

THE TWENTY-SEVENTH CONFERENCE OF THE INTERNATIONAL LAW ASSOCIATION

The twenty-seventh Conference of the International Law Association was held in Paris from May 27th to June 1st, 1912, in the Grand Chambre de la Cour d'Appel in the Palais de Justice. Whitsuntide vacations and the fact that Monsieur Forichon, Senator and First President of the Court, was also Honorary President of the Paris Conference, combined to secure to the Association the distinction of holding its sessions in so historic a chamber. Through the tall windows the slender flèche of the Sainte-Chapelle was in plain view.

At the opening session of Monday afternoon, Judge Forichon extended the welcome of the French judiciary to the Association, and particularly to those of the English Bench present, amongst whom were Judges Kennedy, Phillimore and Darling. He voiced the Association's unanimous regret over the absence of the Right Hon. Lord Alverstone, Lord Chief Justice of England and Honorary President of the Association. The welcome of the French Bar was eloquently expressed by Maître Labori, Bâtonnier de l'Ordre des Avocats à la Cour de Paris. The first session closed with a graceful address by the President of the Association, Maître Eduard Clunet, of the Paris Bar, and ex-President of the Institute of International Law.

Amongst the representatives of foreign powers who attended the opening session was His Excellency Myron T. Herrick, Ambassador of the United States to France.

Tuesday morning the real work of the Conference began.

Dr. Evans Darby, Secretary of the Peace Society, of London, in a paper entitled "The Arrested Progress of International Arbitration," divided the work of those who are striving for the establishment of international peace into what may be characterized as curative and preventive measures, that is to say, measures of settling disputes peacefully as they arise and of preventing quarrels from arising. The former consist of international Courts of Arbitration, the latter of the furthering of mutual understanding be-

tween nations. The two causes of the arrest of progress in those fields today were declared to be first, "disregard of treaty obligations," and second, "the reluctance to forego prospects of advancement, the use of power, and the prospect of securing peace by the ability to enforce one's own will." Examples of arrested progress cited are the failure of adoption by the Senate of the American general arbitration treaties, the suspension of progress towards an International Prize Court and a Court of Arbitral Justice and the likelihood of the disestablishment of the Central American Peace Court at Cartago, Costa Rica. The facts Dr. Darby regards, however, as receding waves of a flood-tide.

Upon motion of Sir Thomas Barclay, M. P., it was voted to appoint a permanent arbitration commission to study the subjects capable of arbitration between nations with a view to drawing up a model form of arbitration treaty. He also urged the need of submitting to an impartial Court of Arbitration questions arising between an individual and a foreign government as defendant, since in such cases under present rules of international law, the defendant nation acts both as litigant and judge.

Monsieur Emile Arnaud, Notaire of Luzarches, in "Notes sur l'arbitrage international," urged the need of the adoption of a code of international law, not only for belligerents, but also for nations at peace. Even without such a code of positive law, a Court of Arbitration should not impose a compromise without that power having been given it by the litigants. As to the possibility of appeals, there is a distinction between decisions founded upon compromise and those founded upon positive rules of international law. In the former case, by the nature of things, appeals are impossible, while in the latter, there seems to be no more logical reason to deny the possibility of providing for appeal than in the case of judgments of national Courts. As a possible solution of the question of sanction in inter-nation justice the economic boycott was suggested.

Dr. Bisschop, Barrister of London, announced the establishment at The Hague of an Academy of International Law entirely independent of the patronage of any nation. The Carnegie Peace Trust has made a substantial donation to the new Academy.

Under the subject of "Territorial Waters," Sir Thomas Bar-

clay traced the history of the three mile rule for territorial waters and for the neutral zone. Of late years, the problems in the two cases have so diverged that the same limit should, he said, no longer be adopted for both classes of waters. The three-mile limit grew out of the fiction that a nation's sovereignty should be recognized as extending as far out to sea as its cannon from shore could protect. Within this zone the right of fishing belongs exclusively to the adjacent nation. Alongside of this rule grew up a similar rule of a three-mile-limit for a protective or neutral zone in which belligerents could not engage in conflict. Today in the case of fishing waters, the development of destructive methods of trawling has created the need of increasing the limit of the fishing zone. On the other hand, the problem of the neutral zone is affected by the increased power of guns aboard warships and the consequent danger to neutral inhabitants of an adjacent nation in case of conflict within the three-mile-limit.

In the Rules on Territorial Waters adopted by the Institute of International Law at Paris in 1894, and approved in 1895 at Brussels by the International Law Association, this distinction between the sovereignty zone and the neutral zone was made. The territorial zone was increased to six miles and the neutral zone remains the distance of a cannon shot from shore; only, of course, being a zone of effective protection to neutrals, it is measured by cannon range from a ship towards the land.

The project of an international conference on the subject proposed by the Dutch Government in 1896 failed through the unwillingness of Great Britain to consider the increase of the sovereignty zone since that would mean a very appreciable diminution of her present fishing-grounds along foreign coasts.

The paper of Mr. A. H. Charteris, of Glasgow, is a study of the three-mile rule as applied to the sinuosities of a coast-line in the case of the Moray Firth on the northeast coast of Scotland¹ and in the case of the North Atlantic Fishing grounds.² Mr. Charteris is in favor of the adoption of a ten-mile limit to the length

¹ *Peters v. Mortensen*, 1906, Court of Session Cases; 8 Fraser (Justiciary) p. 93.

² *Great Britain v. United States*, Sept. 7, 1910. 5 *Am. Journal Int. Law* 1911, p. 1.

of the line drawn *inter fauces terrae*. How to determine the points from which such a base line is to be drawn, remains still doubtful, even since the award of the Hague Court in the case of *Great Britain v. United States*.

Dr. A. A. H. Struychen, of Amsterdam, contributed a careful examination of the "Rights of the Individual in Questions of Extradition." A strict constructionist, he refuses to admit of the existence of an international law relating to extradition independent of the treaty terms between the two states in question. Two conceptions are dismissed as errors: first, that treaties can only give rise to rights and obligations between states as such and can never become national law, so according rights to individuals; and, second, that a treaty, from its very character, must dominate national law and so affect individual rights. Dr. Struychen examines the rights of the individual (1) growing out of a treaty containing an enumeration of the offenses for which extradition will be granted, (2) in political offenses, (3) in the extradition by a country of its own subjects. In the first case, the contracting state cannot refuse extradition for the offenses enumerated, but no right is raised thereby in the individual to protection from extradition for offenses not named. In the second and third cases, the want of a common interest in all countries to suffer the consequences of the enforcement of a rule prohibits the existence of an international law conferring rights on the individual aside from those which flow from the terms of a particular treaty.

Mr. H. F. Dressen, of London, submitted the report of the commission appointed at the last Conference of the Association to inquire into the subject of "The Rule of the Road." Answers to a questionnaire based upon the rules obtaining in France, England and Germany were received by the Commission from Austria, Denmark, Egypt, France, Hungary, the Netherlands, South Africa, Spain and the United States and were digested in the Commission's report which recommended that the different Governments be addressed with a view to the universal adoption of either the left or right hand rule of the road and that pending the attainment of international uniformity like steps be taken to secure in each country a single authority to deal with all road regulations.

An address entitled "Collisions at Sea" by Monsieur Léon

Montluc, of Paris, favoring the international regulation of speed, routes and signals and the creation of an inter-nation Court having jurisdiction over collisions between ships of different nationality, met with very positive opposition on the part of eminent English members who insisted that such questions were too technical to be dealt with by other than competent bodies in each nation.

Wednesday's session opened with three papers on aerial law, a subject hitherto untouched by the Association. Representatives were present from the Aero Clubs of France, Great Britain, Spain and Hungary. Maître Guillaume Desouches, avoué, representing the Aéro Club de France, in "La liberté de l'air" proposed that the International Law Association adhere to the fundamental principle "*de la liberté de la circulation aérienne.*" The high sea escapes the sovereignty of the adjacent nations because of its immense area extending over a single plane. Even more so must the air escape the sovereignty of subjacent nations since its area is even more immense and it extends through an infinitude of navigable planes.

Monsieur Paul Fanchille, of the Institute of International Law, described what had so far been accomplished towards the confection of an aërial code by the Institute of International Law, and the Comité Juridique International de l'Aviation. The latter organization was founded in Paris in 1909. It is composed of groups or committees formed in the principal cities of the world. The groups are coördinated by a central executive committee (*Comité directeur*) at Paris. The groups have different functions. Thus there are *Comités de doctrine* or committees on legal theory; *Comités de défense* composed of lawyers who care for the legal interests of aviators regardless of nationality; *comités techniques*, composed of scientists, and *comités traducteurs* charged with the translation of foreign law on aeronautics. In an annual conference of the united groups, the work of each is correlated with a view to the creation of a uniform code.

The plan has been sketched for a complete code, containing five books upon: 1. Public law; 2. Private law—(a) civil, (b) commercial; 3. Administrative law; 4. Fiscal law; 5. Penal law. Of Book I, chapters have been definitively framed on: 1. General Principles of Aerial Navigation; 2. Nationality and Registration; 3. Landing; 4. Jettison; 5. Wrecks.

In contrast to the two French speakers, Mr. H. D. Hazeltine, of Cambridge University, argued in favor of the recognition of the principle of absolute sovereignty over aerial navigation by the subjacent nation. The analogy between the freedom of the seas and the freedom of the air must not be carried too far, he said. A control over adjacent seas is not essential to sovereignty, but the control of the air space by a foreign nation would absolutely destroy the sovereignty of the subjacent nation. What is certain is that the common law principle of private ownership in a vertical direction is incompatible with aerial navigation and cannot survive.

The discussion which followed culminated in the appointment of a commission upon aerial law. The Association definitely refused to restrict the commission by the adoption of any fundamental principle, such as that of the free navigation of the air.

In the afternoon session, recommendations were made by the commission appointed to study the Report of the Hon. Mr. Justice Phillimore and Dr. Ernest J. Schuster, of London, on a proposed uniform bills of exchange law. At the 25th Conference of the Association held at Buda Pesth, in 1908, rules of a uniform bills of exchange law had been adopted. In June, 1910, the Hague Conference drew up a Preliminary Draft of a Uniform Law. In view of a second Conference at The Hague held in June, 1912, to reconsider the 1910 Draft, it seemed opportune for the Association to submit to that Conference certain amendments and additions to the Buda Pesth Rules. The following is a brief résumé of the amendments, recommended to the Hague Conference on the subject:

"Rule 2. The words 'Bill of Exchange' or their equivalent are not necessary unless required by the law of the country in which drawn."

"Rule 11. An indorsement after maturity is not altered in character by that fact, but an indorsement after protest is but an ordinary assignment."

"Rule 13. Acceptance must be unqualified."³

"Rule 16. Where the acceptor has suspended payment or been adjudged a bankrupt before due date, the holder has an im-

³ This is an alteration in conformity with Anglo-American law. Some continental nations permit of partial acceptance.

mediate right of recourse against the drawer and indorsers except that in the case of inland bills, national law may suspend this rule."

The following additional rules were recommended:

"Rule 17. (a) The holder of a Bill of Exchange bearing indorsements is deemed to be the lawful holder if the chain of indorsements is uninterrupted even if one of the indorsements is forged. A drawee who pays a bill is not compelled to verify the signatures of the indorsers.

"A person who has acquired a Bill of Exchange before maturity and in good faith is to be deemed the lawful holder thereof, notwithstanding any defect in title of one of the previous holders."

"Rule 17. (b) A bill must be presented on the day on which payment may be demanded."

"Rule 18. (a) The protest or noting for protest may be effected on the day on which payment may be demanded, and must at the latest be effected on the business day following the day on which payment is demanded."

A series of studies in international private law were next taken up.

In a paper on "The Limits to the Assimilation of Laws," W. P. W. Phillimore, of London, touched upon a subject which international lawyers, who plan universal codes which will not "march," would do well to study. In maritime and commercial law, where the mutual needs of nations pave the way for uniformity, and in procedure which is not deeply rooted in the customs of a people, unification will be most fruitful of results. National differences in social conditions, religion and politics will long, if not forever, withstand all efforts at infraction. Such, for instance, are the laws of the family relation and the law of real property.

Professor D. Josephus Jitta's subject was "The Admission of Great Britain, the United States and, in General, of Non-European States to the Hague Treaties Concerning International Private Law." The reference is to the Treaty of 1905, relating to procedure, and three treaties of 1902, relating to family law. The object of the treaties is not to unify national law, but to bring

⁴This is the adoption of the American rule which pins the holder's rights upon his good faith and regards gross negligence as evidence of bad faith. A donee's right is protected as a purchaser's for value.

harmony into the rules of international private law. As to the admission of the United States, there is a constitutional difficulty. Questions of procedure and family law are regulated by each State, which is forbidden to enter into foreign treaties, while the Federal Government has no power to impose treaties of this character on the several States. This obstacle could be surmounted by legislation in each State. A further objection is the adoption by the treaties of the rule of nationality to govern personal and real status. Both the Americas have adopted domicile as the only practicable rule because of the number of immigrants falling under the jurisdiction of their Courts. To make our real property subject to foreign law is equally impracticable. Professor Jitta proposes three compromises without favoring any particular one: 1. The capacity to contract marriage shall be governed by national law except where national law expressly adopts another law. Admittedly this does not solve the American problem. 2. For purposes of international *private* law a new nationality shall be acquired *ipso facto* by a domicile of a certain duration. 3. Each nation on entering the union of international private law shall be free to adopt either the system of domicile or of nationality.

Two papers on the difficult question of renvoi were submitted by Dr. J. J. P. Sewell, of Paris, and Dr. J. Pawley Bate, of London. In "Observations on Renvoi in the Case of the Movable Succession of British Subjects Dying Intestate in France," Dr. Sewell considers the possible effect on French law of the English case of *Johnson, Roberts v. Attorney General*, 1 Ch. 821, 1903, which seems not to have been considered in two recent cases of renvoi that have come before the French Courts⁵. In the English case, an English subject died domiciled in Baden. Partial administration was obtained in England where the Court, following the rule of domicile, ordered an inquiry into the law of Baden. The law of Baden applies the law of nationality and the English Court thereupon administered according to the internal English law of the domicile of origin. In the French cases, the Courts adopting nationality as

⁵ Kilford, *Perinelle v. Hall*, Feb. 17, 1910. *Clunet*, 1910, p. 579; *Revue de Droit International Privé*, 1910, p. 870.

Soulié, *Hermann v. Soulié*, March 1, 1910, *Clunet*, 1910, p. 888; *Revue de Droit International Privé*, 1910, p. 872.

the test "accepted" a renvoi made to the internal law of France by a foreign rule of international law adopting domicile as the test. The results of the decisions of the two countries are necessarily in opposition since they both accepted the renvoi, but applied different rules as to what law governed personal status.

In view of the fact that an English Court under *in re Johnson* applies English law not only in the case of an English subject domiciled in a country adopting nationality as the test of personal status, but also in the case of a foreigner domiciled in England, Dr. Sewell believes that a French Court will no longer assume that the English law is based on comity and so will be strongly invited to apply national law.

Dr. J. Pawley Bate, of London, submitted a paper on "Renvoi and English Law," in which *in re Johnson* is also analyzed. He concludes that since domicile is no longer the universal test in international private law in determining the status of movables, the English law of renvoi must be revised to escape the *impasse* created by the existence of two systems. The idea of "accepting the renvoi" is objectionable as involving (1) an abdication of sovereignty by the application of foreign international law and (2) as involving an endless game of "After you, Sir." The proposal is made to adopt a personal law which shall be primarily that of domicile and secondarily that of nationality. The personal law would be that of domicile whenever the question arose between two countries both adopting the same test, such as England and Denmark; the personal law would be that of nationality whenever the question arose between countries adopting opposite systems, as between England and France. France applies national law to foreigners except in general in questions affecting social order. An English Court in applying English law to the administration of movables of an English subject domiciled in France would neither sacrifice its own sovereignty nor "outrage" the French Court. In *in re Johnson* the English subject's domicile of origin was Malta, whose law does not provide for subjects domiciled abroad. Hence to have adopted either domicile or nationality would have "outraged" one Court or the other. Dr. Bate declares the case to be an example of *heimathlos* and that the *lex fori* or *lex rei sitae* was correctly applied though on unsatisfactory reasons.

In the domain of company law, Monsieur Rodolph Rousseau, lawyer and author, reviewed the tests for the fixing of the domicile of a corporation. Mr. J. Arthur Barrett, of the English and American Bars, read a resumé of American corporation law. Monsieur Andor Jacobi, of Buda Pesth, in "La Condition juridique des sociétés anonymes étrangères," discussed the question of the domicile of a corporation and concluded that the "material" test, *i. e.*, the determination of the principal place of business is dangerously vague in the presence of modern trusts and cartels and that the "formulary" test is the safer, *i. e.*, the determination of the place of birth or of incorporation.

Monsieur G. de Laval, of Brussels, contributed a résumé of the Anglo-American law of equitable trusts. The trust has no exact counterpart in the civil law, where it is regarded as *un expédient sui generis*. Not infrequently a continental Court is called upon to uphold a trust and the first inquiry must be whether the trust conflicts with the notions of police and of economic policy or with express laws of the country in which it is sought to uphold it. In general, the Courts have held that the purposes of the Anglo-American trust may be so various that no universal interdict can be placed upon them and that each case must be separately examined.

Wednesday evening, the association was beautifully entertained by its President, Maître Eduard Clunet, at his Paris home. The whole of Thursday was spent at Fontainebleau. In the morning, the members were conducted over the Château. Maître Labori entertained the Association on a most lavish scale at a breakfast given at his country residence at Fontainebleau, to which were invited members of the French Bench and Bar. In the afternoon, an elaborate musical program was executed at a garden party on the lawn.

Friday's session opened with an address by Mr. George White-lock, of the Baltimore Bar, on "The Development of the Injunction in the United States."

The report of the Committee on "The Enforcement of Foreign Judgments" was accepted without discussion in the absence of its spokesman, Mr. Edw. S. Cox-Sinclair, of London. The Committee concluded that (1) substantial progress towards the inter-

national enforcement of judgments can only be obtained by agreements between two or more countries having systems of procedure more or less allied in historical development and (2) that the most hopeful advance is in the direction of the recognition and enforcement in every State of an arbitral award pronounced in any one State.

At the London Conference of 1910, a resolution was passed authorizing Lord Justice Kennedy, then President of the Association, to appoint a committee to collate in detail the law of general average of the great maritime nations. The report of the Committee's labors was presented at the Paris Conference. The general average law of America, Belgium, England, France, Germany, Holland and Norway has here been collected, summarized and compared. It was voted that the Commission formulate a provisional draft of a uniform law of general average, and that the Executive Council of the Association communicate with the different governments regarding an agreement upon the subject of deck-loads.

A criticism of the proposed French "Loi Colin" (Nov. 10, 1910) was presented by Monsieur Leopold Dor of Marseilles. The "Loi Colin" proposes to settle the controversy that has become acute in France between shipowners and merchants as to the limitation of responsibility of the former by clauses in the bill of lading, by declaring any such special clause null and void if in derogation of the common law.

Mr. Robert Temperly, of Newcastle-upon-Tyne, presented a study of the conflict of laws amongst maritime nations upon safety regulations of merchant ships with special reference to timber deck-loads.

Under the presidency of Monsieur G. Maillard of the Paris Bar, the Association listened to four studies of literary and artistic property. In this field eventual uniformity and reciprocal protection seem possible inasmuch as here the law springs from a common human right, *viz.*, to the object of one's labor, a right strictly individual and but slightly affected by national traits. Mr. J. F. Iselin, of London, criticised the new English law which went into effect July 1, 1912, upon three points: (1) the limited nature of the protection accorded the author during the second

half of the fifty years term following his death; (2) the protection to artistic designs being made to depend upon the intention not to use them as industrial designs; (3) the failure to protect authors and composers from manufacturers of mechanical musical and talking devices. Dr. G. C. F. Shirrmeister-Marshall, of London, made an interesting contribution in which he argued that commercial requirements refuted Mr. Iselin's second objection. He further pointed out the want of protection to editors of ancient manuscripts in England and Germany and under the Berne Convention of 1908. Dr. Albert Ostereith made a résumé of the German law of copyright. In a paper on the new Russian law of copyright of 1911, Dr. L. P. Rastorgoneff, of London, showed how the necessity for the free right of translation in Russia because of the diversity of dialects had long fixed public opinion against the protection of the right of translation. The present law recognizes the right to a very limited extent. It is, however, a beginning which should eventually lead to Russia's admission to the Berne Convention.

A critical examination of the English and French law of evidence led to a general confession by each speaker that the law of his own country left much to be desired. Monsieur Leon de Montluc believes that there is much that French law could borrow advantageously from the English law of evidence. Amongst other things he mentions: a clear division of the issue into one of law and of fact; exclusion of hearsay; freer admission of oral proof in civil suits; cross examination of witnesses. It should be remembered that in civil and commercial cases in French law the witness does not appear in Court, but is examined by a process known as *enquête* or examination before a judge in chambers. In purely civil matters oral testimony is only admitted at the discretion of the judge where there is already some written evidence indicating the existence of the obligation (*Commencement d'épreuve par écrit*), while in criminal trials all questions have to be put to the witness through the Court which is free to refuse them.

Mr. Ernest Todd, of London, in an examination of the relative costs of procedure in France and England, concludes that the French system is both less expensive and more rapid. An all too brief section of his paper is devoted to the liability of judges under French law to be sued in respect of acts done while in office.

Mr. Béla Nemere, of Buda Pesth, closed with a study of "Industrial Problems from the Point of View of International Law." Dividing the subject as a whole into questions of capital and of labor, under the former head he examined trade marks and patents, the circulation of labor and the development of trusts and cartels; under the latter head, he examined the question of the working man, his protection, child labor, home labor, insurance, trade unionism and unemployment.

The Twenty-seventh Conference terminated Saturday morning with the acceptance of the invitation of the Spanish government to hold the next Conference at Madrid. The invitation was personally transmitted by Señor Monterro, under-Secretary of the Ministry of Justice. His Excellency Señor Canalejas was elected President of the Association and of the Twenty-eighth Conference which will take place in Madrid, September, 1913.⁶

Layton B. Register

Paris, June 1912

⁶ED. NOTE: Since the writing of this report by Mr. Register, Señor Canalejas was assassinated at Madrid.