

Court itself might be used, but the majority thought a tribunal with all its judges trained in British countries and with "a vivid consciousness of the nature and implications of the special relationships which exist between members of the Commonwealth" was desirable. Consequently those present agreed that the reservation of "*inter se* questions" made by all the dominions, except the Irish Free State, in signing the optional clause of the World Court Protocol should be retained.

It is interesting to note that, whatever may be the nature of the British Empire the suggestions of this conference would assimilate it closely to the League of Nations, with respect to its policy, the objects of coöperation among its members, and its organization. In spite of these resemblances of the Commonwealth to an international organization in external aspects, the historic fact of closer connection cannot be ignored and certainly influenced the proceedings of this conference itself. The remarks, it was noted, were "by no means insipid or colorless" but, on the contrary, were "marked by that outspoken frankness which properly characterizes discussions between members of one family. This happy informality and the complete candor by which it was accompanied produced an atmosphere very different from that of an international conference whether official or unofficial and added very greatly to the practical value of the discussion. For, to quote from a South African speaker, 'characteristic of the family outlook is sanity of aim and reasonableness in our method of approach to public questions.'"

QUINCY WRIGHT

THE ARGENTINE REPUBLIC AND THE LEAGUE OF NATIONS

The action recently taken by the Government of the Argentine Republic has cleared away the confusion which had existed since 1920 with reference to the Republic's membership in the League of Nations. The history of the problem to which a solution has now been given throws light both on the constitutional law of the League of Nations and on certain principles of international law in their application to the Covenant as an international instrument, and it seems to deserve a careful study.

The Argentine Republic is listed in the Annex to the Covenant as one of the "States invited to accede to the Covenant." The conditions of this accession are set by Article 1 of the Covenant, which provides for accession "without reservation" to be "effected by a declaration deposited with the Secretariat within two months of the coming into force of the Covenant." Soon after the signature of the Treaty of Versailles on June 28, 1919, the Government of the Argentine Republic moved to effect its accession. On July 12, 1919, the Minister for Foreign Affairs sent the following telegraphic instruction to the Argentine Minister in Paris: ¹

¹ For the text, see Juan B. Sivori, *La Liga de las Naciones, su origen y la obra realizada en la República Argentina* (Buenos Aires, 1928), p. 503. The translation is that appearing in Warren H. Kelchner, *Latin American Relations with the League of Nations* (Boston, 1930), p. 47.

In accordance with Article 1 of the Covenant of the League of Nations, the Executive Power has decided to adhere to it without any reservation. Publish this decision. Please deposit with the Secretariat the appropriate communication.

This instruction was of course without any significance in international law.

On July 18, 1919, the Argentine Minister at Paris addressed the following letter to Sir Eric Drummond, "Secretary General of the League of Nations, Paris:"²

I have the honour to bring to your notice the correspondence I have just received from my Government, in which I am instructed to adhere unreservedly to the League of Nations in the name of the Argentine Republic, and in accordance with the terms of Article 1 of the Covenant.

I hasten, therefore, to do so in order that you may take such action as you consider necessary.

At this date, Sir Eric Drummond was merely the Secretary-General designate of the League of Nations to be; this was indicated in the reply sent by him, which was in the following terms:³

J'ai l'honneur d'accuser réception de votre communication du 16 juillet, dans laquelle vous m'informez que vous étiez chargé par le Gouvernement Argentin d'adhérer sans réserves, au nom de la République Argentine, et d'accord avec les termes de l'article 1^{er} du Pacte, à la Société des Nations.

Je n'ai pas besoin de vous assurer que c'est avec le plus grand plaisir que j'ai pris note de votre déclaration. Cependant je dois vous faire remarquer que la Société des Nations n'est pas encore constituée légalement et que je ne puis exercer mes fonctions de Secrétaire Général avant l'entrée en vigueur du Traité de Paix.

Dans ces conditions, je vous serais très obligé de bien vouloir m'informer si la communication que vous m'avez adressée signifie que la République Argentine désire faire son adhésion à la Société aussitôt que la commission des ratifications nécessaires au Traité de Paix lui en fournira formellement le moyen.

On July 29, 1919, the Argentine Minister replied to Sir Eric Drummond, as follows:⁴

I have the honour to acknowledge receipt of your letter of 23rd July, in which, while noting the adhesion of my Government to the League of Nations, you point out that, the League of Nations not being yet legally constituted, you are not in the position of being able to carry out your duties of Secretary General until the Peace Treaty comes into force.

You add, that under these conditions you would like to know if the communication I sent you means that the Argentine Republic desires to adhere to the League of Nations, as soon as the necessary ratification of the Peace Treaty makes this possible.

Such is, in fact, the interpretation that should be given to my note of

² Translation from League of Nations Official Journal, 1920, p. 13.

³ Sivori, *op. cit.*, p. 504.

⁴ Translation from League of Nations Official Journal, 1920, p. 14.

the 18th July: the Government of the Argentine Republic adheres to the League of Nations, and it will ratify this adhesion as soon as the Chambers have given their approval. The Secretariat General of the League of Nations will be officially advised of this in due course.

It may be doubted whether any legal effect should be given to this exchange. The Treaty of Versailles was not yet in force; no invitation to accede to the Covenant had been sent to the Argentine Government; Sir Eric Drummond had not been invested with any authority in the premises; and, though the two letters of the Argentine Minister are to be analyzed together, they constituted no more than a statement of intention to accede to the Covenant. Recent practice affords many examples of accession or adhesion conditioned on later ratification or later parliamentary approval; such a course may not have been excluded by the actual language of the Covenant, which refers to reservations and not to conditions. The conclusion would seem to be that prior to January 10, 1920, no action had been taken by which the Argentine Republic became bound by the provisions of the Covenant. However, there was a clear indication of the attitude of the Argentine Government and of its intention to assume League membership. Hence, no question was raised as to the representation of the Argentine Republic at the first International Labor Conference held in Washington in 1919, and the Argentine Government sent to that conference delegates who participated on a basis of complete equality with those of other states.

Following the coming into force of the Treaty of Versailles, on January 10, 1920, a telegraphic invitation to accede to the Covenant was extended to the Argentine Republic by M. Clemenceau, apparently in his capacity as President of the Peace Conference. This invitation read as follows: ⁵

Aux termes de l'article premier et de l'annexe à la partie 1 du traité signé à Versailles le 28 juin 1919 entre les Puissances alliées et associées et l'Allemagne, la République Argentine est invité à accéder au pacte de la Société des Nations dans les deux mois de la mise en vigueur dudit traité.

J'ai l'honneur d'informer Votre Excellence que le traité de Versailles ayant, conformément aux clauses finales, été ratifié par l'Allemagne d'une part, et, d'autre part, par plusieurs puissances alliées et associées dont l'Empire britannique, la France, l'Italie et le Japon, il a été mis en vigueur aujourd'hui 10 janvier 1920, et que copie certifiée conforme de ce traité a été remise ce jour à son Excellence le Ministre de la République Argentine à Paris.

On the same date, the Argentine Minister in Paris was informed of this communication.⁶ On January 16, 1920, the President of the Argentine Republic replied as follows: ⁷

⁵ Text from 30 *La Paix et le Droit* (1920), p. 43. See also, Sivori, *op. cit.*, p. 506.

⁶ 30 *La Paix et le Droit* (1920), p. 43.

⁷ Translation from Kelchner, *op. cit.*, p. 48. See also, Sivori, *op. cit.*, p. 506. It seems that no separate document was transmitted with the reply.

I take pleasure in transmitting to Your Excellency the formal ratification of the Argentine Government under the conditions of adhesion expressed in the note of July 18, 1919, addressed to the Secretary-General of the League by our representative in France.

On January 10, 1920, also, the Secretary-General of the League of Nations notified the Argentine Minister for Foreign Affairs that other governments had been notified of the deposit of the Argentine Republic's accession to the Covenant; on February 11, 1920, the Argentine Minister for Foreign Affairs sent a formal acknowledgment of the Secretary-General's communication.⁸ At the first meeting of the Council of the League of Nations on January 16, 1920, M. Bourgeois stated that the Argentine Republic has already acceded to the Covenant.⁹ On June 29, 1920, the Argentine Government was asked by the Secretary-General to furnish information to serve as a basis for fixing the amount of the Argentine Republic's contribution to the League of Nations, and such information was furnished on October 4, 1920.¹⁰ On October 5, 1920, by decree, the President of the Argentine Republic appointed a delegation to the First Assembly; this decree recited that authority for this action had been given by the Argentine Senate, on September 30, 1920.¹¹ The Argentine delegates to the First Assembly in 1920 participated very actively in the work of the Assembly; one of the Argentine delegates was elected a Vice-President of the Assembly.¹² Owing to the failure of the First Assembly to adopt certain proposals made by the Argentine delegation, some of which related to the amendment of the Covenant, the delegation withdrew from the Assembly; and no delegates have been sent to any later session of the Assembly.

The Argentine Government has not held aloof from League activities during the intervening years, however. It has been represented at various sessions of the International Labor Conference, at the sessions from 1923 to 1928, and in 1931. Moreover, on April 26, 1926, the President of the Argentine Nation promulgated a decree¹³ designating representatives to act as members of a committee on the composition of the Council of the League of Nations, of the Preparatory Committee of the Disarmament Conference, and of the Advisory Committee on Disarmament, and these representatives acted in such capacities.¹⁴ The Argentine Government seems also to have requested the registration of treaties by the Secretariat.¹⁵ Various payments of contributions to meet the expenses of the League of Nations were made by

⁸ Sivori, *op. cit.*, pp. 507-508.

⁹ Procés-verbal of the First Meeting of the Council, p. 5.

¹⁰ *Memoria presentada al Honorable Congreso Nacional, 1920-21, Ministerio de Relaciones Exteriores y Culto*, pp. 4, 7.

¹¹ *Id.*, p. 10.

¹² Records of First Assembly, Plenary, p. 145.

¹³ *Presidencia Alvear, 1922-1928. Compilación de Mensajes, Leyes, Decretos y Reglamentaciones*, III, p. 416.

¹⁴ See, *e.g.*, Records of the Seventh Assembly, First Committee, p. 39.

¹⁵ See 28 League of Nations Treaty Series, p. 288; 62 *id.*, p. 86.

the Argentine Government, the appropriations having been voted by the Argentine Congress; such payments were made in 1924, 1925, 1926, 1927 and 1928, covering fiscal periods from 1920 to 1928.¹⁶ No payment has been made for 1929 or subsequent years, and on October 3, 1933, the Argentine Republic was listed as being in debt to the League of Nations for 4,313,717.37 gold francs.¹⁷

Throughout the period of President Alvear's incumbency, from 1922 to 1928, continuous efforts were made to have the position of the Argentine Republic *vis-à-vis* the League of Nations regularized. On June 6, 1923, President Alvear, in a message to the Congress asking for an appropriation to pay Argentina's contribution to the League of Nations, referred to the adhesion by the Executive Power to the Covenant, as follows: ¹⁸

La referida adhesión se operó con el depósito de la comunicación correspondiente hecha en la Secretaría de la Liga por el Ministro Argentino en París, el 18 de Julio de 1919, de acuerdo con las instrucciones que a ese efecto le impartiera el 12 del mismo mes, el Ministerio de Relaciones Exteriores; y fué ratificada por el Señor Presidente de la Nación en 16 de enero de 1920 respondiendo a la invitación a adherir al Pacto de la Liga que dirigió el Presidente del Consejo Supremo de las Potencias Aliadas y Asociadas.

In 1924, two further messages were sent to Congress with reference to the appointment of delegates to the Fifth Assembly; ¹⁹ but no action was taken by the Congress at that time.²⁰ In each of his annual messages, President Alvear insisted that action be taken,²¹ but in vain. A different attitude came to prevail in 1932, when on September 28 the Chamber of Deputies passed a bill for the approval of the Covenant. "It was explained during the debate that Argentina already was a member of the League from an international viewpoint, but not from an internal constitutional viewpoint, the purpose of the bill being to clear up this ambiguous situation."²² The parliamentary action was consummated in 1933, and on September 26, 1933, the Argentine Minister for Foreign Affairs sent a telegram informing the Secretary-General of the League of Nations that "the Argentine Parliament has just sanctioned in both Houses, the Chamber of Deputies and the Senate, which yesterday unanimously approved it, our country's accession to the League of Nations, at the same time approving the Covenant in accordance with the constitutional powers of Congress, which gives legal validity to the international tie that will henceforth bind us together."²³ On September 28, 1933, the Argen-

¹⁶ The Argentine contributions were authorized by Congress, as parts of the general budgets voted. See 22 *Leyes Nacionales*, p. 144; 23 *id.*, p. 38. See also *Informaciones acerca de la Liga de las Naciones, Ministerio de Relaciones Exteriores y Culto* (1925), p. 40.

¹⁷ League of Nations Document, A. 56. 1933. X, pp. 5-6.

¹⁸ *Informaciones acerca de la Liga de las Naciones*, p. 39.

¹⁹ *Id.*, p. 41.

²⁰ Kelchner, *op. cit.*, p. 101.

²¹ *Presidencia Alvear*, I, pp. 190, 294, 406, 518.

²² New York Times, Sept. 29, 1932, p. 1. (Official records of the debates are not available to the writer.)

²³ League of Nations Document, A. 30. 1933.

tine Minister at Berne communicated to the Secretary-General of the League of Nations the text of the law promulgated on the preceding day; this communication read as follows (translation): ²⁴

In accordance with instructions received from my Government I have the honour to communicate to you the full text of the law voted by the Argentine National Congress under which the Argentine Republic accedes to the League of Nations. This law was promulgated yesterday by the Executive:

National Congress. Argentine Republic. The Senate and the Chamber of Deputies of the Argentine Republic, meeting in Congress, etc., have adopted the following law:

Article 1. The Covenant of the League of Nations contained in the first twenty-six articles of the Treaty of Peace signed at Versailles on June 28th, 1919, is hereby approved.

Article 2. The amendments to Articles 4, 6, 12, 13 and 15 of the said Covenant, the first two of which came into force on July 29th, 1926 and August 13th, 1924, respectively and the last three on September 26th, 1924, are hereby approved.

Article 3. The declaration of principles and Articles 387 to 427 of the Treaty of Peace of Versailles which constitute Part XIII thereof relating to the International Labour Organisation are hereby approved.

Article 4. The Executive is authorised to pay the amount of the contribution to the expenses of the League of Nations allotted to the Argentine Republic for the financial period corresponding to the year of promulgation of the present law.

Article 5. In communicating the present law to the Secretariat of the League of Nations the Executive shall state that the Argentine Republic regards the Monroe Doctrine mentioned as an example in Article 21 of the Covenant as a unilateral political declaration which in its time rendered signal service to the cause of American emancipation and not as constituting a regional understanding as stated in the Article in question.

Article 6. The expenses involved by the execution of the present law shall be defrayed out of the general revenue in respect of the said law.

Article 7. The present law shall be communicated to the Executive.

Given in the Assembly Hall of the Argentine Congress at Buenos Ayres on September 25th, 1933. Signed: JULIO A. ROCA, JUAN F. CAFFERATA, GUSTAVO FIGUEROA, D. ZAMBRANO.

Registered under No. 11,722.

Accordingly the present law shall be regarded as a Law of the Nation; it shall be executed, communicated and published in the Official Gazette and inserted in the national archives. Signed: CARLOS SAAVEDRA LAMAS.

The Assembly took no special action on the Argentine communication, beyond a statement by the President of its welcome reception. On October 2, 1933, the Assembly did proceed, however, to elect the Argentine Republic to a seat on the Council, and an Argentine representative took his seat at the 77th session of the Council.

It should be noted that the law of September 27, 1933, did not call for a reservation as to the Monroe Doctrine. Article 21 prevents the Covenant from affecting the validity, such as may exist, of "international engagements,

²⁴ League of Nations Document, A. 34. 1933. VII.

such as treaties of arbitration or regional understandings like the Monroe Doctrine, for securing the maintenance of peace." It is clearly open to a member of the League of Nations which has accepted this provision to assert that the Monroe Doctrine does not constitute a regional understanding in so far as it is concerned.²⁵

This happy outcome of a delicate situation enables certain problems to be discussed with greater freedom than was previously possible. Was the Argentine Republic a member of the League of Nations and as such bound by the Covenant during the period from 1920 to 1933? The answer to this question is important both for the constitutional law of the League of Nations, and for the effect in international law of constitutional limitations on the treaty-making power. A somewhat similar problem has arisen with reference to Luxembourg's accession to the Covenant,²⁶ and perhaps it has not yet been finally resolved.

If the Argentine Republic was a member of the League of Nations from 1920 to 1933, this must have resulted either from (1) the response by the President of the Argentine Nation to the President of the Peace Conference, on January 16, 1920, or (2) from the actual participation in the activities of the League by the Argentine Government.

(1) By his response of January 16, 1920, President Irrigoyen as the head of state seems to have effected a definitive accession to the Covenant. The informal character of the response does not render it ineffective; accessions are frequently less formal than ratifications, and even for the latter it would be difficult to say that any particular formality is required, apart from special stipulations. The reference to the Argentine Minister's letter of July 18, 1919, leaves no doubt that the President intended his telegram to be a definitive accession.

Yet the problem arises whether the President had power to bind the Republic. Article 86 (14) of the Argentine Constitution confers on the President power "to conclude and sign treaties of peace, of trade, of navigation, of alliance, of limits and neutrality, and agreements with the Pope;" on the other hand, by Article 67 (19) Congress is given power "to approve or reject the treaties signed with the other nations and agreements with the Vatican." Apparently, Congress must approve a treaty before the President may take the final action of ratification or accession, and in the Argentine Minister's letter of July 29, 1919, addressed to Sir Eric Drummond, this condition was stated. The question arises, therefore, whether the Argentine Republic could be bound by the accession to the Covenant by the President, when the Presi-

²⁵ Mexico also stated, on agreeing to membership in the League of Nations, "that she has never recognized the regional understanding mentioned in Article 21 of the Covenant." See this JOURNAL, Vol. 26 (1932), p. 114.

²⁶ League of Nations Official Journal, 1921, pp. 706-708; Hudson, "Membership in the League of Nations," this JOURNAL, Vol. 18 (1924), p. 445; Schücking and Wehberg, *Die Satzung des Völkerbundes* (2 ed.), pp. 305-308.

dent had not obtained the necessary approval by Congress. Is there a principle of international law which invests a head of state with power to bind his state *vis-à-vis* other states? Or must the constitutional limitations on the power of a head of state be viewed as limiting his capacity to represent his state *vis-à-vis* other states?

Article 1 of the Habana Convention on Treaties of 1928 provides that "treaties will be concluded by the competent authorities of the states or by their representatives, according to their respective internal law."²⁷ This would seem to require compliance with a state's constitutional requirements before a valid treaty (or engagement) can be concluded. Mr. Arnold D. McNair has recently made a forceful statement of this view,²⁸ in which he concluded that if a state's written constitution makes the consent of its legislature essential to the conclusion of a treaty, no treaty will be valid without that consent.

In the recent Eastern Greenland Case before the Permanent Court of International Justice, an oral declaration by the Norwegian Minister for Foreign Affairs was held to be binding on the Norwegian Government, without any inquiry by the court into the constitutional limitations upon the powers of the Minister.²⁹ Judge Anzilotti, dissenting in that case, went further; he intimated that international law confers a competence on a Minister for Foreign Affairs, saying that "the constant and general practice of States has been to invest the Minister for Foreign Affairs—the direct agent of the chief of the State—with authority to make statements on current affairs to foreign diplomatic representatives, and in particular to inform them as to the attitude which the government, in whose name he speaks, will adopt in a given question. Declarations of this kind are binding upon the State."³⁰ Nor would Judge Anzilotti admit that this competence conferred by international law can be limited by a national constitution. "As regards the question whether Norwegian constitutional law authorized the Minister for Foreign Affairs to make the declaration, that is a point which, in my opinion, does not concern the Danish Government: it was M. Ihlen's duty to refrain from giving his reply until he had obtained any assent that might be requisite under the Norwegian laws." If the clear indications of the Eastern Greenland Case are to be followed, there could be little doubt that the telegram addressed by the President of the Argentine Republic to the President of the Peace Conference on January 16, 1920, constituted a binding accession, even though the Argentine Constitution required previous assent by the Congress.

(2) If a definitive accession to the Covenant by the Argentine Republic must be said to have been lacking in 1920, possibly an accession may be said

²⁷ 4 Hudson, *International Legislation*, p. 2378. Ratifications of this convention have been deposited by Brazil, Dominican Republic, Haiti, Nicaragua, and Panama.

²⁸ McNair, "Constitutional Limitations Upon the Treaty-Making Power," in Arnold, *Treaty-Making Procedure* (1933), pp. 1-16.

²⁹ Series A/B, No. 53, p. 69 ff.

³⁰ *Id.*, pp. 91-92.

to have resulted from the action taken by the Argentine Government between 1920 and 1933. If a principle of estoppel could be said to exist in international law, a basis for its application might be found here; or perhaps it may be said that there was a tacit acceptance (*stillschweigende Genehmigung*) in the sense in which that term has been used in recent times.³¹ Argentine delegates voted in the First Assembly and in various sessions of the International Labor Conference, contributions were paid to the League of Nations after appropriation by the Argentine Congress, Argentine representatives took part in the committee on the composition of the Council; and these acts are consistent only with Argentine membership in the League of Nations.

On one or the other of these grounds, it seems possible to conclude that the Argentine Republic was a member of the League of Nations prior to September, 1933.

MANLEY O. HUDSON³²

³¹ In its judgment relating to German Interests in Polish Upper Silesia, the Permanent Court of International Justice seems to have admitted the possibility of a "tacit adherence or accession." Series A, No. 7, p. 28. See also Schücking and Wehberg, *op. cit.*, I, p. 308.

³² With the collaboration of M. Raymond J. Jeanprêtre.