

to the maintenance of peace. Even before the conscience of mankind had reached its present state of awareness, mass exterminations were recognized as creating a spirit of vengeance continuing for generations and even for centuries both within the state and in other states where related groups seek action to revenge the crime. One has only to think of events like the massacre of Bartholomew's Night and others committed in periods between religious wars, the Armenian massacres and those of our own day, to realize that genocide is a threatening danger to peace and the source of international wars and civil hostilities.

It should be remembered that notwithstanding the reference of the General Assembly to genocide as an international crime, the nations of the world do not yet consist of a society of individuals all subject to the authority of a definite legal order. The world may well be progressing toward that end, but it is a gradual process. Even with respect to piracy, all that the customary or conventional law assumes to do is to establish an extraordinary jurisdiction and fix the duties of the several states *inter se*, leaving to each state the decision how, through its own law, it will exercise its rights and powers.³ So with respect to genocide, the effective establishment of a special rule of jurisdiction requires international coöperation in order to pursue those charged with genocide beyond the borders of a single state in exchange for reciprocal powers granted to the other parties. Only the treaty-making power can accomplish this result. From the very nature of our Government, the treaty-making power must reside centrally or nowhere. State rights cannot be an obstacle to the participation of the United States in a genocide convention, otherwise the power of the nation would be prevented from acting effectively to combat this threat to the peace and security of all nations and the establishment of a civilized standard of international life.

ARTHUR K. KUHN

THE STATUTE OF THE COUNCIL OF EUROPE

Both logic and history demonstrate that European federal union is at once more obvious and more difficult than world federation. At the same time, as Dean Kayser has recently suggested,¹ it is one of the older projects which may yet become fact.

The draft Statute of the Council of Europe was signed in London on May 5, 1949.² It is to go into operation (Article 42) among the ratifying signatories when seven of them have acted. The signatories included Bel-

³ See Harvard Law School Research in International Law, Drafts of Conventions (Cambridge, Mass., 1932), Introduction to the subject of Piracy. This JOURNAL, Supp., Vol. 26 (1932), p. 760.

¹ World Affairs, Vol. 112, No. 1 (Spring, 1949), p. 7.

² The Times (London), May 6, 1949, pp. 4, 5.

gium, Denmark, France, Ireland, Italy, Luxembourg, The Netherlands, Norway, Sweden and the United Kingdom. Ratifications are to be deposited—somewhat surprisingly—in London.

A few special detailed features of the document itself suggest comment. Thus peace based on justice and coöperation for mutual service appears once again (Preamble) as the ground for setting up an international union. On the other hand the test for membership—in principle—now becomes (Preamble) not devotion to peace or any other objective standard but “like-minded”-ness, although various articles (1, 3, etc.) explain the points or character of the desired state of mind. The operation of the Council is explicitly based (Article 1) on discussion and agreement, and no questions of enforcement or security are raised. Extremely elaborate provisions are included (Articles 20, 29, etc.) for voting by unanimity, two-thirds majority, simple majority, and so on; perhaps the development here has been carried too far. An attempt is made (Article 32) to prevent conflicts between meetings of the Consultative Assembly and national parliaments, on one hand, and the General Assembly of the United Nations on the other. Financial contributions can be calibrated—it was apparently so believed—according to population alone in this Western European union (Article 38). So roughly for representation in the Consultative Assembly (Belgium 6, Denmark 4, France 18, Ireland 4, Italy 18, Luxembourg 3, Netherlands 6, Norway 4, Sweden 6, United Kingdom 18).

More general comment may also be made on this millennial creation. Thus there appears a somewhat curious mixture of Atlantic Charter ideology (Article 3) and good old European diplomacy (the Committee of Ministers—the executive council of the union—is to meet in secret).³ The complete avoidance of the sanctions issue, already mentioned, is very striking. So, for that matter, is the general structural resemblance with the League and the United Nations (Committee of Ministers, Consultative Assembly, Secretariat, subordinate commissions), and the enormous preoccupation with the problem of relations between the Committee of Ministers (old European diplomacy) and the Consultative Assembly (post-1918 Europe). Amendment of the Statute is made surprisingly easy and efficacious (Article 41).

Obviously the fruits and the value of this in some ways revolutionary document depend upon its application to an even greater extent than is usual in such cases. As a constitutional instrument it is inferior to the League Covenant and even to the United Nations Charter, not to mention numerous conventions establishing international administration unions. As an element in Western European defense or Western European economic reconstruction the document does not promise much. Perhaps from a diplomatic, political, or psychological point of view it may have serious

³ See also Art. 25.

significance. It certainly contains no threat of danger to the rest of the world, as some students of international organization have feared would result from the setting up of any European union; this alone may reveal something concerning the nature of this effort.

PITMAN B. POTTER

THE PRESENT STATUS OF FOREIGN PERIODICAL LITERATURE OF INTERNATIONAL LAW

At the recent annual meeting of the Board of Editors of this JOURNAL in Washington some colleagues urged this writer to dedicate his next editorial comment to a survey of foreign periodical publications of international law during and after the second World War. To comply with this request, these lines have been written. They are based on this writer's studies, on his continuous perusal of all these publications, on his knowledge of all the languages involved.¹ This writer is personally acquainted and in correspondence with many of the editors, and has been and is a collaborator of most European and many American periodicals of international law. A check was made in February at the Harvard Law School Library, when this writer attended the discussion conference on international law at Cambridge, convoked by Judge Manley O. Hudson. In the course of recent investigations on the problem of the legal status of occupied Germany, this writer has made a special study of German publications of international law. These lines, however, do not pretend to give an exhaustive picture. They only serve to furnish an orientation to international lawyers in the Americas and they may also, perhaps, be found helpful in Europe.

Only foreign periodical publications, *i.e.*, those not published in the United States, are included. Information is restricted to periodical publications of public international law, excluding publications exclusively or primarily devoted to private international law (conflict of laws). Official publications are in general not mentioned; the same is true of the publications of the United Nations.

Attention may be directed, however, to the fact that the *Bulletin of the Pan American Union* will be replaced by two periodicals,² the more popular *Americas* and the important *Annals of the Organization of American States*.³ This new publication, an outcome of the complete reorganization of the inter-American system under the Bogotá Charter,⁴ will constitute a long step toward improving the hitherto fully inadequate documentation on the inter-American system. Equally important will be the new *Inter-American Juridical Yearbook*.

¹ Unfortunately, this writer does not know Russian; that is why periodical publications of international law in the Soviet Union could not be included.

² See the note in this JOURNAL, Vol. 43 (April, 1949), p. 348.

³ Vol. I, No. 1 (Washington, 1949, pp. 151). The *Annals* will be published in separate editions in the four Pan American languages (Spanish, English, Portuguese and French).

⁴ See the writer's study in this JOURNAL, Vol. 42 (July, 1948), pp. 568-589.