endeavor of the sovereign to do so, by utilizing all of the means at its disposal in seasons of peace as well as in those of war, may so greatly enhance the burden of a belligerent neighbor which desires to invade it, as to discourage its recourse to such action. With appreciation of the military effect of the best efforts of a neutral state, howsoever located, to deter the commission of warlike acts on its soil, and thus to decrease the very existence of localities available for hostile military operations, there is seen a salutary influence for peace that might be exerted if other states in Europe or elsewhere accepted the reasoning and followed the course proposed by the King of the Belgians. It has inspired Mr. Walter Lippmann to declare: "It may be, too, that a new system of peace is in the making, based not on collective action against an aggressor but on the defense of neutrality. If, for example, Poland followed the Belgian example and took a clear decision to join neither Germany nor Russia, the Russo-German war would be a difficult war to fight. There would be no battle-field." [8]

Nothing that has happened in Europe during the interval between the termination of the World War and the year 1937 indicates that the King of the Belgians made an incorrect diagnosis of the problem confronting his country or failed to suggest the correct solution of it. It is believed that he did even more, and that by his realistic approach to the task involved in maintaining the inviolability of Belgian soil, he necessitated a faithful reconsideration of the conclusions of thought that prevailed in 1919, and especially of those which ignored the value of neutrality either as a means of safeguarding the inviolability of territory, or as a deterrent of war between states seeking recourse to armed conflict.

CHARLES CHENEY HYDE

THE INTER-AMERICAN CONFERENCE FOR THE MAINTENANCE OF PEACE

The genesis of the idea for the special Inter-American Conference which began its meetings at Buenos Aires on December 1, 1936, has already been described in this JOURNAL.[1] It is the 108th Inter-American Conference, the first having been held one hundred and ten years ago.[2] It is the second Inter-

in fact suffer as grievous harm as would be the case were a belligerent army to occupy the land. Nevertheless, any Belgian effort to repel by force the belligerent that merely sought transit by air over Belgian soil might be expected to induce an aërial bombardment designed to overcome all resistance.

[8] "Disentanglement in Europe," New York Herald-Tribune, Oct. 17, 1936.

[1] Vol. 30 (1936), p. 270.

[2] See list in Department of State, Publication No. 499. Since 1933, the date of that publication, the following conferences have been held: Seventh International Conference of American States, Montevideo, Dec. 3–26, 1933; The Central American Conference, Guatemala City, March 14–April 13, 1934; Ninth Pan American Sanitary Conference, Buenos Aires, Nov. 12–22, 1934; Pan American Commercial Conference, Buenos Aires, May 26–June 19, 1935; Seventh American Scientific Congress, Mexico City, Sept. 8–17, 1935; Third Pan American Red Cross Conference, Rio de Janeiro, Sept. 15–25, 1935; Seventh Pan

American Conference held outside of the United States which has been signalized by the presence of the President of the United States.

This special conference had a broad agenda, but the Governing Board of the Pan American Union resolved on July 22, 1936, to recommend to the Conference that "preferential consideration be given to the questions relating to the organization of peace, and that the Conference determine which of the other topics, whether of an economic, commercial or cultural character, are *sufficiently ripe to merit a sufficiently general consensus of approval to make* advisable their consideration. . . ." The agenda as approved by the Governing Board at the same session included six general heads: I. Organization of Peace; II. Neutrality; III. Limitation of Armaments; IV. Juridical Problems; V. Economic Problems; VI. Intellectual Coöperation.[3] The first and second headings are unquestionably the most prominent and probably the most important at this time.[4]

There are indications that in certain quarters the convocation of this conference was regarded as an attempt to drive the League of Nations out of the Western Hemisphere. Obviously no tangible evidence is produced to support this thesis. It is a fundamentally fallacious thesis. It stems from the discussions of the relative merits of regionalism *vs.* universality in world organization. Some ardent supporters of the League of Nations profess to see in moves toward regional arrangements a desire to sabotage the League. Perhaps some such moves are so motivated. Basically, however, the opposition to regionalism is akin to the outcast notion, once prevalent in politico-economic thought, that the prosperity of one state depended upon the destruction or poverty of its rivals. With reference to international organization today, any forward step taken anywhere in the world is of direct value and assistance to any similar moves elsewhere. The improvement or perfection of the machinery for international coöperation in the Western Hemisphere is of great value to the fundamental purposes which the League of Nations was designed to serve. It is also pertinent to recall that the agenda of the Buenos Aires Conference specifically calls for consideration of "measures of coöperation with other international entities." The League has always labored under the burden of exaggerated hopes raised by the too ambitious program embodied in the Covenant. It may have to act now upon the principle of the French proverb, "*se reculer pour mieux sauter.*"

The Pan American movement, on the contrary, has grown modestly but steadily. It has not sought to vest in a central organization political powers

American Child Congress, Mexico City, Oct. 12–19, 1935; Second Assembly of the Pan American Institute of Geography and History, Washington, D. C., Oct. 14–19, 1935; Third Pan American Conference of National Directors of Health, Washington, D. C., April 4–15, 1936.

[3] Inter-American Conference for the Maintenance of Peace, Special Handbook for the Use of Delegates. Prepared by the Pan American Union (1936), pp. 3–5.

[4] *Cf.* Thompson, "Toward a New Pan-Americanism," Foreign Policy Reports, Vol. XII, No. 16, Nov. 1, 1936.

which upon occasion would necessarily be sterile if the central organization should seek to apply them against a powerful but recalcitrant state. The Pan American theme is voluntary coöperation carried to the extent which all members, at any given period of time, are willing to accept.

Relative to the first item on the agenda of the Buenos Aires Conference—"Organization of Peace"—it should be noted that many of the American Republics are already parties to five international instruments which the United States recommended should be coördinated: [5]

1. The Treaty to Avoid or Prevent Conflicts (The "Gondra Treaty"), signed at Santiago, May 3, 1923.

2. The Pact of Paris for the renunciation of war, signed at Paris, August 28, 1928.

3. The General Convention of Inter-American Conciliation, signed at Washington, January 5, 1929.

4. The General Treaty of Inter-American Arbitration, signed at Washington, January 5, 1929.

5. The Argentine (Saavedra Lamas) Anti-War Treaty, signed at Rio de Janeiro, October 10, 1933.

Some such coördination of existing instruments and, possibly, their consolidation in one instrument, is highly desirable. The Argentine Anti-War Pact had this point as one of its objectives, but it has not superseded the other agreements and the situation now is quite unnecessarily complex.

The agenda also called attention to the usual problem of securing prompt ratification of such instruments. It envisaged, rather vaguely, the "generalization of the inter-American juridical system for the maintenance of peace." Finally, it posed the problem of the creation of an Inter-American Court of Justice. In this last connection, the remarks made above regarding regional machinery for pacific settlement may need some qualification. Despite the deserved prestige of the Permanent Court of International Justice, its docket has not been crowded. International courts are expensive to maintain. It is not always easy to find a sufficient number of eminently qualified jurists who are in a position to devote their entire time to such work. The allocation of positions on the bench among the several contracting parties has been proved by history to be an extremely thorny problem. It might be wiser to have regional courts only as courts of first instance, from which appeals could be taken to the Permanent Court at The Hague. There has of course been considerable agitation in favor of such a system. There is a real need in the Americas for some permanent judicial machinery which could function in the settlement of the ordinary run of pecuniary claims. The well-known divergencies of view existing particularly between the United States and other American Republics as to some legal rules for determining the responsibility of a state for injuries to aliens, makes the establishment of such a permanent

[5] There are other treaties not included in this plan; *cf.* Hudson, "The Inter-American Treaties of Pacific Settlement," Foreign Affairs, Vol. 15 (1936), p. 165.

court difficult but not impossible. The need for it is dramatically emphasized by an examination of the awards of the many claims commissions which have adjudicated such cases. The long periods of time intervening between the dates on which claims arise and their final adjudication results all too frequently in awards which include interest charges totalling amounts often equal to or in excess of the principal sum. It may be recalled that the Pan-American Pecuniary Claims Convention of 1910 obligates the parties to arbitrate all such claims which "are of sufficient importance to warrant the expenses of arbitration." The present high cost of arbitration causes great hardship to small claimants.[6] In this connection it is also well to remark the points on the agenda of the Buenos Aires Conference which contemplate the codification of international law and the "Formulation of principles with respect to the elimination of force and of diplomatic intervention in cases of pecuniary claims and other private actions."

According to available press statements, the proposals submitted at Buenos Aires for an American international court have been referred to the Pan American Union for study and report to the Eighth Pan American Conference in 1938. It is also stated that the project for the codification of international law has been shelved.

On December 7th, Secretary of State Hull made public the text of a "Co-ordinating Convention."[7] This project was subsequently abandoned in favor of new drafts, but it remains important as an indication of the policies which the United States advocated. It is reported that the opposition to the original proposal was largely inspired by the fear of some Latin American members of the League of Nations that the approval of such a treaty might lead to conflict with their obligations under the Covenant.

Article I of the original Hull proposal referred to the five treaties already mentioned, roughly summarizing their provisions and renewing the pledges contained therein. Article II would have set up a new type of machinery. It proposed the creation of a Permanent Inter-American Consultative Committee. The committee was to have been composed of the Secretary of State (the Minister for Foreign Relations) of each one of the contracting parties. The committee was specifically charged with establishing "efficient methods of procedure—such as arrangements for consultation by telephone, telegraph and mail" in order that they might act with despatch in an emergency. The functions of the committee were limited to disputes arising in the Western Hemisphere and apparently to disputes arising between two or more of the signatories of the convention. The aid of the Permanent Inter-American

[6] However, a more fundamental and desirable solution would be the perfection of procedures in national courts whereby aliens could sue the state for damages in all cases from which international claims might arise; see Hyde, "A convention for the prevention of international differences arising from private claims," Report of the Twentieth Annual Lake Mohonk Conference on International Arbitration, 1914, p. 125.

[7] Text in Department of State, Press Releases, Dec. 12, 1936, p. 478.

Consultative Committee might be invoked by the disputing parties or the committee might consult on its own initiative and might act in a mediatory capacity. As in the old Bryan type of treaties, the parties would have agreed that while the committee was considering a dispute "they will not commit acts which may aggravate the controversy nor resort to hostilities nor take military action preliminary to hostilities."

After thus stating the various procedures, new and old, for the settling of disputes and for the avoidance of war, Articles VI through X dealt with the conduct of neutrals in case war did break out. Under Article VI, the Saavedra Lamas Anti-War Treaty was invoked by reference to the obligation of the parties to adopt in their character as neutrals "a common and solidary attitude." They were to act through the Permanent Inter-American Consultative Committee. The committee's first task was to decide whether a state of war actually existed, but individual states were not precluded from determining this issue for themselves with reference to the application of domestic neutrality legislation or with reference to general rules of international law on neutrality. Under Article VII, it was declared that neutrals were free to prohibit or restrict trade and commerce between themselves and belligerents and that such prohibitions or restrictions should not be considered as in contravention of treaties of commerce. This provision was obviously inserted because of the rather vigorous discussion of the subject during the debates on the legislation in the United States in the winter of 1936. This same article reflected the recent neutrality act of the United States in requiring that such prohibitions or restrictions should be applied equally to all belligerents except in situations where any of the parties were bound to take other action by other multilateral treaties or conventions to which they were parties. This was presumably a reference to obligations under the League Covenant. Articles VIII and IX were further reflections of the new United States neutrality legislation. The former article required neutrals to embargo shipments of arms, ammunition or implements of war to any of the belligerents or to neutral countries for transshipment to or for the use of belligerents. Article IX similarly provided for embargoes on loans and credits. Article X was an explicit reservation of the right of neutrals to impose other restrictions on trade and commerce with belligerents if they wished to do so.

The new drafts [8] divide the problems between a "Peace Convention" and a "Convention Coördinating Existing Treaties." The inadequacy of the latter is demonstrated by the co-existence of the former. There is, moreover, a "Non-Intervention Convention" reaffirming the principles of the Convention on Rights and Duties of States, signed at Montevideo in 1933. The aim of consolidation and unification of the inter-American treaties for the advancement of peace is apparently not being achieved.

The "Peace Convention" adapts in its preamble the language of Article 11

[8] Texts in the New York Times, Dec. 14, 1936; *cf.* Department of State, Press Releases, Dec. 19, 1936, p. 503 ff.

of the Covenant, and on this premise that war anywhere concerns all states everywhere, lays down in Article I an obligation to consult whenever "the peace of the American republics should be menaced." Article II elaborates the aims of consultation in the event of both inter-American and extra-American wars.

The Coördinating Convention, like the original Hull proposal, paraphrases the five treaties to be "coördinated." The proposal for a Permanent Inter-American Consultative Committee is dropped with nothing put in its place, although the need for consultation is repeated and it is asserted that "it is desirable to create a practical means whereby an effective and continuing opportunity for such consultation and coöperation shall be made available." Apparently (under Article II) the parties are thrown back on the several somewhat conflicting procedures of the earlier conventions. The draft as published is highly repetitious, with numerous references to the obligation to consult in case of war or threat of war. Perhaps prior procedures are strengthened by the stipulation that states in controversy—if parties to this treaty—will not resort to military action "during cognizance of the dispute by the High Contracting Parties." As for neutrality, the new plan reiterates the obligations of the Argentine Anti-War Pact for the parties to take "in their character as neutrals a common and solidary attitude," but there is no real development of that potentially important treaty. There is no obligation, as there was in the first Hull proposal, to impose any embargoes; the parties may "take into consideration" the placing of embargoes "but only through the operation of . . . domestic legislation."

There is nothing startling about any of these proposals. They will disappoint those who do not agree with Secretary of State Root's remarks to the Third Pan American Conference at Rio de Janeiro in 1906: "Not in a single conference, nor by a single effort, can very much be done. You labor more for the future than for the present; but if the right impulse be given . . . the work you do here will go on." These most recent proposals are important as further steps along the line of inter-American coöperation. From the standpoint of the United States they mark an advance toward a policy of international consultation, although confined to the inter-American realm. Perhaps the most disappointing feature is the failure to provide any thorough plan for inter-neutral coöperation.[9]

It is not possible here to do more than mention the proposed economic resolution urging equality of treatment and reduction of trade barriers, and the convention for promoting cultural relations by establishing governmental fellowships for the exchange of students and professors. These topics will warrant detailed analysis at a later time.

An outstanding aspect of the Conference has been the apparent willingness of Secretary Hull to yield gracefully to counterproposals. He seems also to

[9] Cf. Neutrality, Its History, Economics and Law, Vol. IV, Jessup, Today and Tomorrow (1936), Chap. VI.

have adopted the wise conference technique of securing agreement through informal conversations instead of precipitating debate and conflict in the formal sessions of the conference and of its committees. PHILIP C. JESSUP

THE BAN ON ALIEN MARRIAGES IN THE FOREIGN SERVICE

In an Executive Order of November 17, 1936,[1] President Roosevelt amended the instructions to diplomatic and consular officers by the addition of a regulation which is intended to prevent Foreign Service officers from marrying aliens. The order is general in its effect and applies to men and women alike. It has not, therefore, aroused any opposition from the advocates of equal treatment for men and women. In point of fact, the women in the Foreign Service who have married have found it either inconvenient or inappropriate to continue in the service and have resigned. By the terms of this new order, henceforth the Foreign Service officer who would marry an alien is required to send in a request for permission, "accompanied by the officer's resignation from the Foreign Service or for such action as may be deemed appropriate." This provision, in so far as it implies the possibility of permissive authorization, is probably intended to be only temporary in order to obviate interference with those who have already plighted their troth; and in one or two such instances, the request for permission made subsequently to the issuance of the order has been granted. But after this transition period, the Department, if it does not refuse all requests for permission, undoubtedly will be subjected to criticism on the ground of discrimination; and when a request is refused, the lady in question will naturally regard such action as a disparagement and official insult from the American Government. This transitory provision, if so it be, also serves to leave the Department an escape in the event that the regulation should prove too drastic or arouse unexpected criticism and opposition.

It must be remembered that since the passage of the Cable Act[2] an alien woman who marries an American does not thereby acquire his nationality, with the consequence that the alien wife of a Foreign Service officer would require a separate passport from another government, and the circumstances of her different nationality would necessarily entail certain inconveniences in case of travel or transfer of post; it would, in some instances, be the cause of another serious handicap to the efficiency of an officer married to an alien in that it might render inexpedient or even impossible to detail him to a post where he might, because of his particular qualifications, be especially useful. In the present state of tension in Europe, a Foreign Service officer with a French or Russian wife might not, for example, be available for service in Germany.

Other inconveniences and difficulties arise from the necessarily representa-

[1] Executive Order No. 7497. Printed also in The Department of State, Press Releases, Dec. 5, 1936, pp. 456–457; and in Supplement to this JOURNAL, p. 51.

[2] Act of Sept. 22, 1922, 42 Stat. 1022; Supplement to this JOURNAL, Vol. 17 (1923), p. 52.