

INTERNATIONAL LAW.*

INTRODUCTION.

The year which has intervened since the last report has witnessed some very marked developments in the field of international law. Early in its course Mr. Stimson, the Secretary of State of the United States, hopefully said that the Briand-Kellogg treaty meant that war had "become illegal throughout practically the entire world" and towards its end Mr. Roosevelt, the new President, proposed, as an immediate practical step, a general international agreement not only for the reduction of armaments, but for abstention by each signatory state from the despatch of an armed force of whatever nature across its frontier. In the interval, however, action was in the opposite direction. The armed forces of Japan penetrated deeper and deeper into Chinese territory. Bolivia and Paraguay declared and proceeded to wage war upon one another. Colombia and Peru also went to war. The Disarmament Conference has been debating the nature of the limitations which should be put on armaments in a spirit which seems to make agreement difficult, and the Conference has now adjourned until September next. The Government of the German Reich adopted a more audacious attitude towards throwing off the restrictions of the Treaty of Versailles. The burden of expenditure upon armaments generally remained heavier than it was twenty years ago. And the United States itself, soon after the public recognition by its representative (Mr. Davis) that it was free from the "fears and apprehensions, based upon historical and racial grounds" which "have led to the maintenance of large armaments in Europe," announced a programme of naval expenditure up to the limit permitted by the London Naval Treaty.

From this welter of contradiction between generous words and selfish conduct it is impossible to see any clear avenue of escape. Hopes of the removal of disturbing conditions based upon the assembly of a great international conference in London seem slowly to be fading. National Governments are everywhere distracted by pressing and enormously difficult domestic problems even involving prospective or actual revolution. That they should be able to deal calmly and sanely with international questions of extraordinary complication and at the same time maintain their prestige with their excited peoples is perhaps hardly to be expected.

* Report of the Committee on International Law presented to the Eighteenth Annual Meeting of the Canadian Bar Association, August 30, 1933.

At the same time there have been during the past year important steps in the expansion and development of the field of international law which are worthy of note.

The action taken by the League of Nations in reference to the Sino-Japanese conflict, and the measures adopted by the League with a view to the settlement of the disputes between Bolivia and Paraguay and between Colombia and Peru, the pronouncement by the Secretary of State of the United States of America on the position of neutrals as affected by the Briand-Kellogg Pact, and the substantial affirmation of that position by the present Roosevelt administration, and the work of the Permanent Court of International Justice are of particular interest.

I. THE SINO-JAPANESE CONFLICT.

In our report of last year we dealt with the Sino-Japanese dispute over Manchuria and the appointment by the League of Nations of the Lytton Commission, composed of a British, French, German, Italian and United States member, to investigate and report upon conditions on the ground.

The unanimous report of the Lytton Commission was filed in Geneva on September 22nd, 1932. This report, in the words of Henry L. Stimson, late Secretary of State in the United States Government, "has been one of the most significant steps ever taken under international co-operation in such a crisis."

The report, which was quite voluminous, dealt exhaustively with the origin and nature of the dispute between China and Japan. The Commission made certain findings of fact with reference to the situation in Manchuria, the issues between China and Japan as they existed prior to September 18th, 1931, when the growing tension between the two countries came to the breaking point, and of the events in Manchuria subsequent to that date, with a summary of the economic interests in Manchuria, especially those of China and Japan. Among these findings of fact it should be noted the Commission expressly finds (1) "That the military operations of the Japanese troops" during the night of the 18th September described in the report "cannot be regarded as legitimate measures of self-defence;" (2) "That the present regime cannot be considered to have been called into existence by a genuine and spontaneous independence movement," and (3) "There is no general Chinese support for the 'Manchukuo Government,' which is regarded by the local Chinese as an instrument of the Japanese."

The Commission further made a statement of certain principles and conditions which, in their view, would have to be observed in

arriving at a settlement of the dispute. They find (1) that a mere restoration of the *status quo ante* would be no solution; and (2) that the maintenance and recognition of the present regime in Manchukuo would be equally unsatisfactory.

The Commission lays down the following ten conditions which they regard as the necessary features of any satisfactory solution: (a) Compatibility with the interests of both China and Japan; (b) Consideration for the interests of U.S.S.R.; (c) Conformity with existing multilateral treaties; (d) Recognition of Japan's interests in Manchuria; (e) The establishment of new treaty relations between China and Japan; (f) Effective provision for the settlement of future disputes; (g) Manchurian autonomy; (h) Internal order and security against external aggression; (i) Encouragement of an economic rapprochement between China and Japan; (j) International co-operation in Chinese reconstruction.

The Council of the League, on November 28th, 1932, referred the report of the Commission to the Extraordinary Assembly, and early in December the Assembly heard representations by the two parties to the dispute. China expressed her willingness to accept the recommendations of the Lytton Commission as a basis for settlement. Japan, while agreeing that a restoration of the *status quo ante* would be no solution, contended that the establishment of the State of Manchukuo was the only solution possible, and, in the meantime, on September 16th, had concluded with the Manchukuo Government a protocol granting that State its formal recognition.

A special committee was appointed by the Assembly to study the report of the Commission, the observations of the parties and the opinions expressed in the Assembly, and to draw up a proposal with a view to the settlement of the dispute. The Committee, in its report, proposed that a committee be set up to which the Governments of the United States and of the U.S.S.R. would be invited to name representatives; that this Committee conduct, in conjunction with the parties, negotiations with a view to the settlement of the dispute on the basis of the principles set out in the report of the Lytton Commission and having regard to the suggestions made in that report. The U.S.S.R. declined to name a member of the Committee. The Committee conducted negotiations extending over some weeks, but without success, as Japan was unwilling to accept any basis of settlement which the Committee considered fair. The Committee thereupon drew up a report under Article 15, paragraph 4 of the Covenant, and by its report expressly adopted the suggestion of the Lytton Commission that:

In the special circumstances which characterize the dispute, a mere return to the conditions previous to September 1931 would not suffice to ensure a durable settlement, and that the maintenance and continuance of the present regime in Manchuria cannot be regarded as a solution.

It found that:

(c) In order that a lasting understanding may be established between China and Japan on the basis of respect for the international undertakings mentioned above, the settlement of the dispute must conform to the principles and conditions laid down by the Commission of Enquiry,

and proceeded to enumerate and enlarge upon the ten conditions above set out.

On February 24th, 1933, the Assembly adopted the report of the Committee, Japan only dissenting. The Japanese delegation, after the adoption of the report, withdrew from the Assembly. On February 25th, the Japanese Government sent to members of the League, under paragraph 5 of Article 15 of the Covenant a statement of its position and contentions, and subsequently, on March 27th, gave notice under the terms of the Covenant of withdrawal from the League.

On February 24th, when the report was before the Assembly, Dr. Riddell, on behalf of the Government of Canada, made the following official statement setting forth the position of Canada in reference to the Lytton Report and the recommendations of the Committee:

His Majesty's Government in Canada have learned with regret that the efforts to effect a settlement of the Sino-Japanese dispute carried on under Paragraph 3 of Article 15 of the Covenant have not been successful. They recognize that with the exhaustion of its efforts for conciliation the Committee of Nineteen was bound to proceed to the preparation of a report in accordance with the provisions of Paragraph 4 of Article 15. The report, which is now before the Assembly represents the unanimous and considered judgment of an informed and impartial committee, jealous of preserving the peace of the world.

The Canadian government have, from the inception of the dispute, supported every effort to secure its solution by peaceful means; they have scrupulously refrained from word or deed that might have jeopardized the prospects of peaceful settlement, and they have withheld judgment on the facts and merits of the dispute, in the belief that premature or injudicious comment might have prejudiced the success of our collective efforts to restore that good understanding between China and Japan upon which peace in the Far East depends.

In accepting the report of the Committee of Nineteen, the Canadian government desire to express their appreciation of the loyal and patient perseverance with which the committee have pursued its anxious task. The public opinion of the world, in which they believe lies the final and effective sanction for the maintenance of the integrity of international agreements, has watched

the committee's exploration of every possibility of a peaceful settlement between the parties to the dispute, and it has recognized reluctantly that its efforts have been unrewarded.

The Canadian government believe that in the recommendations of the report will be found a solid basis for the peaceful development of the Far East and they earnestly hope that the parties to the dispute may eventually accept a regime embodying such recommendations and thereby reconcile their conflicting claims and interests in so far as reconciliation is humanly possible.

It is not necessary to emphasize the gravity of the decision which the states members of the League must take to-day. The faith of the world in the possibility of peaceful settlement has been shaken; if it is destroyed, the structure of security slowly built up on the foundation of scrupulous respect for international covenants will be undermined. As that structure shows signs of strain, the prospects of reducing the world's burden of armaments are endangered and the task of achieving international economic co-operation is magnified.

For these reasons we must vote for the adoption of the report.

A Committee consisting of the members of the original Committee and of representatives of Canada and the Netherlands was appointed to follow the situation, to assist the Assembly in performing its duties under the Covenant of the League, and to aid the members of the League in concerting their action and their attitude among themselves and with the non-member States.

The United States of America endorsed the report of the Committee as adopted by the Assembly, and consented to appoint a member to sit on the new Committee but not to vote. Russia declined to appoint a member to the Committee. The Committee is still functioning and has brought to the attention of members of the League the desirability of certain measures being taken by each of them relating to the following questions: participation of the present Government of Manchuria in international conventions; postal services and stamps; international non-recognition of the currency of Manchukuo; acceptance by foreigners of concessions or appointments in Manchuria; passports and other matters.

In reference to the invasion of northern China by Japanese troops, on June 3rd last the Chinese Government reported to the League the terms of an armistice confined solely to military matters and not touching political issues, under which the Chinese army was to be withdrawn to a specified line across which the Japanese army would not pass, and China undertook to maintain peace and order between the line of withdrawal and the Great Wall.

The Report of the Assembly is undoubtedly a document of great importance in the development of international law. In it, for the first time since the League of Nations was organized, the procedure of Article 15 of the Covenant has been carried out and a new signi-

ficance has been given to its provisions. It is important to note, however, that the Report does not constitute a declaration that there has been a resort to war in disregard of Articles 12, 13 or 15 of the Covenant and that, therefore, the question of applying the sanctions provided in Article 16 of the Covenant did not arise.

II. THE COLOMBIA-PERU CONFLICT.

The dispute between Colombia and Peru was brought to the attention of the League by Colombia in January 1933, and arose out of incidents which occurred in September 1932 in the port of Leticia, capital of the district which, under a treaty between the parties, formed part of the Colombian territory on the Amazon River. At about the same time, Colombia invited the Government of the United States to intervene in the dispute as a signatory to the Paris Pact and, simultaneously, proposals had been made by the Brazilian Government for settling the dispute. The Council of the League, acting under Article 15 of the Covenant, appointed a Committee to seek in co-operation with the representatives of Colombia and Peru, a basis of agreement between the parties, and thereupon hostilities ceased.

This Committee made a report recommending complete evacuation by the Peruvian forces, and the appointment of a commission to take charge of the administration of the territory. This report, which was adopted by the Council of the League, was not accepted by Peru and hostilities were again renewed, but, on May 25th, the Advisory Committee set up by the Council to follow the dispute, was successful in negotiating an agreement between the two parties under which a League Commission has been appointed to proceed at once to Leticia and to take charge of the administration of the territory. Hostilities between the two countries ceased, and in June the Commission proceeded to Leticia, and the first stage of the settlement of the dispute between these two countries has thus been completed in conformity with recommendations made by the Council of the League.

III. THE BOLIVIA-PARAGUAY CONFLICT.

The dispute between these two countries has for many months been the subject of negotiations for a settlement, not only by a Committee set up by the Council of the League, but by a Committee of neutrals at Washington.

On May 20th last the Council of the League adopted a report of its Committee recommending the dispatch of a League Commission to negotiate any arrangement calculated to promote the execution of the obligation to cease hostilities.

The Bolivian Government declined to cease hostilities and maintained that in its view the only logical basis for the suspension of hostilities was an agreement on the general conditions of arbitration. On July 4th last the Council of the League appointed a commission, consisting of representatives of the United Kingdom, France, Italy, Spain and Mexico, to proceed to the Chaco in order to define the scope of the problem, and to undertake negotiations with the two Governments with a view to the setting up of an arbitral tribunal for the final settlement of the dispute.

The A.B.C. countries of South America, viz., Argentina, Chili, Brazil and Peru are co-operating with the League in an effort to effect a settlement.

IV. THE BRIAND-KELLOGG PACT AND NEUTRALS.

In the introduction of this report we referred to Mr. Stimson's statement as to the illegality of war. By the Pact of Paris—known as the Briand-Kellogg Pact—which became effective in 1929, and has now been adhered to by sixty-two nations, recourse to war for the solution of international controversies was condemned by the contracting parties and was renounced as an instrument of national policy in their relations with one another. By that Pact the contracting parties further agreed that the settlement or solution of all disputes or conflicts of whatever nature, or of whatever origin they might be, should never be sought except by pacific means.

Mr. Henry L. Stimson, Secretary of State in the United States Government, on August 8th, 1932, speaking of this Pact, pointed out that, during the centuries which had elapsed prior to the World War since the beginning of international law, a large part of that law had been a development of principles based upon the existence of war; that the existence and legality of war were to a large extent the central facts out of which these legal principles grew and on which they rested, and that the development of the doctrine of neutrality had been predicated upon the duty of a neutral to maintain impartiality between two individuals. Referring to the Briand-Kellogg Pact Mr. Stimson said:

War between nations was renounced by the signatories of the Briand-Kellogg Pact. This means that it has become illegal throughout practically the entire world. It is no longer to be the source and subject of rights. It is no longer to be the principle around which the duties, the conduct and the rights of nations revolve. It is an illegal thing. Hereafter when two nations engage in armed conflict either one or both of them must be wrongdoers—violators of the general treaty.

Mr. Stimson pointed out that this called for a complete revision of our ideas of neutrality and of the position of neutral powers.

It is only necessary to quote Mr. Stimson's word to realize the great significance which must be attached to the view so expressed by him.

This position was in substance affirmed by the present administration of the United States. Great Britain has welcomed these declarations of the American Government on the question of neutrality and the aggressor as being most important declarations in the interests of international co-operation and of peace. They are certainly most important from the standpoint of Canada and the other members of the British Commonwealth in case a situation should ever arise in which it became necessary for us to participate in the enforcement of any sanctions imposed by the Covenant of the League.

One of the criticisms of the Kellogg-Briand Peace Pact has been that it imposed no sanction for its violation, and it made no provision for consultation among its signatories in order to avoid or deal with its violation.

The declaration of the United States Government on the 7th January, 1932, "That it would not recognize any situation, treaty or agreement which might be brought about by means contrary to the covenants and obligations of the Pact of Paris," was a declaration by that Government that it believed that this sanction at least should operate for a violation of the Pact.

On the 11th March, 1932, the Assembly of the League unanimously adopted (Japan refraining from voting) the following declaration: "It is incumbent upon the members of the League of Nations not to recognize any situation, treaty or agreement which will be brought about by means contrary to the Covenant of the League of Nations or the Pact of Paris." We, therefore, have a declaration, concurred in by all the powers except Japan and Russia, that this great and powerful sanction must follow the violation of the Pact of Paris.

These declarations mark a most notable advance. The United States Government has declared that in case of a threatened violation of the Pact, there should be consultation among the signatories to the Pact as to the steps to be taken, and that the United States was prepared to join in such consultation.

The definition of "the aggressor in an international conflict" has been the subject of much discussion, not only in its application to the Covenant of the League of Nations, and to the Pact for consultation under consideration at the Disarmament Conference.

During the World Economic Conference in London a Convention was signed between Russia, Afghanistan, Estonia, Latvia, Persia, Poland, Roumania and Turkey defining such aggressor as "the State

which shall be the first to have committed one of the following actions—(a) declaration of war on another State; (b) invasion by armed forces of the territory of another State, even without declaration of war; (c) an attack by its land, sea or air forces even without declaration of war upon the territory vessels or flying machines of another State; (d) a naval blockade of the coasts or ports of another State; (e) support accorded to armed bands which, organized on its territory, shall have invaded the territory of another State or refused in spite of the demand of the invaded State to take on its own territory all the steps in its power to deprive the bandits aforesaid of all aid or protection."

The Convention further provides that no consideration of a political, military, economical or any other character shall serve as an excuse or a justification for aggression. Its signature is looked upon as a very real achievement of Soviet diplomacy. The Convention is in its substance identical with the definition of aggression adopted by the Security Committee of the Disarmament Conference and reported to the General Commission by the Chairman of that Committee on May 24th, 1933. Great Britain and certain other powers have not so far accepted this definition or any definition of aggressor.

The statement by Mr. Stimson as to the effect of the Briand-Kellogg Pact has not been universally accepted, but his statement as to the effect of the Pact on the position which should in future be taken by neutral nations towards a State which resorts to the use of force, if generally accepted, will be a great step in the development of international law.

V. THE WORK OF THE PERMANENT COURT OF INTERNATIONAL JUSTICE.

The Permanent Court of International Justice has dealt with several important cases during the past year, one of the most important being the dispute between Denmark and Norway as to the sovereignty over a portion of the east coast of Greenland.

A difference of opinion had existed for a long time between Denmark and Norway as to the international status of the eastern coast of Greenland. Denmark claimed sovereignty over the whole Island. Norway's contention was that a portion of the east coast was not subject to the sovereignty of any particular country. The dispute was brought to a head when Norway made a declaration of occupation and took possession of the territory which she contended was free. Denmark thereupon brought the matter before the World Court, and asked for a judgment that the promulgation of the declaration of occupation of the lands in question by the Norwegian

Government constituted a violation of the existing legal situation, and was accordingly unlawful. Norway filed a countercase asking judgment to the effect that Denmark had no sovereignty over the lands in dispute.

At a recent sittings of the Court, following a full trial of the issues between the two countries, judgment was delivered in favour of Denmark, holding that Denmark was entitled to sovereignty over the entire Island, and that Norway's action was unlawful and in violation of the rights of Denmark.

The dispute between these two nations as to their territorial rights had been of long standing and involved questions of their national rights and national interest, and the settlement of the dispute by the decision of the Court is another instance of the great part being played by this tribunal.

It is not without interest also to note that in the course of the proceedings before the Permanent Court of International Justice on the reference to it by the Council of the League of the question as to whether the customs regime established by Germany and Austria in accordance with the Vienna protocol on March 13th, 1931, would be compatible with the various protocols relating to the financial reconstruction of Austria signed at Geneva in 1922, the question came up as to representation on the Court of the States which were interested in the decision and took part in the proceedings.

No Austrian or Czechoslovakian national was a member of the Court as it was then constituted, and Austria and Czechoslovakia thereupon claimed the right to nominate Judges to sit on the case. The Statute of the Court provides, Article 31, paragraph 4:

Should there be several parties in the same interest, they shall, for the purpose of the preceding provisions, be reckoned as one party only.

The Court held, applying the above provision, that all the Governments who came to the same conclusion must be held to be in the same interest for the purpose of the advisory procedure; and that, as the arguments advanced by Germany and Austria led to the same conclusion, and as Germany was represented on the Court, Austria was not entitled to nominate a Judge. Similarly, as the arguments of France, Italy and Czechoslovakia led to the same conclusion, and France and Italy were represented on the Court, Czechoslovakia was not entitled to nominate a Judge.

This decision may have a bearing on the right of a British Dominion, in case a dispute with a foreign nation should come before the Court, to name a judge to sit on the case, if the Court should be of the opinion that Great Britain was a party in the same interest.