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An Adress*, August 24 1912

The Work of the Institute of International Law

On behalf of the Institute of International Law, whose president I have the honor to be, I would first of all like to express our deep gratitude to His Majesty[1] for honoring this opening of the twenty-seventh session of the Institute with his presence. I also beg to be allowed to convey our sincere thanks to the Minister of Foreign Affairs[2] for assuming the chairmanship of this session, and to the members of the diplomatic corps, to the Norwegian authorities, and to their ladies who have come here at our invitation. We see this large and distinguished gathering as a sign of sympathy not only for the Institute but also, and perhaps above all, for the ideas which it seeks to promote.

Practically no existing movement enjoys such popularity and has such a wide following as the movement for peace in international relations. The undertakings inspired by this aim are numerous and of varied nature. In many civilized countries, societies have been formed to propagate the idea of pacifism among the people of the world, and great international meetings are held at frequent intervals. The parliaments of the majority of nations have founded an Interparliamentary Union[3] in order to work together to assure peace, and the same idea has prompted governments to send their representatives to various great conferences.

The part played in this movement by the Institute of International Law has been so considerable that perhaps you will pardon me if I take this opportunity of outlining, as briefly as possible, those aspects of this international work which the Institute can rightfully claim as the fruit of its own endeavors. It is perhaps my duty to do so, for the Nobel Prize awarded to the Institute a few years ago carried with it the stipulation, in accordance with the statutes of the Foundation, that the laureate should go to Oslo and there give a lecture. Now since this statutory rule has, I think, largely influenced the decision of the Institute to hold its present session in the Norwegian capital, it may be maintained that it devolves upon its president to give the lecture in which laureates introduce themselves to the public and justify, from a popular point of view, their claim to the recognition which accompanies the award of a Nobel Prize.

Such an explanation is perhaps not entirely without purpose because the organization and manner of operation of our Institute are necessarily such that it can never aspire to be popular in the broadest sense of that word. The founders of the Institute believed, with good reason, that its deliberations and resolutions would not carry sufficient weight unless its members and associates were more or less restricted to persons of specialized knowledge who represented the science of international law in various countries. The statutes demand that members should have "rendered services to international law in the domain of theory or of practice". The Institute does not open its doors to everybody and consequently does not have the kind of democratic character, so to speak, which in this day and age is generally a prerequisite for popularity. In its day-to-day activities, the Institute can hardly appeal to popular sentiment, nor can it attract to its work the untiring attention of that powerful instrument for expressing and broadcasting such sentiment, the modern press. Our work does not, however, avoid publicity; its results are published in our *Annuaire* [Yearbook], and although in accordance with the statutes its sessions are not public, the Bureau may admit representatives of the press to such meetings. In this connection two additional points are worth noting. In the first place, a large proportion of the work is done, not during the sessions themselves but in the intervals between them, by commissions whose members exchange views on current problems and pave the way for further discussion of them during the plenary sessions. In the second place, it must be admitted that these problems are sometimes so technical that their meaning and significance can be appreciated only with great difficulty by those who are not well versed in international law. In general, one can say that it is through its professional approach to very difficult, often arduous, and consequently rather slow work that the Institute strives to achieve its aim. According to the first article of its statutes, this aim is to "encourage progress in international law", by trying to formulate the general principles of the science so as to meet the standard of the judicial conscience of the civilized world, and by actively supporting every serious effort made toward the gradual and progressive codification of international law.

What is the importance of this work?

To put it briefly, it constitutes the basis necessary for all pacifistic work.

Justitia et pace is the motto of the Institute. It means we cannot hope to achieve peace until law and justice regulate international as well as national relations. It means eliminating, as far as possible, the sources of international friction which result from uncertainties and differences of opinion in the interpretation of the law. It means constructing by unremitting

and patient work, block by block, the foundation that will support the rule of law over nations and peoples.

One can scarcely say that the immense importance of such efforts has always been generally understood, or that it is fully grasped even today.

There are two completely different groups that have not given these efforts quite their just due.

On the one hand, there is the group which maintains that in international relations force will always overcome law and that no code of international law can hold its own against the inequalities existing among nations with respect to their means of force. On the other hand, there are those who consider it futile to try to reach the desired goal by following the steep and tortuous path proposed by our Institute and who believe that they can get there by other, more easily accessible roads.

I shall return presently to consider those who are skeptical of international law, but first I would like to say a few words about the utopians of modern pacifism.

It is my opinion that the truly pacifistic movement has no more dangerous enemies than those who believe that they can anticipate natural developments and who try to persuade people to tackle the lofty summit of universal peace by a sort of "flight of Icarus" which would inevitably end, I fear, as sadly as did Icarus himself. Despite the progress of modern aeronautics, the aircraft has yet to be invented which would allow us to dispense with the necessity of following terrestrial paths to achieve practical and lasting civilizing results. Some people are convinced that universal compulsory arbitration in international relations is such an aircraft, just the one to carry us safely into the reign of perpetual peace. I must say frankly that this is a fatal misconception far removed from the true facts of international life. No one will deny that arbitration is an effective instrument for settling many kinds of international disputes, and the ever increasing use of it in our time is one of the most heartening and most promising facets of modern international life. The Institute of International Law would be the last to discount the full significance of this fact. Indeed, it has itself contributed extensively to the development of international jurisdiction. The arbitration procedure adopted by the Hague Conventions[4], for example, is based largely on a system worked out by the Institute. It was also the Institute that supplied valuable preparatory work for the organization of an

international prize court whose almost unanimous adoption by the global powers has been called the most notable result of the second Peace Conference[5]. The Institute is including on its agenda discussion of ways in which to extend the application of international arbitration and to resolve certain legal problems which at the last conference at The Hague prevented more general support for the concept of compulsory arbitration. But the Institute's most effective contribution to the development of this idea is the work it has done to establish the foundation without which compulsory arbitration cannot become a reality. We must not lose sight of the fact that international jurisdiction must necessarily take the same role in relations between nations that tribunals play in disputes between individuals. Such jurisdiction is a means of resolving questions of *law*. However, the time is still a long way off when all civilized nations, large as well as small, will be ready to submit to arbitration questions of interests, especially of vitally important *interests*. The situation has been very clearly assessed in a recent report by an eminent member of this Institute who has devoted much effort to international arbitration: "To settle such questions by arbitration the judges would have to take up positions as gods of battle, of the fortunes of war, and of the fates of armed conflict. They would have to take into account the predominating interests of the nations concerned, the balance of power, and the existence of strength superior enough on one side to determine the outcome of a war. It is fruitless to search for formulas of arbitration which would permit solutions when justice plays so small a part." One might also add that it would be fruitless to try to find judges who would be universally recognized as being equal to this virtually super-human task.

Those who do not realize that, in the present state of mankind, arbitration is incapable of avoiding or resolving large-scale international conflicts of interests, lay themselves open to cruel disillusionment. Not until the day when international life in its entirety is governed by the principles of law and justice, will it be possible to apply arbitration, universally and without exception, to the relations between nations.

Our Institute can justly claim the distinction of being the first international association to base its work on recognition of the fundamental truth that the advance of international law is the basis necessary to all efforts for peace and justice in international relations. It is only right that I recall at this point the name of the man to whom credit for this distinction is primarily due, the man who first took the initiative in bringing about the realization of the idea, the leading founder of our Institute, the eminent Belgian scholar and statesman Rolin-Jaequemyns[6].

Although I have stated earlier that the importance of "l'idée-force" or guiding principle of our Institute is perhaps not fully appreciated by everyone, I must point out that testimonials from those who do appreciate it are both more numerous and more telling. The Institute has received many such tributes, direct and indirect. Among the former I include words such as those spoken not many minutes ago by the Minister for Foreign Affairs, and certainly I include the Nobel Prize itself. And just recently the directors of that great organization for promoting peace which was created through the generosity of Mr. Carnegie[7] gave the Institute a grant of 100,000 francs to help it in its work. I wish to take this opportunity to express publicly, on behalf of the Institute, our profound gratitude for this generous recognition of the merit of our work.

The indirect tributes come from those who have focused their efforts on the same goals and who, despite beginning with a point of departure different from that of the Institute, have ended by associating themselves with the actual work of the Institute. Let me call your attention to some remarkable facts concerning this point.

The Interparliamentary Union, one of whose principal aims is to spread propaganda in favor of international arbitration, passed the following resolution at its session in Berlin in 1906[8]: "Whereas, The proper functioning of all international jurisdiction depends on the establishment of generally recognized principles of international law, the Conference is of the opinion that the third conference at The Hague should concern itself with international public law, using as a basis the work already done toward this end and in particular that of the Institute of International Law."

Even more important is the fact that governments have found problems with which the Institute has been concerned worthy of inclusion in the agenda of major diplomatic conferences.

When, thirteen years ago, the sovereign of a great empire took the generous initiative of convening the first "peace" conference at The Hague[9], the pacifism then envisaged was at first perhaps somewhat different from that which concerns our Institute. But, by necessity, this first conference and the succeeding one in 1907 became in reality what they should also have been called: conferences of *international law*. None will question the great influence which the preparatory work of our Institute has had on the results of these conferences. It is manifest on every page of the Acts of these conferences.

In the domain of international private law, thanks to the initiative of our eminent colleague Mr. Asser[10], diplomatic conferences have ever since 1893 made use of the material furnished by the Institute's resolutions for international conventions.

One might wonder whether the Institute of International Law has not lost some of its importance through the fact that the subjects for discussion and negotiation between governments have often been the same as its own, particularly after the second Hague Conference recommended that these worldwide meetings become a regular and constant element of international life.

This way of looking at it would not be an objective one, however. As I have just mentioned, the results achieved by the Hague Conferences in the fields of both public and private international law, are to a great extent due to the groundwork done by the Institute. Consequently, far from detracting from the importance of our work, the certainty that its results will be of service to governments for international conventions has increased its significance as well as the responsibility attached to it. Our Institute is fully aware of the special tasks imposed upon it by virtue of its collaboration with diplomatic conferences on international law. At the session in Paris in 1910, it elected a committee to prepare a study for the Institute on matters to recommend for inclusion on the agenda of the next peace conference. This committee's report will be discussed in the course of the Institute's present session.

Moreover, the work of our Institute will never be made redundant by the work of such diplomatic conferences, since the latter use different methods and, at least to a certain extent, different points of view. Through force of circumstances the big conferences can be called only at rather long intervals, often at times dictated by the general international situation rather than by choice. The Institute, on the other hand, works continuously and regularly, so to speak. The program and consequently the resolutions of the big diplomatic conferences are bound to be largely influenced by factors of a non-juridical kind and are very often the result of compromise between conflicting political interests. The Institute, on the other hand, enjoys complete independence and can, without having to look either to right or left, freely maintain points of view which according to the convictions of its members and associates best conform to the demands of law and justice. Heading our statutes is the following declaration: "The Institute of International Law is an exclusively scientific body, without any official character."

This independence of any authority or political faction, as well as, generally speaking, of any influence alien to its aims, constitutes the strength of the Institute. The authority and influence of its work are based on this very independence, as well as on the qualifications of competence demanded for admission of its members or associates.

During the forty years since the founding of the Institute, its work has encompassed practically the whole area of international law, both public and private. But we are still far from exhausting all the questions which call for settlement. The development of international commercial and industrial relations, together with current scientific and technological progress, continually gives rise to new problems. There are, for instance, the judicial problems created by modern aeronautics, problems to which the Institute has given serious study and to which it will devote much time during the present session. On the other hand, the progress of scientific research in the field of law itself, along with the general development just mentioned, does not permit the Institute to retain indefinitely the solutions such research may have dictated. After a certain length of time, questions which have already appeared once on our agenda have to be resubmitted for further study whenever theory or practice indicates new points of view concerning them.

Looking back over the development of the concept of law and justice in international affairs during the forty years of the Institute's existence, we have every reason to be satisfied and to view the future with confidence.

Does this mean that we have had no disappointments?

Disappointments, yes, but no failures!

Our disappointments have sometimes been bitter ones indeed. And those to whom any effort to establish a legal basis for international relations is but an object for scorn, have never allowed us to forget them. Who has not heard remarks like this: Rulings of international law have little value since they are broken like spider webs at the first contact with conflicting interests? Even today, many still hold the view expressed by Frederick the Great[11]: "Treaties are like filigree, very pretty to look at but of little practical use."

We have a reply to this. It is true that even today it happens that international treaties are broken or that generally accepted laws are violated. But cast your eyes, you skeptics, upon the vast domains which are today controlled by international conventions or by generally recognized codes of law-domains which include political, economic, philanthropic, artistic, and literary relations which lie at the very heart of the material interests and ideals of nations and which dominate their everyday life. You will see that, compared with the large number of conventional or customary precepts which are scrupulously observed, instances are relatively rare and exceptional in which a treaty is broken by a temporary abuse or a pre-dominating interest. Furthermore, if we want to do justice to these exceptions, we must be truly aware of the relative value of each rule of law - whether it is founded on a convention or on some other source, whether it concerns the internal relations of a country or international life. The purpose of law is to serve, not to thwart progress and development. Even in the internal life of nations such progress cannot always be made without some conflict of interests that cannot be resolved without violation of existing law, either through revolutions or coups d'etat. How many of the numerous constitutions the world has seen introduced in the last century have been able to operate without any infringement of their laws? Should we, on this account, refuse to recognize a constitutional law or deny its judicial character? No sensible person will say Yes. Does this mean then that we must regard violations of international law from a totally different point of view?

As I said earlier, we are certainly not utopians who believe that the reign of justice and peace on earth has long been knocking at our door, and that it is only the obstinate militarists and the plotting diplomats who refuse to open it. If our work has had some success, it is undoubtedly because of our efforts to "calculate the limits of the possible", as one great statesman put it; because of our patience in refusing to advocate premature solutions; and because of our belief in the necessity of developing *gradually* and *progressively* as our statutes bid us.

Without exaggerating our competence, we can perhaps say that the study we have had to devote to the nature of law, to the conditions of its development, and to its place in the progress of human civilization in general, gives us the necessary perspective to judge which factors or events would be most likely to discourage the supporters of international law and justice. We know that what is called the law of nations dates back no further than to the beginning of the seventeenth century, and that this whole system of international conventions which I have just spoken of and which today constitutes an apparently indispensable basis for

international relations has its roots only in the last fifty or, at most, the last hundred years. What an infinitesimal fraction of time this is within the entire span of the world's development, past and future! And, if we have managed to achieve so much in so short a time, then what prospects are nor open to us for future development?

All attempts to further human progress should have far-reaching aims, and those who wish to take an active part in the effort should not lose patience if the progress sometimes appears to be very slow or even to sustain interruptions and setbacks.

The goal, the undisputed and inviolable reign of law in international relations, is most certainly still a long way off, and we must accept the probability that many generations will perish in the desert before mankind reaches the promised land. But let us take heart in the discerning words spoken by Mirabeau a century ago: "Law will one day become the sovereign of the world."

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* Delivered by Georg Francis Hagerup at the Nobel Institute in Oslo, this address was simultaneously the official opening of the twenty-seventh session of the Institute of International Law, of which Mr. Hagerup was the president, and the lecture which the laureate or, as in this case, a representative of the honored organization gives in Oslo after the award of the Nobel Peace Prize. The Institute of International Law had been awarded the prize eight years previously in 1904. Georg Francis Hagerup (1853-1921), Norwegian jurist and statesman who had been minister of justice in the Norwegian government (1893-1895), head of the ministry (1895-1898; 1903-1905), and a member of the Hague Tribunal (1903), was at the time of this address minister plenipotentiary to Copenhagen, Brussels, and The Hague, as well as president of the Institute of International Law and a member of the Nobel Committee. This translation of his speech is based on the French text in *Les Prix Nobel en 1912*, which is identical to the text in *Annuaire de l'Institut de droit international- Session de Christiania-Août 1912* (Paris: A. Pedone, 1912), Vol.25, pp. 543-55, except for three minor differences. No title has been given to the speech in the printed sources; the title used here embodies the theme of the discourse.

1. Haakon VII (1872- 1957), king of Norway (1905-1957).

2. Johannes Irgens (1869-1939), the Norwegian jurist and diplomat-minister of foreign affairs (1910-1913) - who had just delivered the speech of welcome.

3. In 1888. See Cremer's Nobel lecture, pp. 51-52.

4. For a discussion of these, see Renault's Nobel lecture, pp. 143-166.

5. For a discussion of Convention XII on the creation of this court, see Renault's Nobel lecture, pp. 160-163.

6. Gustave Rolin-Jaequemyns (1835-1902), editor of the *Revue de droit international et de legislation comparée*.

7. Carnegie Endowment for International Peace established in 1910 by Andrew Carnegie (1835-1919), American industrialist and philanthropist.

8. The 1906 session of the Interparliamentary Union was held in London. Berlin was the site in 1908 (September 17-19) of the fifteenth Interparliamentary Conference which passed the resolution (Number 7) to which Mr. Hagerup refers. See *Union interparlementaire: Résolutions des conférences et décisions principales du conseil*, 2e édition, par Chr.-L. Lange, secrétaire général de l'Union (Bruxelles: Misch & Thron, 1911). Resolution 7 as reported in *Union interparlementaire*, p. 106, contains three words omitted in both the *Les Prix Nobel* text and the *Annuaire* text of the speech: *de la codification*. These words appear between *s'occupe* and *du droit internationa*l *public*, so that it reads in English: "...concern itself with *the codification of* international public law..."

9. Czar Nicholas II of Russia whose Rescript to all countries represented at his court resulted in the 1899 Hague Peace Conference.

10. Tobias Asser (1838-1913), co-recipient of the Nobel Peace Prize for 1911.

11. Frederick II, known as Frederick the Great (1712-1786), king of Prussia (1740- 1786).

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