in the frank admission that it is but an experiment, and in the stipulation that if, after a fair and full trial, any nation is convinced that its continuance in the league will entail upon it too great a loss of sovereignty or liberty, it shall be permitted to withdraw in peace and to resume unhampered the complete independence and freedom of action it now enjoys as a sovereign state.

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