Lewis (Maryland) introduced in the House of Representatives a bill providing for authority to be given by Congress for the President's ratification of the three Court Protocols including the "optional clause";[20] if the authority recently given to the President to accept an invitation to the United States to become a member of the International Labor Organization[21] would serve as a legal precedent for such action, the proposal presents a question of political expediency rather than of legal power.

In no country other than the United States has an issue been made of supporting the existing court. It is being maintained at the present time (April 1, 1935) by the 49 parties to the 1920 Protocol of Signature, and by twelve additional States which as members of the League of Nations contribute to meeting its expenses. The court's annual reports list 475 international instruments which relate in some way to its jurisdiction, and 41 States or members of the League are now bound by the "optional clause" which gives the court jurisdiction over certain classes of disputes. The "permanence" of the court seems assured. It is now engaged in holding its 34th session, having before it a request for an advisory opinion relating to minority schools in Albania. Clearly, the vote in the United States Senate will not undo the great progress achieved in the establishment of the court and in its successful functioning over a period of more than thirteen years. It seems inevitable that the United States will yet find a way of sharing the responsibility for the contributions which the court will continue to make.

MANLEY O. HUDSON

TREATIES AND CHANGING CONDITIONS

It would seem self-evident that it is better to revise or to put an end to a treaty in accordance with law rather than to risk friction on account of breaking a treaty. Yet straining the treaty to the breaking-point or breaking the treaty itself has been common in international readjustments in recent years. The doctrine of *rebus sic stantibus* has been advanced as a basis of setting aside treaty obligations. Some liberal constructionists of this doctrine find even in slight changes of conditions in one of the states parties to the treaty, or even in neighboring states, sufficient ground for considering inoperative the whole or certain provisions of a treaty. Those following a stricter doctrine maintain that the only ground upon which the treaty may be set aside is such a change in conditions as makes the action acceptable to all parties to

made by the House of Representatives Committee on Foreign Affairs on June 15, 1932. 72d Congress, 1st Session, House of Representatives Report No. 1628. See also the writer's comment in this JOURNAL, Vol. 26 (1932), pp. 794–796.

[20] 74th Congress, 1st Session, H. R. 4668. See also the letter of Professor James W. Garner, of the University of Illinois, in the New York Times of Feb. 10, 1935.

[21] The Constitution of the International Labor Organization was proclaimed by the President on Sept. 10, 1934, and is published in U. S. Treaty Series, No. 874. On the effect of this action, see the writer's comment in this JOURNAL, Vol. 28 (1934), pp. 669–684.

the treaty. In the days when most treaties were between two states such a waiver of the terms was sometimes possible, but as many states may be and now frequently are parties to a treaty, agreement of all parties is less probable.

Treaties containing clauses providing that the agreement shall be in perpetuity, or treaties omitting provisions for revision or for termination, have often been the cause of international friction. There has been a growing appreciation of the advantage of advance recognition that at a specified period after the treaty is in effect conditions may have changed to an extent which would warrant modification of the treaty. When the articles have already been carried out, as in executed boundary treaties or treaties for the payment of money, there may be no reason for further provisions, but in many executory treaties changing conditions may make modifications essential.

States are now taking cognizance of the possibility that conditions in the future may make changes in treaties desirable and that this should be provided for in advance rather than that the relations between them should become unduly strained. Japan in giving notice of intention to terminate the Washington Treaty on Limitation of Naval Armament on December 31, 1936, was acting in accord with Article 23 of the treaty.

In many treaties it may be advisable to make provisions not merely for denunciation but also for changes from time to time as conditions seem to demand. This practice is meeting with favor as is seen in some recent treaties of the United States where clauses similar to the following occur:

> Article XXXII. The present Treaty shall be ratified and the ratifications thereof shall be exchanged at Washington. The Treaty shall take effect in all its provisions thirty days from the date of the exchange of ratifications and shall remain in full force for the term of one year thereafter.
>
> If within six months before the expiration of the aforesaid period of one year neither High Contracting Party notifies to the other an intention of modifying by change or omission, any of the provisions of any of the Articles in this Treaty or of terminating it upon the expiration of the aforesaid period, the Treaty shall remain in full force and effect indefinitely after the aforesaid period subject always to termination on a notice of six months.[1]

The more frequent resort to such clauses would make disputes under the doctrine of *rebus sic stantibus* less probable as the adaptation of treaties to changing conditions under these clauses becomes a regularized procedure.

GEORGE GRAFTON WILSON

[1] Treaty between the United States and Finland, proclaimed August 10, 1934, Treaty Series No. 868.