

*HANDBOOKS PREPARED UNDER THE DIRECTION OF THE
HISTORICAL SECTION OF THE FOREIGN OFFICE.—No. 160*

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SCHEMES FOR MAINTAINING
GENERAL PEACE

BY

THE RIGHT HON. LORD PHILLIMORE,
D.C.L., LL.D.

LONDON :

PUBLISHED BY H. M. STATIONERY OFFICE.

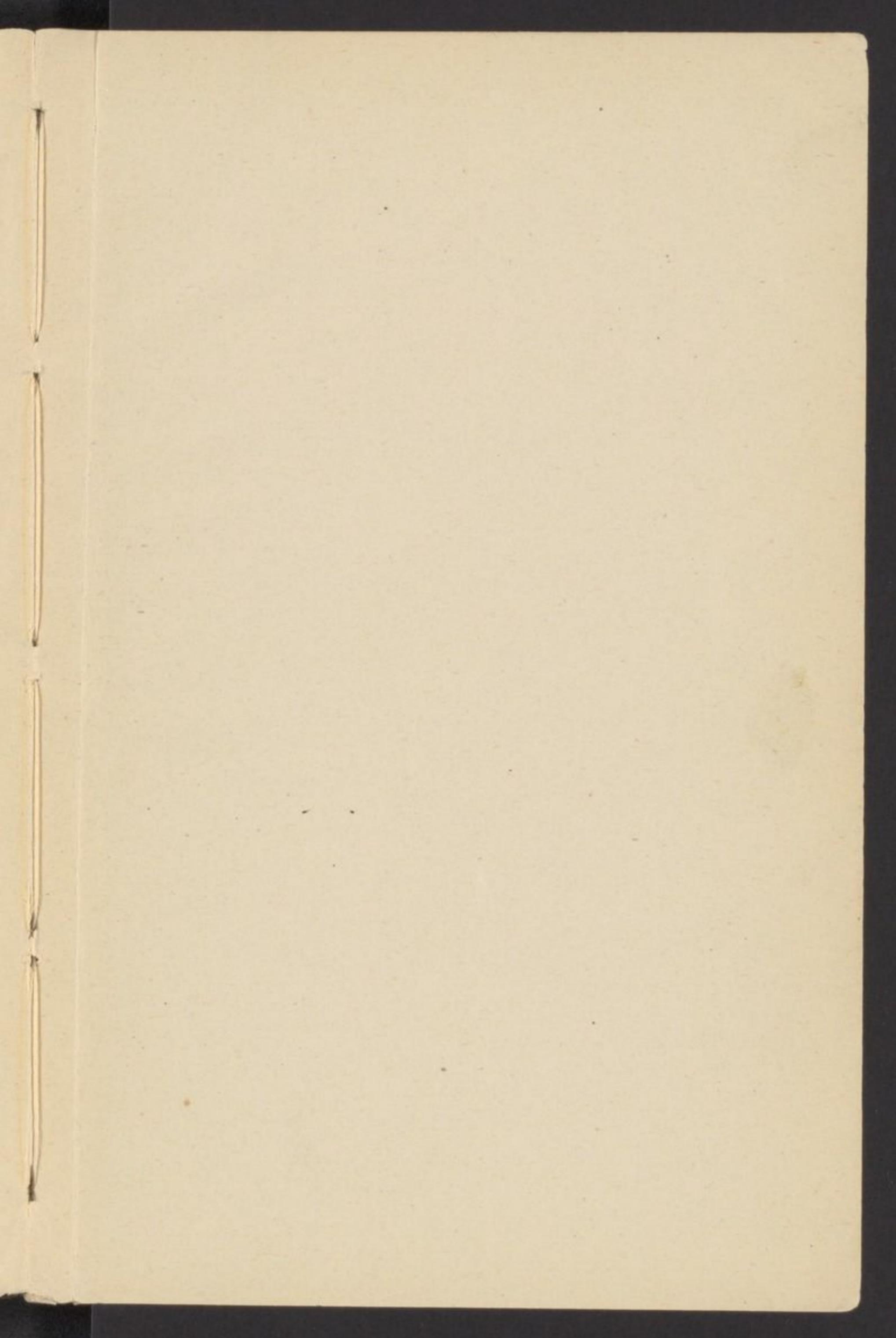


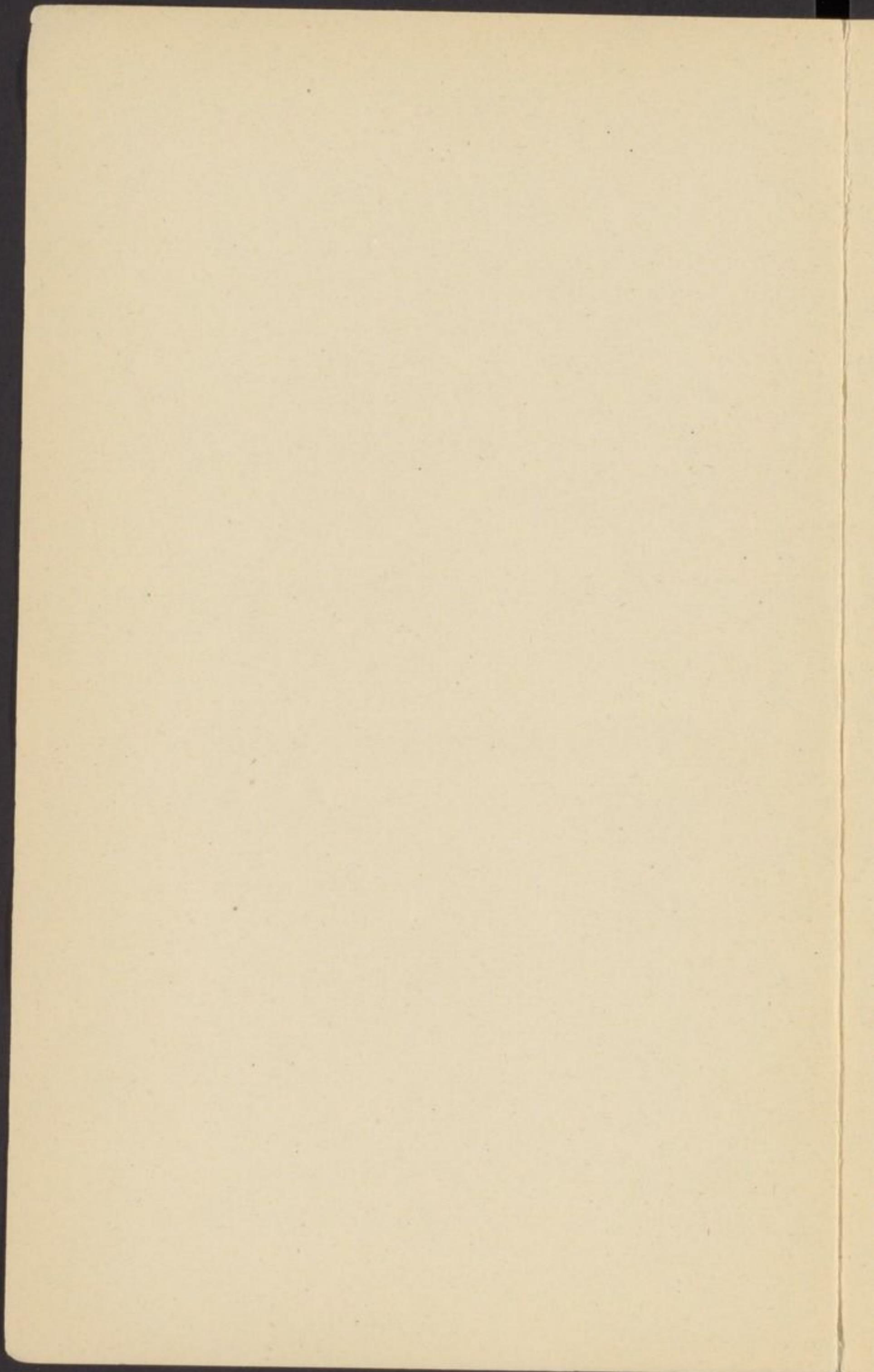
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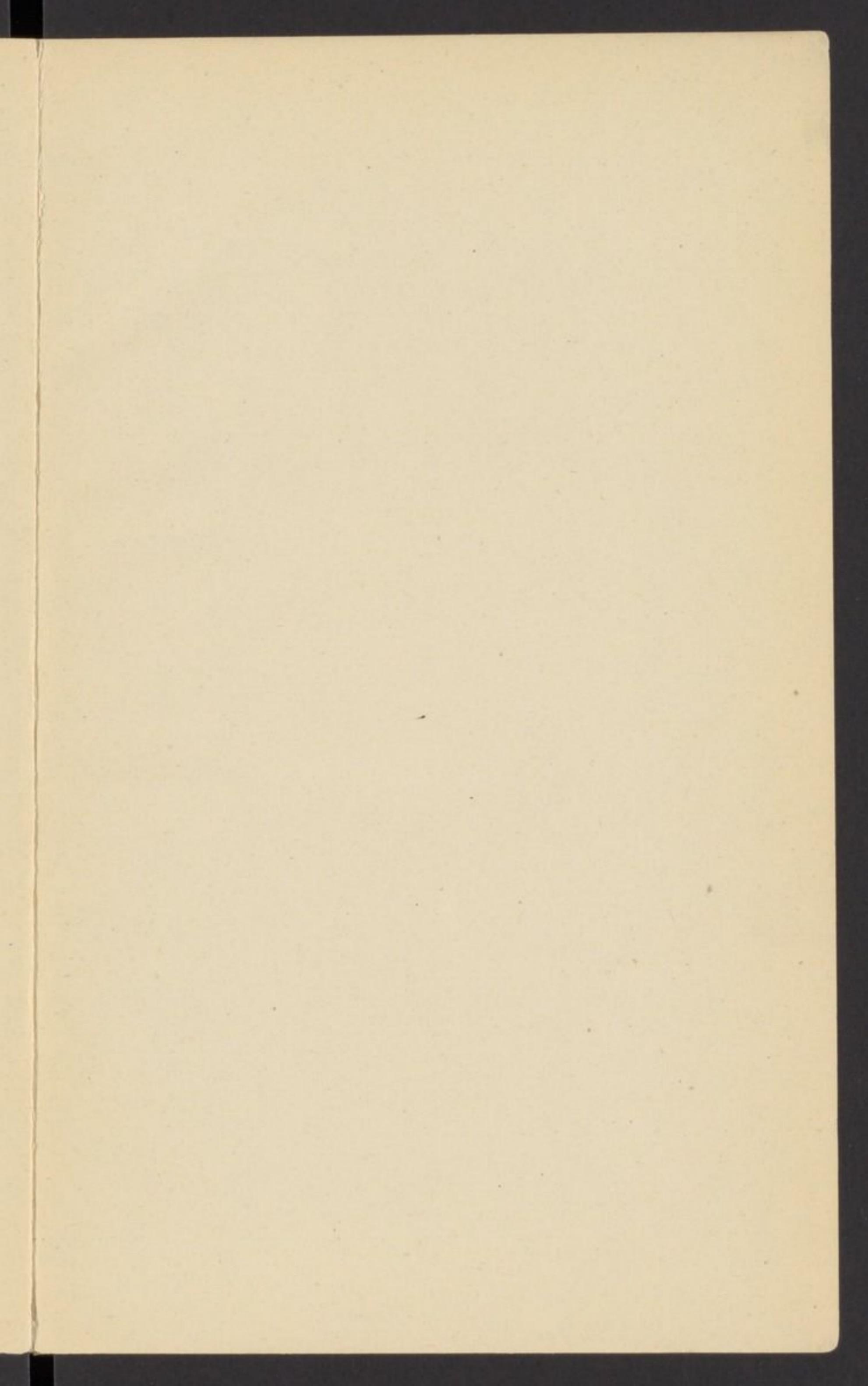


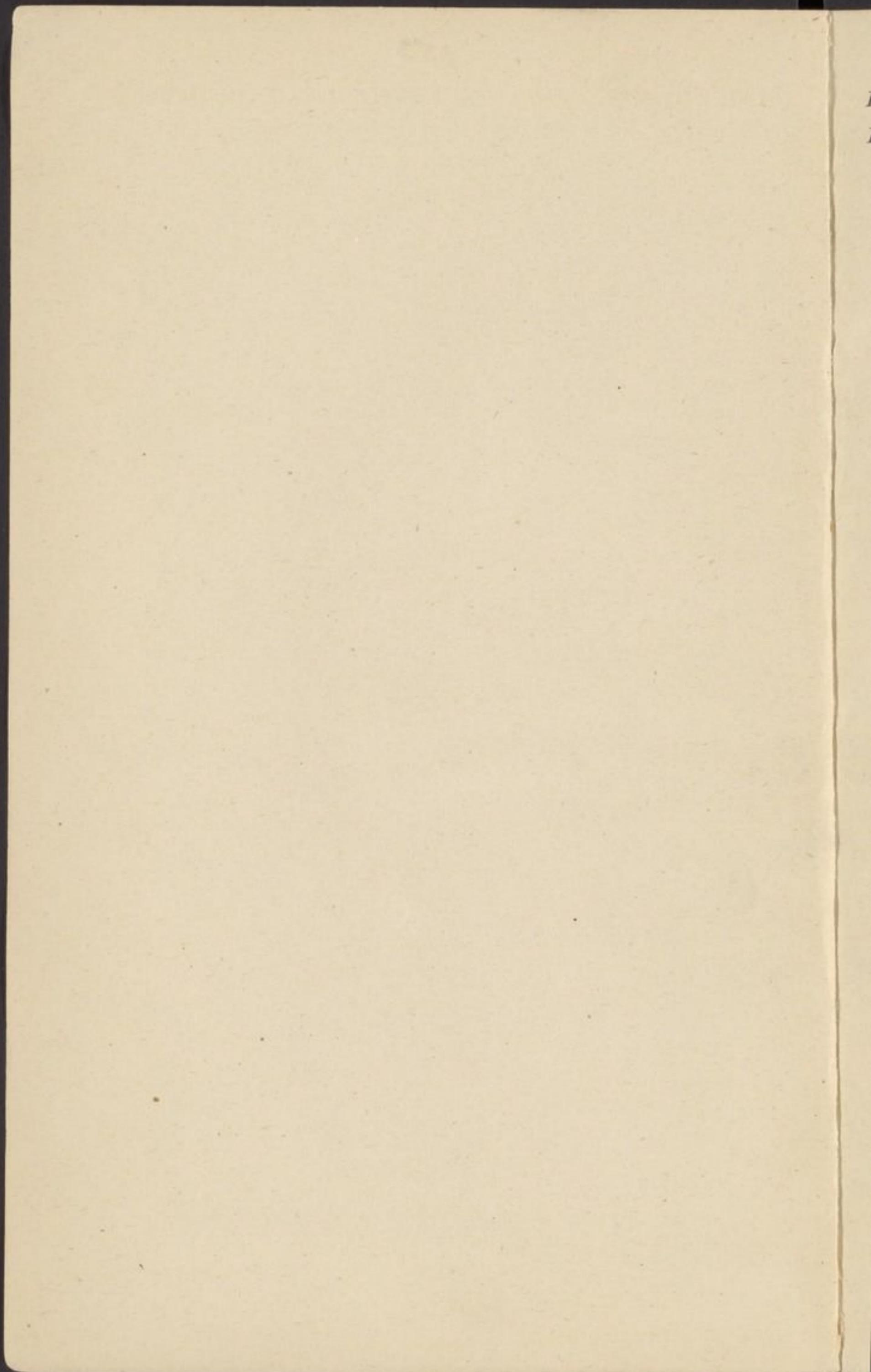
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EDITORIAL NOTE

IN the spring of 1917 the Foreign Office, in connexion with the preparation which they were making for the work of the Peace Conference, established a special section whose duty it should be to provide the British Delegates to the Peace Conference with information in the most convenient form—geographical, economic, historical, social, religious, and political—respecting the different countries, districts, islands, &c., with which they might have to deal. In addition, volumes were prepared on certain general subjects, mostly of an historical nature, concerning which it appeared that a special study would be useful.

The historical information was compiled by trained writers on historical subjects, who (in most cases) gave their services without any remuneration. For the geographical sections valuable assistance was given by the Intelligence Division (Naval Staff) of the Admiralty; and for the economic sections, by the War Trade Intelligence Department, which had been established by the Foreign Office. Of the maps accompanying the series, some were prepared by the above-mentioned department of the Admiralty, but the bulk of them were the work of the Geographical Section of the General Staff (Military Intelligence Division) of the War Office.

Now that the Conference has nearly completed its task, the Foreign Office, in response to numerous inquiries and requests, has decided to issue the books for public use, believing that they will be useful to students of history, politics, economics, and foreign affairs, to publicists generally and to business men and travellers. It is hardly necessary to say that some of the subjects dealt with in the series have not in fact come under discussion at the Peace Conference; but, as the books treating of them contain valuable information, it has been thought advisable to include them.

It must be understood that, although the series of volumes was prepared under the authority, and is now issued with the sanction, of the Foreign Office, that Office is not to be regarded as guaranteeing the accuracy of every statement which they contain or as identifying itself with all the opinions expressed in the several volumes ; the books were not prepared in the Foreign Office itself, but are in the nature of information provided for the Foreign Office and the British Delegation.

The books are now published, with a few exceptions, substantially as they were issued for the use of the Delegates. No attempt has been made to bring them up to date, for, in the first place, such a process would have entailed a great loss of time and a prohibitive expense ; and, in the second, the political and other conditions of a great part of Europe and of the Nearer and Middle East are still unsettled and in such a state of flux that any attempt to describe them would have been incorrect or misleading. The books are therefore to be taken as describing, in general, *ante-bellum* conditions, though in a few cases, where it seemed specially desirable, the account has been brought down to a later date.

G. W. PROTHERO,

General Editor and formerly

Director of the Historical Section.

January 1920.

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SCHEMES FOR MAINTAINING GENERAL PEACE

PRELIMINARY

THE task undertaken in the following pages is to tabulate and discuss the various measures which have been suggested for the peaceful settlement of disputes which may arise in future between States, so that they may be, if possible, decided without recourse to war. The schemes to this effect, if we go through the history and literature of the world, seem to fall into four classes :

(1) The provision of a single Universal Superior who would settle in the last resort as between his subordinates or feudatories.

(2) The substitution of a Republic for a single Universal Superior, and the making of a Federation of States which, through its organ or organs, should decide disputes between its component members.

(3) The provision and promotion of International Arbitration.

(4) A sort of composite between (2) and (3), which has found favour with writers of quite modern date, mostly since the War began.

I. ONE SUPREME POWER

From time to time, since Europe began to settle down after the break-up of the Western Roman Empire, there have been thinkers who have devoted their attention to schemes for the prevention of war. Scholars in particular have referred with regret to the times when the *Pax Romana* prevailed, when the great Roman Empire, or the

two halves of it acting in conjunction, embraced the whole of the civilized world for those who were ignorant of the civilization of the Far East, and when the Empire by its strength imposed quiet upon its uncivilized neighbours, and reduced frontier wars with them to the category of mere border forays, to be dealt with as matters of police.

One of the earliest exponents of the idea of a universal monarchy—that is, literally, of there being one supreme ruler over all princes and States—was Dante, who published his treatise *De Monarchia* in the year 1311.¹ He felt the need of a superior tribunal to decide between warring nations, and contemplated, for this purpose, a monarchy so universal that there could be no enemies, only rebels. With a bold neglect of historical detail, and a contempt for all the world outside his narrow knowledge of geography, he considered that the monarchy of the Emperor Augustus was such a universal monarchy; that the right to it was vested in the Romans; and that this right had passed to the Emperors of his own day. The point on which he felt most doubt was whether the Emperors held immediately from God or mediately through the Pope, and he concluded in favour of the immediate jurisdiction of the Emperor in matters temporal.

Other writers looked for their Universal Monarch in the Pope; and there is no doubt that from time to time he exercised a valuable mediating influence, and sometimes received complete submission. Leibnitz, in the preface to his *Codex Iuris Gentium Diplomaticus*, published in 1693, expresses himself, in a remarkable passage,² as follows:

¹ There is a good summary in J. A. Symonds's *Introduction to the Study of Dante*, pp. 71-5.

² Dr. Darby (*International Tribunals*, p. 100) gives a translation of the greater part of this passage. He also quotes (p. 98) a letter

‘But Christians have another common bond, that is, the positive Law of God which is contained in the Holy Scriptures. To which should be added the sacred Canons which have been received by the whole Church, and afterwards, in the West, the Papal Laws to which kings and nations submitted themselves. And I find that before the schism of the last century it had long been universally accepted (and not without reason) that there should be understood to be a sort of Commonwealth of Christian Nations, whose heads should be in sacred matters the Pope, in temporal matters the Roman Emperor, who was thought to have retained as much of the rights of the old Roman Monarchy, as might be needful for the common good of Christianity, without prejudice to the rights of Kings and the liberty of Princes. . . . Nothing was more common than for Kings to submit themselves, in the making of treaties, to the approval and correction of the Pope, as in the Peace of Bretigny. . . . But as human things, even the best, tend to become corrupt, the Popes began to extend too much the limits of their authority and to make a too unrestrained use of their power.’

Calvo, in his work on International Law, treats of the Pope as an International Arbitrator.¹ The claims of the Popes to dispose of newly discovered territories, hitherto occupied by infidels, are well known. One of these Bulls is set out in the *Codex* of Leibnitz.² Another, dated May 4, 1493, was in the nature of an award between Spain and Portugal, and was confirmed by the Treaty of Tordesillas, 1494.³

Though it is inconceivable that the majority of nations would recognize any jurisdiction in the See of Rome, it might be useful to have a sovereign who, by virtue of his position, was a perpetual neutral, and could be

from Leibnitz to Saint-Pierre. It should be remembered that Leibnitz was not a papist.

¹ Sect. 1487.

² And see Fleury, *Histoire Ecclésiastique*, vol. 24, Lib. 117, Sect. 73.

³ Calvo, sect. 1487; Prescott, *History of Ferdinand and Isabella*, vol. i, p. 544.

applied to for his services as an intermediary. The present Pope brought about some mitigation of the cruelties of the Great War,¹ and it is perhaps unfortunate that Leo XIII was denied admission to the first Hague Conference.

After the Western Empire, as refounded by Charlemagne, had become entirely dissociated from, and often came into conflict with, the Eastern Empire, and after the growth in strength and organization of the Mohammedan Powers, the idea of a universal monarchy under the Emperor became untenable. After the failure of the Council of Florence (A. D. 1437) to heal the rupture between the Eastern and Western Churches, and the development of the Reformation in the next century, the Pope (however some might think of him as a supreme power *de jure*) ceased to have any position as a generally recognized superior.

II. A FEDERATION OF STATES

A Republic or Federation of States was a natural substitute for the idea of a Universal Monarchy. The first approach to it was the 'Grand Design' of Henry IV of France. Somewhere about the same time the expedient of Arbitration began to present itself. While the object of both these schemes is the same, their principles are different, indeed inconsistent.

The idea of a Federation is the formation of such a Unity that war between any two of the federated States partakes of the nature of Civil War, and is to be suppressed in some way by the sovereign authority of the Federation. The idea of Arbitration is that two

¹ His Circular Note, issued in August 1917, is mentioned in Section III (p. 21).

independent Sovereign Powers submit, *pro hac vice* only, some particular dispute to the determination of an authority chosen *ad hoc*, to which they were under no obligation *a priori* to submit themselves, and to which they, of their own free will, submit for the moment. The two ideas have kept their place in the literature on this subject; but, while Federation was the favourite scheme of the 17th and 18th centuries, Arbitration took the leading place throughout the 19th. Now, however, as will be seen hereafter, the idea of Federation is the one which specially commends itself to writers of the present time.

There is a possible combination of the two ideas, if for Arbitration before a Tribunal formed *ad hoc*, in virtue of previous consent, recourse to a Permanent Court be substituted, and the main object of the Federation be to constitute and support such a Court, with an Executive and a Police to enforce obedience to its orders.

The idea of a wide Federation of States seems to have been suggested by the success of such Confederations or Leagues as the Amphictyonic League, the Swiss Confederation, the Hanseatic League, and the States-General of Holland. Later writers have fortified their views by reference to the Confederation of the United States of North America.

The idea of a European Federation is generally supposed to have first seen the light in the 'Grand Design' of Henry IV of France. This scheme is to be collected partly from Sully's *Mémoires*, and partly from the works of the Abbé de Saint-Pierre. Henry IV contemplated a rearrangement of Europe. The five principal points treated of with Elizabeth of England were, according to Sully:¹

¹ Sully, *Mémoires*, ed. 1814, vol. iii, pp. 54, 55; and see generally vol. vi, Book XXX.

1. Restoration of the freedom of the election of an Emperor ;
2. Making the States-General independent of Spain and perhaps giving them some addition of territory from Germany ;
3. Making Switzerland completely independent and adding to it Alsace and Franche-Comté ;
4. Dividing Christianity into sovereignties of about equal importance ;
5. Reducing the religions or the forms of Christianity in Europe to three : the Catholic, the Protestant or Lutheran, and the Reformed or Calvinist.

Henry IV proposed to secure the internal peace of the Federation, but he contemplated external war. Indeed, the principal object of the Federation was the reduction of the power of the House of Habsburg. Another object being to reduce the religions of Europe to three, the Turk was to be expelled from Europe ; and it was expressly provided that, if the Grand Duke of Muscovy or Tsar of Russia would not come into the alliance, and apparently if he would not accept one of the above-named forms of Christianity, he was to be treated like the Sultan, and cast out of Europe.¹

The scheme of Saint-Pierre (see Authorities, p. 68) is conveniently summarized by Wheaton² and by Dr. Darby.³ His views have also been given by De Molinari (see Authorities).⁴ His own publications, *Projet de traité pour rendre la Paix perpétuelle entre les Souverains Chrétiens*, and *Abrégé du projet de Paix perpétuelle*, are not easy of access. According to Wheaton his main articles were :

1. An alliance for mutual security against foreign or civil war, and for guaranteeing the possessions of the several States as established by the Treaty of Utrecht.
2. A provision for contributions to a common fund.

¹ Sully, ed. 1814, vol. v, p. 296.

² Wheaton, *Histoire des Progrès du Droit des Gens*, fourth edition.

³ *International Tribunals*, p. 70.

⁴ See below, p. 10.

3. Establishing peace among the Allies. Any differences to be submitted to the arbitration of the other Powers of the League, and to be decided provisionally by a majority, and finally by a plurality of three to one. For this purpose nineteen Powers whom he mentions were to have single votes; all other Powers were to be associated to make up a vote.

4. Provision for offensive action against recalcitrant members who did not conform to the rules made by the Alliance, or contravened treaties, or prepared for war.

According to quotations in Dr. Darby's *International Tribunals*, Saint-Pierre provided for each State in the Confederation sending a quota of forces, and for the appointment of a generalissimo. At the end of his scheme there is a suggestion of an Asiatic Union similar to that of Europe, with a hope that the two Confederations would be at peace with each other.

Saint-Pierre is a decided advocate of force. Thus he says :

'Le Souverain qui prendra les armes avant la déclaration de guerre de l'Union, ou qui refusera d'exécuter un règlement de la Société ou un jugement du Sénat, sera déclaré ennemi de la Société, et elle luy fera la guerre, jusqu'à ce qu'il soit désarmé, et jusqu'à l'exécution du jugement et des règlements.'¹

And :

'Si après la Société formée au nombre de quatorze voix un Souverain refusoit d'y entrer, elle le déclarera ennemi du repos de l'Europe, et lui fera la guerre jusqu'à ce qu'il y soit entré, ou jusqu'à ce qu'il soit entièrement dépossédé.'²

A scheme for a European Diet, Parliament or Estates, was published by William Penn in 1693-4 (see Authorities). It was limited to European States, and its object was that peace should be established and maintained in Europe. Penn expresses his general adhesion to the

¹ Dr. Darby, *International Tribunals*, p. 75.

² *Ibid.* Voltaire called it, in his poem *La Tactique*, 'L'impraticable Paix de l'abbé de Saint-Pierre', *Works*, vol. xii, p. 232.

'Grand Design'. As between the various members of the Federation, obedience to the decisions of the Supreme Diet or Senate was to be enforced by arms. Thus he says that,

'If any of the Sovereignties constituting this Imperial Diet should refuse to submit their claims or pretensions to the Diet, or to accept its judgment, and should seek their remedy by arms, or delay compliance beyond the time specified, all the other Sovereignties, uniting their forces, should compel submission to, and performance of, the sentence and payment of all costs and damages.'

No one of these schemes, as will be observed, was wide enough for 'the Parliament of man, the Federation of the world'. They are only schemes for large and comprehensive alliances, and for regulating disputes between the Allies. Penn points out many of the difficulties which would attend upon even his limited Federation. In this he is followed by Kant in a work which is about to be quoted, and in which the idea may be traced that, the larger the Federation, the less its value as an expedient for preserving peace between the Allies.

Kant, in 1795, published a tract on *Perpetual Peace*. It is very short, and consists of a series of Articles or Propositions, with a running commentary for the amplification of each. He proposed that standing armies should, in the course of time, be abolished; that no State should interfere by force with the constitution or government of another State; that the civil constitution in every State should be republican, by which he carefully explains that he does not mean democratic;¹ and

¹ 'Republicanism (says Kant) is the political principle of severing the executive power of the government from the legislature. Despotism is that principle in pursuance of which the State arbitrarily puts into effect laws which it has itself made; consequently it is the administration of the public will, but this is

that 'international right should be founded on a federation of free states'.

As to the completeness of this Federation he seems to be somewhat hazy. In one part of his observations upon this proposition he says that a 'State of Nations' would be a contradiction; a little farther on he says:

'For States, in their relation to one another, there can be, according to reason, no other way of advancing from that lawless condition which unceasing war implies, than by giving up their savage lawless freedom, just as individual men have done, and yielding to the coercion of public laws. Thus they form a State of Nations (*civitas gentium*), one, too, which will be ever increasing and would finally embrace all the peoples of the earth.'¹

His mind is perhaps to be gathered as much from other parts of his writings as from the actual treatise itself.² From his *Rechtslehre* one gathers that he thought that a Universal Union of States was impossible, and that therefore perpetual peace, the final goal of International Law, was really an impracticable idea.

In the passage in the *Rechtslehre* he proposed a Union of Nations, to be termed a Permanent Congress of States, to which every neighbouring State might be at liberty to associate itself, on the model of the Diplomatic Conference which used to exist, as he says, at The Hague during the first half of the 18th century. The Association was to be voluntary, and adhesion to it would be at all times revocable. He had no scheme for a tribunal, and had worked out no details. The material passage from the *Rechtslehre*, and the actual propositions of *Perpetual*

identical with the private will of the ruler. Of these three forms of a State, democracy, in the proper sense of the word, is of necessity despotism.' *Perpetual Peace*, by I. Kant, 1795, p. 125. Translation by Miss M. Campbell Smith, 1915.

¹ *Ibid.*, p. 136.

² *Rechtslehre*, Pt. ii, sect. 61. Translation by Miss M. Campbell Smith, p. 129.

Peace, without the running commentary, are given by Dr. Darby in his work.¹

In the translation of the whole *Essay on Perpetual Peace*, published with Introduction and Notes by Miss Mary Campbell Smith, the translator's Introduction is well worth study as a more complete contribution than Kant's own *Essay*. Miss Campbell Smith points out the inability of Arbitration to deal with disputes which arouse the passions of nations, and the practical objections to any scheme of disarmament; and, while advocating Federation as the only thing that 'can help out the programme of the Peace Society', says, nevertheless, that it cannot be pretended that it would do everything.

In 1857, shortly after the Crimean War, De Molinari, who had been much moved by that war, and especially felt the injury which it had occasioned to neutrals, published a work on Saint-Pierre, and prefixed to it an Introduction which stated his own views. He referred also to a work by Ancillon,² called *Tableau des Révolutions du Système politique de l'Europe* (see Authorities, p. 68).

De Molinari is perhaps the first writer who contemplated a Federation, the object of which would be confined to the establishment of an International Tribunal with International Police. The Tribunal was not to be an accident of the Federation; but the Federation was to be made in order to constitute it a real Court, and not a mere Arbitral Tribunal. He called his Federation 'concert universel', and was not even afraid of the expression 'une Sainte-Alliance universelle'. He observes:

'S'il existait, pour les gouvernements comme pour les particuliers, des tribunaux devant lesquels ils fussent tenus de porter leurs différends, avec une force publique organisée pour faire

¹ *International Tribunals*, pp. 150-63.

² The 'Discours préliminaire' to Ancillon's book is pessimistic, but worthy of study. He wrote in French, but was in fact a German.

respecter les décisions de ces tribunaux; s'il existait, pour tout dire, une justice et une police internationales, les différends des gouvernements ne troubleraient pas plus la paix du monde que les procès des particuliers ne troublent aujourd'hui l'ordre intérieur des États.

Malheureusement, ces cours de justice et cette force publique internationales n'existent point. Pour nous servir de l'expression des jurisconsultes, les gouvernements se considèrent comme étant les uns vis-à-vis des autres dans l'état de nature; ce qui signifie qu'ils s'attribuent le droit de juger leurs propres causes, comme aussi de poursuivre par la force la revendication de leurs droits ou de leurs prétentions abusives ou fondées. De là, la guerre' (pp. 47, 48).

Bluntschli also had a scheme for a European Federation, the decisions of which were to be carried into execution by the Great Powers. He frankly says of his scheme that the possibility of a European War would not be completely excluded by its organization, and that a disarmament and disbanding of all standing armies would by no means be an immediate consequence of it. His scheme, as set forth in Dr. Darby's book (p. 194), is very fanciful.

A few years before the Great War, the idea of a United States of Europe commended itself to Sir Max Waechter, who visited, as he states, every European country, and interviewed a number of Sovereigns and Ministers, delivered a lecture at the Royal Institution in February 1909, and wrote on the subject numerous letters to the papers, especially one which appeared in *The Times* of January 31, 1914. He founded a European Unity League, and developed his scheme in a pamphlet, privately printed, dated November 1, 1916 (see Authorities, p. 71).

III. INTERNATIONAL ARBITRATION

States unwilling to diminish aught of their sovereignty and independence by submission to a paramount Power, or by entrance into a Confederation, can nevertheless get the advantage of some form of neutral intervention to assist in the conciliation of their warring claims. Thus, from early times, it has been a convenient practice to invoke the good offices or mediation of a third State.

The Treaty of Teschen, 1779, between Maria Theresa, Empress and Queen of Hungary, and Frederick II, King of Prussia, was concluded under the mediation of France and Russia. These Powers not only mediated but guaranteed the stipulations of the Treaty and of certain ancillary Treaties.

The Treaty of Szistowa, 1791, between the Emperor and Turkey, was declared to have been concluded under the mediation of Great Britain, France, and the States-General.

The Treaty of 1850, between Prussia and Denmark, was declared to be concluded with the concurrence of Great Britain as a mediating Power.

Pufendorf,¹ Vattel,² Wheaton,³ Bluntschli,⁴ Heffter,⁵ Klüber,⁶ Phillimore,⁷ and Calvo,⁸ treat of 'good offices'

¹ *De Iure Naturae et Gentium*, Book V, ch. 13, sect. 7; Book VIII, ch. 8, sect. 7.

² *Le Droit des Gens*, Livre II, sect. 328.

³ *Elements of International Law*, sects. 73, 288.

⁴ *Le Droit International Codifié*, Introduction, p. 31; sects. 485-7.

⁵ *Le Droit International de l'Europe*, sect. 88.

⁶ *Droit des Gens moderne de l'Europe*, sect. 160.

⁷ *Commentaries upon International Law*, vol. iii, sect. 4.

⁸ *Le Droit International*, sects. 686, 687, 1456-70.

and mediation. Diplomatic sanction to the general idea of mediation was given by Article VIII of the Treaty of Paris, 1856, and by Protocol 23 of the Congress by which the Treaty was framed.¹ Good offices and mediation form the subject of Section 2 of the Convention for the pacific settlement of international disputes, framed at the Hague Conference of 1899, and reaffirmed at the Conference of 1907.²

A further step is taken when States agree to submit differences to arbitration. Arbitration, as at least an occasional means for avoiding war, has been contemplated by most writers on International Law—by Grotius,³ Pufendorf,⁴ Vattel,⁵ Phillimore,⁶ Heffter,⁷ Klüber,⁸ Bluntschli,⁹ and Calvo.¹⁰ Passages from other writers, such as Bentham and James Mill, are quoted by Dr. Darby, in the work already referred to, as having treated of arbitration as a means of avoiding war.

As Calvo says, arbitration was rare in the 16th, 17th, and 18th centuries. It has been well observed that the 18th century was the century of mediation, and the 19th that of arbitration. Since the Franco-German War of 1870-1 and the formation of the Institut du Droit International and the Association for the Reform and Codification of the Law of Nations, afterwards styled The International Law Association, projects for international arbitration have been very numerous. They are to be found in Dr. Darby's book on International Tribunals. The most fully developed of these projects is that of the International Law Association accepted at the Conference at Buffalo, August 31, 1899 (*op. cit.*, p. 592).

¹ Darby, *International Tribunals*, p. 299.

² *Ibid.*, p. 606; Pearce Higgins, *The Hague Conferences*, p. 102.

³ *De Iure Belli et Pacis*, Book II, ch. 23, 8; Book III, ch. 20, 46.

⁴ Book V, ch. 13, sects. 3-6.

⁵ Sect. 329.

⁶ Vol. iii, sects. 3, 5.

⁷ Sect. 109.

⁸ Sect. 318.

⁹ Sects. 488-98.

¹⁰ Sects. 1481-1565.

As regards the appearance of arbitration clauses in Treaties, the germ is to be traced to clauses in Treaties of Peace referring claims for compensation by the subjects of one of the two States at war against the other State to Commissioners for adjudication and assessment. The next step was to provide in similar Treaties for Arbitrations *de futuro* in the event of new disputes arising. Then came a series of Treaties of modern date, some ratified and some not, being not Treaties of Peace after war, but Treaties framed in time of peace solely for the purpose of avoiding war in the case of future disputes by means of some form of arbitration.

Into these Treaties there gradually enters the idea of a Tribunal or Court. The phrase occurs in the plan of the International American Conference of 1890, which ultimately lapsed for want of ratification by the individual American Republics. The Anglo-American Arbitration Treaty, 1897, also not ratified, and the Treaty between Argentina and Italy, 1898, speak of an Arbitral Tribunal. But all these Courts or Tribunals were to be created *ad hoc*, and to be merely bodies of Arbitrators chosen for the purpose of deciding some special controversy, whose commission would end as soon as they had awarded on that controversy.

In the Convention for the specific settlement of international disputes framed at the Hague Conference of 1899, a further step was taken by the organization (on paper at any rate) of a 'permanent Court of Arbitration accessible at all times and working, except there be contrary stipulation of the parties, in conformity with the Rules of Procedure inserted in the present Convention'. If this Court had had a real existence, with ascertained judges, and an obligation on the States party to the Treaty to refer differences, even differences of one class only, to it, and to abide by its decision, it might be said that the contracting States were tending towards

the position of the United States of America, with one Supreme Court to decide differences between different States or between their respective inhabitants.

But, on examination, very little that is effective remains of this idea. There is, no doubt, an International Bureau established at The Hague, which is to act as the Clerk's Office or Registry of the Court (Art. 22). Each of the Signatory Powers is to nominate certain persons to be Arbitrators, so that the Bureau will have a list of Arbitrators (Art. 23). Further, when two Powers desire to apply to the Permanent Court for the settlement of a difference, the choice of Arbitrators to form the Tribunal should be made from the general list of the Members of the Court. And, if the States, having applied to the Permanent Court, and so far submitted to it, fail to agree upon the constitution of an Arbitral Tribunal, there is a procedure in the Treaty for effecting the composition of the Tribunal (Art. 24).

But no State binds itself to apply to the Permanent Court. If States do apply, they are not discouraged from choosing their own Arbitrators, either within, or outside of, the list of Members of the Permanent Court; and if, failing to agree otherwise, they allow the procedure of the Court to be applied, that procedure helps them very little, for it only provides that each party shall name two Arbitrators, and that these Arbitrators together shall choose an Umpire. It is only by suggesting a list of Arbitrators and providing in the case of disagreement for the choice of an Umpire that the rules of the Conference help them (Art. 24).

Moreover, no power is given to a State to have recourse *ex parte* to the permanent Court of Arbitration or to its Bureau at The Hague with a statement that it has a dispute with another State which it wishes to have referred to Arbitration, and to get the assistance of the Court to have it so referred. Nothing comes before the

Court unless and until the two States 'sign a special agreement or *compromis* clearly defining the objects of the dispute as well as the extent of the powers of the Arbitrators' (Art. 21).

Article 32 contemplates the conferring of Arbitration functions upon a single Arbitrator, or several Arbitrators, named by the parties at their discretion, or chosen from among the Members of the Permanent Court. The Signatory States in fact set up a model form or pattern of arbitration proceedings, but bind themselves to nothing except the establishment of an International Bureau at The Hague, to which they are to communicate information as to any Arbitration Proceedings to which they are parties (Art. 22), and the expenses of which they are to bear in certain proportions (Art. 29).

In addition to the Procedure by Arbitration there are some useful provisions for International Commissions of Inquiry, under which the North Sea Commission sat in 1905 to inquire into the recent episode at the Dogger Bank.¹

The second American International Conference, meeting at Mexico in 1902, effected a Treaty that was not only signed but ratified by a sufficient number of American States to give it force; but the Treaty did little more in this respect than adhere to the Hague Conference, with a provision (Art. 4) that

'Whenever it may be necessary, from any cause whatever, to organise a Special Tribunal, either because any one of the parties may desire it or by reason of the Permanent Court of Arbitration at The Hague not being open to them, the procedure to be followed shall be established on the signing of the Arbitration Agreement.'

The second Hague Conference of 1907 went some way farther. The Convention is at any rate a much more

¹ Pearce Higgins, *The Hague Peace Conferences*, p. 167. And see later the Anglo-American Treaty of 1914 (p. 21).

elaborate document, having ninety-seven Articles as against sixty-one. The subject of International Commissions of Inquiry is much farther elaborated. This Convention was not intended to be supplementary to the old Convention, but to replace it; and many of the Articles are mere re-enactments.

The old Convention stated that

‘In questions of a legal nature, and especially in the interpretation or application of International Conventions, arbitration is recognized by the Signatory Powers as the most effective, and at the same time the most equitable, means of settling disputes which diplomacy has failed to settle’ (Art. 16).

The new Convention repeats this, and adds :

‘Consequently, it would be desirable that, in disputes regarding the above-mentioned questions, the Contracting Powers should, if the case arise, have recourse to arbitration, in so far as circumstances permit’ (Art. 38 of 1907).

There is an improvement in detail as to the appointment of the Umpire (compare Art. 24 of 1899 with Art. 45 of 1907); and there is a noteworthy step towards the conversion of the International Tribunal into a Court to which any aggrieved Power may apply *ex parte*, in the additional clause which appears at the end of Art. 48:

‘In case of dispute between two Powers, one of them may always address to the International Bureau a note containing a declaration that it would be ready to submit the dispute to arbitration. The Bureau must at once inform the other Power of the declaration.’

A similar indication is found in Chapter III, ‘On Arbitration Procedure’, where this new provision is introduced by Art. 53 :

‘The Permanent Court is competent to settle the *compromis*, if the parties are agreed to have recourse to it for the purpose. It is similarly competent, even if the request is only made by

one of the parties, when all attempts to reach an understanding through the diplomatic channel have failed in the case of

‘1. A dispute covered by a general Treaty of Arbitration concluded or renewed after the present Convention has come into force, and providing for a *compromis* in all disputes and not either explicitly or implicitly excluding the settlement of the *compromis* from the competence of the Court. Recourse cannot, however, be had to the Court if the other party declares that in its opinion the dispute does not belong to the category of disputes which can be submitted to obligatory arbitration, unless the Treaty of Arbitration confers upon the Arbitration Tribunal the power of deciding this preliminary question ;

‘2. A dispute arising from contract debts claimed from one Power by another Power as due to its nationals, and for the settlement of which the offer of arbitration has been accepted. This provision is not applicable if acceptance is subject to the condition that the *compromis* should be settled in some other way.’

This is supplemented by Articles 54 and 58 :

‘ART 54. In the cases contemplated in the preceding Article, the *compromis* shall be settled by a Commission consisting of five members selected in the manner laid down in Art. 45, paragraphs 3 to 6. The fifth member is *ex officio* President of the Commission.’

‘ART. 58. When the *compromis* is settled by a commission, as contemplated in Art. 54, and in default of agreement to the contrary, the Commission itself shall form the Arbitration Tribunal.’

In the Convention of 1907 a new Chapter (Chap. IV) on Arbitration by Summary Procedure is added. This is an alternative form, the utility of which it is not very easy to see ; at any rate, no new matter or principle is introduced.

In the final Act of the Conference of 1907 it is stated that the Conference is unanimous—

‘1. In admitting the principle of compulsory arbitration.

‘2. In declaring that certain disputes, in particular those

relating to the interpretation and application of the provisions of international agreements, may be submitted to compulsory arbitration without any restriction.

‘Finally it is unanimous in proclaiming that, although it has not yet been found feasible to conclude a Convention in this sense, nevertheless the divergencies of opinion which have come to light have not exceeded the bounds of judicial controversy, and that, by working together here during the past four months, the collected Powers not only have learnt to understand one another and to draw closer together, but have succeeded in the course of this long collaboration in evolving a very lofty conception of the common welfare of humanity.’¹

And there is added a wish or *vœu* to the following effect :

‘1. The Conference calls the attention of the Signatory Powers to the advisability of adopting the annexed draft Convention for the creation of a Judicial Arbitration Court, and of bringing it into force as soon as an agreement has been reached respecting the selection of the Judges and the constitution of the Court.’²

The draft Convention referred to in this *vœu*³ goes farther, as it contemplates the appointment of salaried and permanent judges, who are to enjoy diplomatic privileges and immunities, and who are to form a special Delegation of three judges annually. The Court is to meet once a year, unless the Delegation considers it unnecessary. The Delegation is to be competent to decide cases if the parties agree to arbitration by summary procedure, to settle the *compromis* of Art. 52 of the Hague Convention, if the parties are agreed to leave it to the Court, and, in certain cases at the request of one party only. And a procedure for the Court is established.

The result is that there is in the actual Convention a suggestion of a skeleton Court and a procedure for any

¹ Pearce Higgins, p. 67.

² Pearce Higgins, p. 67.

³ Pearce Higgins, p. 498.

cases which States at variance may desire to refer to arbitration; there is a distinct recommendation to refer certain classes of cases to arbitration without restriction; though no recourse to the Hague Court of Arbitration can be made except by mutual consent, there is the power to use the International Bureau as a formal vehicle for announcing the readiness of one State to go to arbitration; and lastly, there is the more trenchant provision in Art. 53, enabling the Permanent Court in certain cases to frame a *compromis* or reference to Arbitration.

But this is more in seeming than in reality; for the vehicle for framing the *compromis* is to be a Commission, the members of which are to be nominated as in Art. 55, that is by each party appointing two Arbitrators, with provisions for the choice of an Umpire. If, therefore, one State is unwilling to go to Arbitration, even though it has obliged itself beforehand to submit questions to Arbitration, it can effectively prevent a compulsory reference by refusing to appoint its members of the Commission.

When facts are looked in the face, it remains that Arbitration under the second Hague Conference, as under the first, is only for those who agree to submit to it. The draft Convention carries matters a little farther, but not much.

As Sir Thomas Barclay¹ has truly observed:

‘It is obvious that a Treaty of Arbitration, to fulfil its purpose of avoiding any break in the amicable relations between States, must be at the same time general, obligatory, and automatic. It must be general, because its purpose would be defeated if, when the crisis came, one or the other party were driven to dispute the applicability of the treaty to the matter at issue. It must be obligatory, because, if it is not, a treaty of submission must be negotiated at the worst moment for negotiations,

¹ ‘The Hague Court and Vital Interests,’ *Law Quarterly Review*, April 1905. Reprint, pp. 9, 10.

viz., at a moment when the state of feeling threatens to suspend negotiations altogether. . . . For the same reason it must also be automatic.'

But the Conference of 1907 could not attain this desirable object.

By the Treaty of Washington of September 15, 1914, between Great Britain and the United States, provision is made for the appointment of a Permanent International Commission, to investigate and report upon disputes between the two countries when diplomatic methods of adjustment have failed. The composition of the Commission is to be as follows:

'One member shall be chosen from each country by the Government thereof; one member shall be chosen by each Government from some third country; the fifth member shall be chosen by common agreement between the two Governments, it being understood that he shall not be a citizen of either country.'¹

The reference to the International Commission is compulsory. The Commission may also spontaneously, and by unanimous agreement, offer its services. A great number of Treaties² on this model have been effected between the United States and other countries. This procedure may be considered as an adoption or extension of the provisions as to International Commissions of Inquiry framed by the Hague Conferences. It is the latest application of the principle of International Arbitration.

In August 1917 the Pope addressed a Note 'To the Heads of the Belligerent Peoples',³ in which as his first

¹ League of Nations Society Publications, No. 4, November 1916: 'Treaty between the United Kingdom and the United States of America with regard to the Establishment of a Peace Commission. Signed at Washington, September 15, 1914.'

² Known as the Bryan Treaties.

³ *The Times*, August 16, 1917.

suggestion towards a 'just and lasting peace' he placed the following :

'The fundamental point should be that the moral force of right should replace the material force of arms; hence a just agreement between all for the simultaneous and reciprocal diminution of armaments, according to rules and guarantees to be established, to the extent necessary and sufficient for the maintenance of public order in each State; then, in the place of armies, the establishment of arbitration with its exalted pacifying function, on lines to be concerted and with sanctions to be settled against any State that should refuse either to submit international questions to arbitration or to accept its awards.'

To this the German Government apparently answered:¹

'The Imperial Government welcomes with special sympathy the leading idea of the peace appeal, in which his Holiness clearly expresses his conviction that in the future the material power of arms must be superseded by the moral power of right. We also are convinced that the sick body of human society can only be healed by the fortifying moral strength of right. From this would follow, according to the view of his Holiness, the simultaneous diminution of the armed forces of all States and the institution of obligatory arbitration in international disputes. . . . The task would then of itself arise of deciding international differences of opinion, not by the use of armed forces but by peaceful methods, especially by arbitration, the great peace-producing effect of which we, together with his Holiness, fully recognize. The Imperial Government will, in this respect, support every proposal which is compatible with the vital interests of the German Empire and people.'

The Austrian Emperor replied as follows:²

'With deep-rooted conviction we greet the leading idea of your Holiness that the future arrangement of the world must be based on the elimination of armed forces and on the moral force of right and on the rule of international justice and legality.'

¹ *The Times*, Sept. 24, 1917.

² *The Times*, Sept. 22, 1917.

We, too, are imbued with the hope that a strengthening of the sense of right would morally regenerate humanity. We support, therefore, your Holiness's view that negotiations between the belligerents should and could lead to an understanding by which, with the creation of appropriate guarantees, armaments on land, sea, and air might be reduced simultaneously, reciprocally, and gradually to a fixed limit, and whereby the high seas, which rightly belong to all the nations of the earth, may be freed from domination or paramountcy, and be open equally for the use of all.

'Fully conscious of the importance for the promotion of peace of the method proposed by your Holiness—namely, to submit international disputes to compulsory arbitration—we are also prepared to enter into negotiations regarding this proposal.'

The United States had previously, in a communication signed by their Secretary of State, regretfully pointed out to His Holiness that 'the word of the present rulers of Germany could not be taken as a guarantee of anything that is to endure'.¹

IV. RECENT SCHEMES OF FEDERATION

1. *Summary of Views*

Since the Great War began, there have been a number of publications by individuals and by associations submitting schemes for the prevention of future war. Some writers lay stress upon recourse to Arbitration, others upon a European or World Federation or League. The various proposals will be given with some fullness in the latter part of this section; but the following is a convenient summary:

All agree in dividing disputes between nations into disputes which are justiciable and those which are not, and suggest that the former should go before some form

¹ *The Times*, August 30, 1917.

of Tribunal, whether called a Court or a Body of Arbitrators, and whether established in permanance or appointed *ad hoc*. The general idea is that it should be a permanent body.

All agree in referring all other disputes to some body which will not proceed upon legal principles which are *ex hypothesi* inapplicable, but will act—as it is sometimes expressed—as a Council of Conciliation. Some would give to this Council quasi-legislative powers, that is to say, powers to add to the existing rules of International Law. Some would give the Council a power to supersede, or to take the place of, the Court, by amending or repealing the existing rules of International Law or the existing terms of Treaties, and, having thus established new law, either remitting the case to the Court or dealing with it as a Court. The source of this last idea is the Alabama Convention, by which Great Britain and the United States, before submitting their disputes to the Arbitration Tribunal at Geneva, agreed that certain principles should be applied, as if they were International Law, by the Tribunal.

All these writers agree that it should be incumbent upon every State party to the League to submit, or to consent to the submission of, any dispute either to the Court or to the Council; and that there should be a *moratorium* (to use a convenient application of a word hitherto employed in commerce), that is to say, that no State should have recourse to war pending the decision of the Court or Council, as the case may be.

As to the constitution of the Court and of the Council, there are varieties in detail. All the writers would admit that, to some extent, every State party to the League should have some voice in the appointment of the Court and of the Council; but they differ widely as to the extent and as to the weight to be given to the smaller States.

Most of them would create an artificial body of eight Great Powers—the old six European Great Powers, with the United States and Japan added, but China excluded, and would eliminate from the League, and therefore from voice in the Court or Council, what they call backward or half-civilized States. Some hesitate about the admission of any of the South American States,¹ forgetting that, if their schemes are to be of any use, they must at least contemplate what is likely to happen during the next fifty years, and that during that period the A. B. C. States² are likely to become some of the most important in the world. Most of them would divide States in the League into two classes only—(a) the Great Powers, (b) all the rest, putting the eight Great Powers on an equal footing *inter se*, and all the others, however much they differ in importance, also on an equal footing *inter se*.

As to the enforcement of the duty to go to the Court or Council, and to refrain from war in the interval, most of those who have written since the War began accept the necessity of constraint by force. Many of them do it with reluctance, and most of them suggest that the primary and most suitable use of force would be by some form of international boycott, in lieu of an actual recourse to arms. Many writers have persuaded themselves that, if the international boycott be used, it would be sufficient, and that it would not in its turn provoke war.

On the question of enforcing the Order or Award of the Court or Council, there is more difference of opinion. Few go the length of saying that it should be the duty of the several States parties to the League to compel the State against which an Order of the Court has been

¹ e. g. Hobson, p. 158 ; Woolf, *International Government*, p. 58 ; *Framework of a Lasting Peace*, p. 55.

² Argentina, Brazil, and Chili.

made to comply with that Order. None go the length of saying that it should be a duty of the States to enforce obedience to the recommendation or award of the Council. Where obedience is to be enforced, some would make it the duty of every State to contribute to the enforcement; some would leave it to the Great Powers alone; some suggest that, if a State not content with non-performance of the Order or Award takes up arms in contradiction of it, it should be resisted by all the States. Some would leave the injured State to enforce its right, or protect itself against invasion, assisted only to this extent, that the wrongdoer will be driven to fight without allies, because all Treaties of Alliance are to be deemed in such an event to be dissolved. Some, again, have been content with a general outline, and have not worked out in detail the machinery by which force, whether economic or military, is to be decided upon and applied. Some would create for these purposes an Executive of the League, and suggest that there should be a scale of contributions in men and money, such as there was among the States of the old Holy Roman Empire and, it is believed, among those which formed the German Confederation of 1815.

The next question that arises concerns the relation of the League to States outside the League, and the duty of States inside the League to assist one of their number, if attacked from outside. Opinions vary as to this, and as to the possibility of having anything like a large League to start with, some being so modest in their aspirations that they anticipate that the League, in its initiation, will consist of the 'Entente' Powers with a few neutrals added. Others deprecate anything like a League which would exclude Germany and her Allies—an exclusion which would result in the formation of a second League, more or less hostile to the first.

Most of the writers to whom reference will be

made published their books before the United States joined in the war; and many of them are now out of date.

Some see a great instrument of peace in absolute, unconditional Free Trade; others are violent Protectionists in the sense that they would artificially regulate trade for the benefit of particular national industries. But they seek to reconcile their scheme with international harmony, by setting up some international or super-national body that would play the part of Providence to the several States, and, while protecting the national industries, would compel the various nations to facilitate the supply of raw materials and advantages of transit to all others in need of them.

Some think that the panacea is to be found in what they call Democratic Control, by which they mean not merely that a people should elect its Parliament—Parliament choosing the Ministers and leaving it to them to settle such matters—nor even that they would have confidence in Parliament, but that every diplomatic question should be decided in the face of day, after general public discussion. It is as if, in matters of business, when two bodies of men were treating with each other, neither were to be allowed to discuss between themselves in private what line of action they should take with regard to the other.

Another school is so anxious for regulation of all kinds that it would press forward from regulation by the State of most of the actions of individual citizens to regulation by a super-State of the actions of individual States. This school would have, not merely a super-national Executive to determine how the forces of the League should be used to prevent war, but a Legislature which would regulate all relations of States *inter se*, and of citizens of one State with another State or the citizens thereof, in peace as well as in war, as to the

course of trade, the rules of occupation and development of unsettled countries, grants and concessions, trusts, cartels, changes of nationality and domicile, and so forth, with a supernational Executive to enforce the enactments of this supernational Legislature.

2. *Particular Organizations*

The organizations which have thus far taken this matter in hand appear to be those of—

- (a) Viscount Bryce and his friends.
- (b) The British League of Nations Society.
- (c) The (American) League to Enforce Peace.
- (d) The Fabian Society.
- (e) The Union of Democratic Control.
- (f) L'Organisation Centrale pour une Paix durable (The Hague).¹

(a) *Lord Bryce's 'Proposals for the Prevention of Future Wars'*.—These have been revised to April 1917. Under this scheme, summarily described, the six Great Powers of Europe, the United States and Japan, and all other *European* Powers which may be willing, shall enter into a 'Treaty Arrangement'. China and the other American and Asiatic Powers may apparently be admitted later (Art. 1). Disputes are divided into those which are of a justiciable character and those which are not (Arts. 2, 4).

'Disputes of a justiciable character' are to be defined as

'Disputes as to the interpretation of a treaty, as to any question of international law, as to the existence of any fact which, if established, would constitute a breach of any inter-

¹ The outlines of the schemes of these organizations have been filled up in several cases by members writing on their own behalf, who sometimes carry the proposals of their particular body a good deal farther.

national obligation, or as to the nature and extent of the reparation to be made for any such breach.'

Justiciable disputes are to be referred to 'the Court of Arbitral Justice', or to the Court of Arbitration at The Hague; and the Powers are to agree 'to accept and to give effect to the Award of the Tribunal' (Art. 3). For other matters, and for the question whether a dispute is of a justiciable character or not, reference is to be made to the Permanent Council of Conciliation. On this Council all the signatory Powers are to have representatives; each of the Great Powers so called—that is, the eight mentioned—is to have, it is suggested, three members, the other Powers at least one (Introd., p. 21). Apparently the whole Council is to sit, though it is to have power to appoint Committees to report. No executive power is conferred on the Council; but it is to have power, of its own initiative, to consider disputes and invite the Parties to submit them with a view to conciliation (Art. 10), and even to make suggestions before disputes arise (Art. 12).

'MORATORIUM FOR HOSTILITIES.

'ART. 17. Every signatory Power to agree not to declare war or begin hostilities or hostile preparations against any other signatory Power before the matter in dispute has been submitted to an arbitral tribunal, or to the Council, or within a period of twelve months after such submission; or, if the award of the arbitral tribunal or the report of the Council, as the case may be, has been published within that time, then not to declare war or begin hostilities or hostile preparations within a period of six months after the publication of such award or report.

'LIMITATION OF EFFECT OF ALLIANCES.

'ART. 18. The signatory Powers to agree that no signatory Power commencing hostilities against another, without first complying with the provisions of the preceding clauses, shall be entitled, by virtue of any now existing or future treaty of alliance or other engagement, to the military or other material support of any other signatory Power in such hostilities.

'ENFORCEMENT OF THE PRECEDING PROVISIONS.

'ART. 19. Every signatory Power to undertake that, in case any Power, whether or not a signatory Power, declares war or begins hostilities or hostile preparations against a signatory Power, without first having submitted its case to an arbitral tribunal or to the Council of Conciliation, or before the expiration of the prescribed period of delay, it will forthwith in conjunction with the other signatory Powers take such concerted measures, economic and forcible, against the Power so acting as in their judgment are most effective and appropriate to the circumstances of the case.

'ART. 20. The signatory Powers to undertake that, if any Power shall fail to accept and give effect to the recommendations contained in any report of the Council or in the Award of the Arbitral Tribunal, they will at a Conference to be forthwith summoned for the purpose consider, in concert, the situation which has arisen by reason of such failure, and what collective action, if any, it is practicable to take in order to make such recommendations operative.'

(b) *The British 'League of Nations Society'*.—This Society published its *Project of a League of Nations* in August 1917. The programme is short, and is as follows :

'1. That a Treaty shall be made as soon as possible whereby as many States as are willing shall form a League binding themselves to use peaceful methods for dealing with all disputes arising among them.

'2. That such methods shall be as follows :

(a) All disputes arising out of questions of International Law, or the interpretation of Treaties, shall be referred to the Hague Court of Arbitration, or some other judicial tribunal, whose decisions shall be final and shall be carried into effect by the parties concerned.

(b) All other disputes shall be referred to and investigated and reported upon by a Council of Inquiry and Conciliation; the Council to be representative of the States which form the League.

'3. That the States which are members of the League shall

unite in any action necessary for ensuring that every member shall abide by the terms of the Treaty; and in particular shall jointly use forthwith both their economic and military forces against any one of their number that goes to war, or commits acts of hostility against another, before any question arising shall be submitted as provided in the foregoing Articles.

‘4. That the States which are members of the League shall make provision for mutual defence, diplomatic, economic, or military, in the event of any of them being attacked by a State not a member of the League which refuses to submit the case to an appropriate Tribunal or Council.

‘5. That conferences between the members of the League shall be held from time to time to consider international matters of general character, and to formulate and codify International Law, which, unless some member shall signify its dissent within a stated period, shall hereafter govern in the decisions of the Judicial Tribunal mentioned in Article 2 (a).

‘6. That any civilised State desiring to join the League shall be admitted to membership.’

It will be seen that this scheme accepts the same division of disputes as that adopted by Lord Bryce. It contemplates forcible action by the States which are members of the League. They are to use economic or military force against any one of their number that goes to war before submitting the question either to arbitration or for conciliation. It binds the parties, when the case is referred to arbitration, to carry out the award. But it makes no provision for force being brought to bear upon the party unwilling to obey the award or to accept the Report of a Council of Conciliation. Force is only to be used to secure the *moratorium* while the dispute is under consideration. It will be further seen that the scheme is so far from contemplating a world-wide League that it provides in Art. 4 for mutual defence by members of the League against outside Powers in certain events.

(c) *The American ‘League to Enforce Peace’*.—The

proposals of this League are set out in an article by the chairman, Dr. Marburg, in a publication of the Society. The four articles of its platform are as follows :

‘ 1. All justiciable questions arising between the signatory Powers, not settled by negotiation, shall, subject to the limitations of treaties, be submitted to a judicial tribunal for hearing and judgment, both upon the merits and upon any issue as to its jurisdiction of the question.

‘ 2. All other questions arising between the signatories and not settled by negotiation shall be submitted to a Council of Conciliation for hearing, consideration, and recommendation.

‘ 3. The signatory Powers shall jointly use forthwith both their economic and military forces against any one of their number that goes to war, or commits acts of hostility, against another of the signatories before any question arising shall be submitted as provided in the foregoing.

‘ 4. Conferences between the signatory Powers shall be held from time to time to formulate and codify rules of international law, which, unless some signatory shall signify its dissent within a stated period, shall thereafter govern in the decisions of the Judicial Tribunal mentioned in Article 1.’¹

It will be seen that this platform is less drastic than that of the British League, because it omits the contractual duty to carry into effect the decision of an Arbitral Tribunal, and also contains no clause corresponding to Article 4 of the British platform, which makes the League into an Alliance against any State, not a member of the League, that attacks a member.²

The American League has published a collection of speeches made at a meeting held by it in Philadelphia, June 17, 1915, and, under the title ‘Enforced Peace’, the Proceedings of the first Annual National Assemblage at Washington, May 26–7, 1916. Dr. Lowell, President of Harvard University, who was a speaker

¹ *The Project of a League of Nations*, p. 18.

² One speaker, however (Dr. Clark), at their first meeting, took the line of the British League.

at both meetings, published a separate pamphlet in September 1915. The purport of these publications is to show the need of an organization to enforce peace, and to induce the authors' countrymen to take an active part in promoting it. They are very eloquent, but they do not go into detail, and they contribute little towards the development of the general idea or to meet criticisms.¹

Dr. Lowell's pamphlet, however, has useful observations upon the impracticability of an international police, upon the probable feebleness of a Conference of Powers called upon to restrain a recalcitrant State, and upon the difficulties of an economic boycott. One point is insisted on which has more novelty, namely, that, as balancing the *moratorium* which prevents a State from having recourse to arms pending the reference to Court or Council, that State should be able to get an injunction from Court or Council restraining its opponent from continuing its aggression *pendente lite*. This suggestion is also made by Mr. Lowes Dickinson.² How far it would be understood and accepted by nations whose systems of jurisprudence are not Anglo-American may be a question.³

(d) *The Fabian Society*.—A work of some importance, entitled *International Government*, has been published by this Society. It contains two reports (Parts I and II) by Mr. L. S. Woolf, and a project (Part III) by a Fabian committee 'for a Supernational Authority that will Prevent War'.⁴ Part I is well worthy of consideration.

¹ The papers which go into most detail are *The League Program*, by Thomas Raeburn White; *Preparedness and Ultimate Reduction of Armaments*, by Hamilton Holt; and *A Reply to Critics*, by Theodore Marburg.

² See below, pp. 51 *seq.*

³ Mr. Robert Goldsmith has written a book, published at New York in 1917, to support the views of the American League.

⁴ Mr. Woolf has more recently published a second book called *The Framework of a Lasting Peace* (1917). The body of the work

Mr. Woolf attempts to classify the causes of war, and he analyses them under four heads :

‘ 1. Disputes arising from legal or quasi-legal relationship, e. g. (a) as to interpretation of treaties ; (b) as to contractual rights and duties ; (c) as to definitions of boundaries ; (d) as to delicts.

‘ 2. Disputes arising from economic relationship, trade, and finance.

‘ 3. Disputes arising from administrative or political relationship, e. g. as to questions of territory, subject races, expansion, nationality, supremacy, and predominant influence.

‘ 4. Disputes arising from what may be called social relationship, e. g. as to questions of honour.’¹

The classification is not satisfactory ; and, though Mr. Woolf attempts to bring two of the recent great wars, the Spanish-American and the Russo-Japanese, under one or other of these heads, he fails. He does not deal with the Boer War or attempt to classify the Great War. He is a believer in International Law, and expresses himself to the following effect :

‘ A large number of its rules are quite definitely admitted, are acted upon every day, and really do help to regulate pacifically international society. On the other hand, much of it is vague and uncertain. This is due largely to two facts : there is no recognized international organ for making International Law, and no judicial organ for interpreting it. The consequences are two : whenever new circumstances arise which require a new rule of conduct for nations, the nations concerned have to set about making the new rule by bargaining and negotiation. If they cannot agree, either it remains uncertain what the law is or the question has to be settled by war. Secondly, when there

is a useful reprint of the schemes of the several organizations, including a translation of the Minimum Programme of the Central Organization for a Durable Peace and the Draft Treaty framed by the Dutch Committee. The introduction makes little or no new contribution to the study of the subject.

¹ *International Government*, p. 10.

is already a rule, but nations disagree as to its interpretation, they again have to attempt by bargaining and negotiation to come to some agreement as to how it shall be interpreted. And again, if they cannot agree, the only method left is to cut the knot by war' (*op. cit.*, p. 13).

Mr. Woolf makes some acute reflections on the difficulty of combining respect for the *status quo* with the legitimate desire of nationalities, now by force included in different States, to obtain separation and possibly amalgamation. He thus expresses himself:

'The Union of Democratic Control urges the adoption of the principle that "no province shall be transferred from one Government to another without consent, by plebiscite or otherwise, of the population of such province". The adoption of this principle as part of the international constitution would indisputably be a great step forward, but one may point out that really to ensure a permanent peace it would be at least necessary to add: "Nor shall any province be compelled to remain under any Government against the consent of the population of such province"' (*op. cit.*, p. 29).

He summarizes his historical conclusions as follows:

'1. A new system of international relationship began to appear in the last century. The pivot of the system was the making of international laws and the regulation of certain international affairs at international Conferences of national representatives. The important part of the system was the expressed or unexpressed acceptance of the principle that such affairs could only be settled by the collective decision of the Powers.

'2. The functions of these international Conferences may be of three different kinds, which in practice have not been clearly recognized and distinguished. Their function may be:

(a) To come to a decision binding upon the States represented, i. e. to legislate; or

(b) To examine facts and express an opinion or issue a report; or

(c) To act as a Council of Conciliation or Mediation between two or more disputing States.

'3. The efficacy of Conferences in preventing war and in settling international questions has been remarkable. It has, however, been limited by the fact that the submission of any question to a Conference has always been a subject for negotiation, and, therefore, only a move in the diplomatic game. The first step towards the peaceful regulation of international affairs would be to remove this question of submission altogether from the sphere of negotiation and diplomacy, and to define the cases in which a Conference must be called or could be demanded.

'4. Little progress in the making of international laws by Conferences can be expected unless the rights of an international majority to bind a minority—if only an exceptionally overwhelming majority, in specific cases—are admitted and defined.

'5. The development of Conferences into full international legislative bodies depends principally upon the possibility of :

(a) Agreement as to what are international questions which are to be submitted for collective decision to Conferences.

(b) Agreement as to the rights of an international majority to bind a minority' (*op. cit.*, pp. 42, 43).

His constructive scheme is based upon the following principles. There are two classes of national disputes : the first, fitted for a Tribunal whether the members of it be called Judges or Arbitrators, where there is a dispute as to facts or the construction of Treaties and similar documents, or upon the construction and application of recognized International Law ; and a second, in which the Arbitrators may, or may not, have to determine the facts and there is no law to guide them, and where, as he expresses it :

'Certain persons must be selected by States as likely to be reasonable and open-minded, and such disputes will be referred to their decision, which will represent a fair and reasonable settlement or compromise' (*op. cit.*, p. 44).

He presumes that disputes of the first class will generally be referred to a Permanent International Court of Arbitration, and disputes of the second to an International Conference. But he thinks that there

would be certain cases in which it would not be right to insist upon the *status quo* or rights thereby acquired; and that the existing principles of International Law may favour certain Great Powers—particularly his own country, Great Britain—too much. In cases of the latter sort it ought (he thinks) to be the right of a disputing State to have it considered by the International Conference whether the law ought not to be altered first, and then the case decided on; or, as the reference to the Tribunal of Arbitration would probably be unnecessary, he would allow the disputing State to claim that the whole matter be determined by the Conference, which would first make the law, and then adjudicate upon the law which it had made. He gets this idea from the Alabama Arbitration.¹ It will probably be thought that this scheme is impracticable; and, as Mr. Woolf confesses, the State most likely to suffer would be his own.

For the constitution of his Tribunal of Arbitration he divides the States of the world into two classes: the eight so-called Great Powers, and the rest. He would have a Tribunal of seventeen Judges, each Great Power appointing one and the other States collectively electing nine; and he would exclude from the Court the representative or representatives of any disputing State. This might give a lesser Power, in case it were not directly represented by a subject of its own on the Tribunal, some advantage in a contest with a Great Power.

The international rights and obligations which would be defined and acknowledged under his system are as follows:

‘1. The obligation to refer all disputes and differences not settled by negotiation either to a tribunal or to a Conference.

‘2. The obligation in certain defined disputes and differences²

¹ See above, p. 24.

² ‘i. e. those which would not affect the independence or the territorial integrity, or which would not require an alteration in the internal laws, of a State.’

referred to a Conference, to accept and abide by the decision of the majority of the representatives.

'3. The obligation to accept and abide by the judgment of a tribunal.

'4. The obligation of a State to abide by every general rule of law and every decision made by a Conference and agreed to or ratified by that State.

'5. The obligation to abide by certain defined general rules of law made by a majority of the representatives in a Conference' (*op. cit.*, p. 75).

Of these he regards the first, third, and fourth, as of primary importance. He insists that there shall be what has above been called a *moratorium*. He says that the nations which compose the International Authority are to

'agree to enforce, and actually enforce by every means in their power, the obligation of each individual State to refer a dispute or difference to tribunal or Conference before resorting to force of arms' (*op. cit.*, p. 77).

He shrinks from definitely saying that force should be employed, but he seems to contemplate that either war or 'economic and social pressure' would be used if necessary. He then passes to what he calls the 'construction of some International Authority', and with a good deal of elaboration suggests a scheme of International Legislation by the Powers assembled in Conference, with a considerable predominance given to the eight Great Powers, and the right of a sufficiently large majority to bind the recalcitrant rest.

Part II is devoted to an elaborate analysis of the extent to which, under existing conditions, nations are united and interpenetrated, and to an enumeration of a number of Unions, Postal and Telegraphic, Sanitary, and so forth, official or otherwise, which at present exist. Here and there the writer shows that he has not much

knowledge of practical business; and this part will hardly repay perusal.

One idea, however, can be drawn from it. He points out, as is the fact, that in some of these Treaties the States with large Oversea Dominions are allowed additional votes. Thus, in the General Postal Union Treaty of June 1, 1878,¹ by Art. 21, Great Britain has one additional vote for British India and the Dominion of Canada; and votes are given to the Danish, Spanish, French, Dutch, and Portuguese colonies, one vote to each group. By the Telegraphic Convention of June 15, 1897,² separate votes are given for India, Canada, Australasia, and the other British Colonies (afterwards declared to be South Africa); to the German, Danish, Spanish, Dutch, and Portuguese Colonies—each collectively; to the French Possessions in China, and a second vote to the other French Colonies. These cases seem to form precedents to be borne in mind, if any numerical Court of Arbitration should be hereafter established.

Part III of *International Government* is the work of the Fabian Committee. It contains a draft code for the 'establishment of a Supernational Authority'.

There is to be an International High Court for the decision of justiciable issues, and an International Council to secure 'by common agreement such International Legislation as may be practicable', and to promote the settlement of non-justiciable issues, with an International Secretariat or Bureau. All the constituent States are to bind themselves to abstain from war till they have first submitted their claim to the Court

¹ Hertslet, *Treaties and Conventions between Great Britain and Foreign Powers so far as they relate to Commerce and Navigation*, vol. xiv, p. 1007.

² Hertslet, *op. cit.*, vol. xxi, p. 484.

of Arbitration, or to the Council, for examination and report.

The International Council is to be framed, as in all these schemes, with a peculiar regard for the so-called eight Great Powers, each of whom is to appoint five representatives, while the other States are to appoint two each. There is elaborate provision for the subdivision of the Council into minor Councils :

- (a) Of the eight Great Powers.
- (b) Of the other Powers.
- (c) Of the States of America.
- (d) Of the States of Europe.

And the matter is so arranged that the eight Great Powers, if they are unanimous, have a practical veto upon any change.

The Court is to consist of fifteen Judges, one to be nominated by each of the eight, the other seven to be elected among the other States. (This gives the lesser States somewhat less than Mr. Woolf proposes.) A power of injunction *pendente lite* is to be given to the Court. Justiciable matters, as defined in the scheme, are to go to the Court; and the Court is to have a power of deciding whether the matter is within its jurisdiction or not.

It is contemplated that the Council will enter upon a considerable amount of legislation, and that on matters of secondary importance a three-fourths majority—provided that all the Great Powers are in the majority—should be capable of making a law.

Then there are two Articles inserted by way of suggestion, and doubtfully. They are headed, 'Provision for Abrogation of Obsolete Treaties' and 'Provision for Cases in which International Law is vague, uncertain, or incomplete'. These Articles are an elaboration of Mr. Woolf's suggestion that in some cases, where a dispute

arises, first new law shall be made, and then a decision given upon the new law.

The first part of the Article (16 A) is harmless enough, but quite unnecessary. It contemplates cases where an earlier Treaty has not been expressly repealed, but has been substantially abrogated. It is quite unnecessary to have any provision for such cases. The sting is in the latter part. A State is to be able to make a claim to have it declared that a Treaty, to which it is a party, has become obsolete

‘ . . . by reason of one or other independent Sovereign State concerned in such Treaty or Agreement having ceased to exist as such, or by reason of such a change of circumstances that the very object and purpose for which all the parties made the Treaty or Agreement can no longer be attained.’¹

In such a case, instead of the matter being submitted as a justiciable issue to the Court, it is to be brought before the Council, which may by a three-fourths majority, including all the Great Powers, decide that the Treaty is obsolete and ought to be abrogated; and shall thereupon promptly deal with the question in dispute as a non-justiciable issue.

Under 16 B, a State may submit a claim that ‘the International Law applicable to such issue is so vague or so uncertain or so incomplete as to render the strict application thereof to the issue in question impracticable or inequitable’. The Council is then, by the same majority, to have similar powers.

It is to be observed that, though the size of the majority may perhaps be a sufficient protection, almost any alteration of law for the benefit of some favoured State, and to the detriment of the State in possession, might be brought about under one or other of these Articles.

¹ *International Government*, Part III, p. 251. This is a form of statement of the well-known International position as to the application of the doctrine *rebus sic stantibus*.

The use of sanctions for enforcing a decision of the Court, including an interlocutory injunction, is worked out under twelve heads :

'(a) To lay an embargo on any or all ships belonging to the recalcitrant State ;

'(b) To prohibit any lending of capital or other moneys to the citizens . . . of the recalcitrant State, or to its national Government ;

'(c) To prohibit the issue or dealing in or quotation on the Stock Exchange or in the Press of any new loans . . . of the recalcitrant State, or of its national Government ;

'(d) To prohibit all postal, telegraphic, telephonic, and wireless communication with the recalcitrant State ;

'(e) To prohibit the payment of any debts due to the citizens . . . of the recalcitrant State, or to its national Government ; and, if thought fit, to direct that payment of such debts shall be made only to one or other of the Constituent Governments . . .

'(f) To prohibit all imports, or certain specified imports . . .

'(g) To prohibit all exports, or certain specified exports . . .

'(h) To prohibit all passenger traffic (other than the exit of foreigners), . . . to or from the recalcitrant State ;

'(i) To prohibit the entrance into any port of the Constituent States of any of the ships registered as belonging to the recalcitrant State, except so far as may be necessary for any of them to seek safety, in which case such ship or ships shall be interned ;

'(j) To declare and enforce a decree of complete non-intercourse with the recalcitrant State . . .

'(k) To levy a special export duty on all goods destined for the recalcitrant State, . . .

'(l) To furnish a contingent of warships to maintain a combined blockade of one or more of the ports, or of the whole coast-line of the recalcitrant State' (*op. cit.*, pp. 253, 254).

In the event of the State against which the decision goes engaging in war, and apparently also in the event of its entering into war before the matter has come before the Court or Council, the other signatory States are to make war upon it.

Part of this scheme of the Fabian Committee recalls the paper constitutions which the Abbé Sieyès used from time to time to produce during the French Revolution.

(e) *The Union of Democratic Control*.—The four cardinal points in the policy of this Association are as follows :

‘1. No province shall be transferred from one Government to another without the consent by plebiscite, or otherwise, of the population of such province.

‘2. No Treaty, Arrangement, or Undertaking shall be entered upon in the name of Great Britain without the sanction of Parliament. Adequate machinery for ensuring democratic control of foreign policy shall be created.

‘3. The Foreign Policy of Great Britain shall not be aimed at creating Alliances for the purpose of maintaining the Balance of Power, but shall be directed to concerted action between the Powers, and the setting up of an International Council whose deliberations and decisions shall be public, with such machinery for securing international agreement as shall be the guarantee of an abiding peace.

‘4. Great Britain shall propose as part of the Peace settlement a plan for the drastic reduction, by consent, of the armaments of all the belligerent Powers, and to facilitate that policy shall attempt to secure the general nationalisation of the manufacture of armaments, and the control of the export of armaments by one country to another.’

And to these a fifth has lately been added :

‘5. The European conflict shall not be continued by economic war after the military operations have ceased. British policy shall be directed towards promoting free commercial intercourse between all nations and the preservation and extension of the principle of the open door.’

The Union has published a number of pamphlets. Some of the writers merely set forth the miseries and mischiefs of war, which we all know. Others, writing during the recent war, maintained that the enemy, if properly approached, would come to reasonable terms ;

while others, indulged in half-veiled complaints of the government of their own country. All, however, unite in advocating their particular panacea, which they call Democratic Control of Foreign Policy. Upon this last proposal short and, it is apprehended, sufficient observation has already been made.¹

In several forms the writers favour a future League of Peace; and Mr. Lowes Dickinson, who has written a number of works developing the idea, and is a prominent member of the British League of Nations Society, has contributed one pamphlet to the publications of the Union, *Economic War after the War*. The Union has also published, in a pamphlet called *Towards an International Understanding*, some contributions from French and Dutch sources, the only one of value being by Dr. Noci Van Suchtelen, of Holland, who in general terms favours a European Confederation as the only solution for the future.

(f) *The 'Organisation Centrale pour une Paix durable'*.—The Executive Committee of this body contains members from the belligerents of both sides, and from neutrals. Its minimum programme is as follows:

'1. No annexation or transfer of territory shall be made contrary to the interests and wishes of the population concerned. Where possible, their consent shall be obtained by plebiscite or otherwise. The States shall guarantee to the various nationalities included in their boundaries equality before the law, religious liberty, and the free use of their native languages.

'2. The States shall agree to introduce in their colonies, protectorates, and spheres of influence, liberty of commerce, or at least equal treatment for all nations.

'3. The work of the Hague Conferences with a view to the peaceful organisation of the Society of Nations shall be developed. The Hague Conference shall be given a permanent organisation and meet at regular intervals. The States shall agree to submit

¹ See above, p. 27.

all their disputes to peaceful settlement. For this purpose there shall be created, in addition to the existent Hague Court of Arbitration, (a) a permanent Court of International Justice, (b) a permanent International Council of Investigation and Conciliation. The States shall bind themselves to take concerted action, diplomatic, economic, or military, in case any State should resort to military measures instead of submitting the dispute to judicial decision or to the mediation of the Council of Investigation and Conciliation.

'4. The States shall agree to reduce their armaments. In order to facilitate the reduction of naval armaments, the right of capture shall be abolished and the freedom of the seas assured.

'5. Foreign policy shall be under the effective control of the parliaments of the respective nations. Secret treaties shall be void.'

It is somewhat strange that, advocating as it does in its third Article a permanent Court and a permanent Council, the Organisation should have issued among its 'Rapports' a contribution from M. Henri Lambert, a Belgian, saying that peace is not a thing to be organized, and that it seems to him that the great Supernational Council would have more need of peace than peace of it.¹

The *Recueil de Rapports* issued by this Organisation began in 1916 and has reached four volumes, which contain Papers on the following subjects: the taking of plebiscites on proposed annexations; nationalities; freedom of trade; development of the Hague Conferences; International Court of Justice and Council of Conciliation; International Sanction; limitation of armaments; freedom of the seas; and parliamentary control of foreign policy.

Several of the writers² have already published their

¹ 'L'Organisation Centrale pour une Paix durable,' *Recueil de Rapports*, 1916, p. 145.

² Such as Mr. C. R. Buxton, Mr. Hobson, Mr. Aneurin Williams, and Mr. Thomas Raeburn White.

views in separate form. Their new Papers are not much more than repetitions of the old. Some come from Germany and Austria-Hungary, and some from neutral States.

There is also an official commentary on the Minimum Programme (undated); an *Exposé des Travaux de l'Organisation*, by Chr. L. Lange of Christiania, 1917; and a separate pamphlet, *Le Contrat social des Nations*, by Professor André de Maday (Neufchâtel, 1917). All the publications of the Organisation emanate from The Hague.

The most important document is the Draft Treaty prepared by the Dutch Commission, which is also to be found in an English translation in Woolf's *The Framework of a Lasting Peace*. This Draft is preceded by an 'Exposé des Motifs' (vol. i, pp. 240-93). Its plan is as follows. It takes the usual line of a Court and a Council of Conciliation, but as to the Court it differs from many of the other schemes; and in respect of the composition of the Court it shows a tendency to return to the older theory of arbitration. So also as to the Council. The nations which enter into the Federation are to choose a certain number of Judges for the one body and Councillors for the other. The matter is to be heard—whether it be by the Court or by a Committee of the Council—by a body consisting of two nominees of each of the contending States with one President or Umpire. He is to be chosen by agreement between the parties, or nominated by the appropriate Presidential Bureau. It is with this latter body that the real power will lie. It consists of a President and two Vice-Presidents, chosen by a majority of votes from among the States forming the League, the eight Great Powers having each three votes, and all the others one. The Court is to sit on justiciable matters, defined in the ordinary way, with the addition that all matters which the States, as between themselves, have

by any special Treaty agreed to submit to arbitration shall be called justiciable. If the States can agree upon their submission to arbitration (*compromis*) the Court will decide upon it. If they cannot agree upon the terms of their submission, they may ask the Court to frame it, when it will be called a *quasi-compromis*.

The Court can also act at the request of one party, if it appear that the matter in question is included in the list of those which by some special Treaty are to be referred to arbitration. But even here its jurisdiction is excluded if the other party denies that it is one of those matters, unless indeed it has been made part of the special Treaty that the Arbitral Tribunal shall decide upon its own competence or jurisdiction. With these exceptions the Draft Treaty returns to the old view of the Hague Convention of no compulsory arbitration except in rare and special cases. But, say the promoters, this defect is remedied by giving increased competence to the Council. The Council can act in the case of all disputes, either at the joint request of the parties, or if, for any reason, the Court is incompetent. So far good. But then, as the promoters with some *naïveté* explain, little harm is done to the sovereignty or independence of a State, because, though the Court decides by a majority, the Committee of the Council can only decide by a majority containing within it the vote of one at least of the representatives of the State against which the decision is given.

One matter is left to the whole Council by Article 107. If its Committee cannot decide, by reason that neither of the representatives of the State to be decided against agrees with the decision; or if neither party has appealed to the Court or Council over some dispute which exists between them; or even if there is no dispute but only reason to fear that a dispute will arise, the whole Council may sit in full session, the Great Powers having

three votes each. But then it can only give officious advice (*avis d'office*).

This Draft Treaty is very elaborately worded, and there are, no doubt, some ingenious modes of avoiding difficulties. But it comes to very little; and its principal value is perhaps as showing that writers not of Anglo-American origin are more averse than others from interfering with the independence and sovereignty of various States.¹ The American writer, Mr. White, on the other hand, in his paper which appears in the same collection,² states that in his opinion it is the greatest objection to the Hague Convention, and to all the systems which arise from it, that the tribunals are composed of Judges named by the contending parties, who are practically certain to take the side of their own country, so that the real power of decision rests with one man, the Umpire or President.

It will be noticed that the Dutch scheme has no *moratorium*, and no clause binding the Treaty States to enforce obedience. There is, however, a clause (Art. 3) by which the several States bind themselves to respect and execute the decisions come to by Court or Council.

Mr. Aneurin Williams, who has a Paper in the same collection (vol. i, p. 233), would make it part of the Treaty that every State should obey, and that all other States should agree to compel it to obey, these decisions; but, as this might involve too great a derogation from independence and sovereignty, he would permit any State to withdraw from the Federation upon giving twelve months' notice.

¹ Compare Chief Justice Beichmann's pamphlet, which is referred to below (p. 49).

² Vol. i, p. 317.

3. *A Permanent International Tribunal*

Some useful criticisms upon the construction of a Permanent International Tribunal are to be found in an article by Chief Justice Beichmann, of Norway, in vol. xxi of *Scientia*.¹ Dr. Beichmann was, and probably still is, one of the Norwegian representatives on the Hague Court. He thinks that a Permanent International Court of Justice will not be a very efficacious mode of preventing war. He observes that wars are rarely provoked by justiciable disputes. Political conflicts, he remarks, are those which really endanger peace; and therefore he thinks that recourse to arbitration, the Arbitrators being selected from the members of the Hague Tribunal, has an advantage for two reasons: (1) that the Arbitrators appointed by each nation will act as Conciliators or Negotiators, and be in this way more useful than they would be as Judges; (2) that the Tribunal ought to have the full confidence of the parties, and that each State would have confidence in its own Arbitrators, and (owing to the method of choosing the Umpire) in the Umpire as well.

His view is that the Great War will make it more difficult than it was to form a Confederation of the States of Europe, or to get any State to derogate from its sovereign rights in favour of a new central organization, executive or legislative; that there will be so much rancour between the contending parties, and so much irritation among the neutral States at the way in which belligerents have used their powers, that they would never agree upon any International Tribunal. He further points out that, if there is to be a Tribunal competent to settle all sorts of disputes between States, every State will desire to be represented upon the Tribunal, as its

¹ A scientific Review published at Bologna, and also by Willams and Norgate of London.

decisions (at least, this appears to be his view) will not only bind the parties but form precedents of International Law.

In a volume of Essays called *The Ministry of Reconciliation*, edited by Mr. Hugh Martin, and published in March 1916, Dr. Evans Darby, former Secretary of the Peace Society, and the author of the most complete work on International Arbitration, has an Essay on 'The Political Machinery of International Peace'. In it he refers 'to the advantages of such confederations as the Swiss and German, and that of the United States'. He proceeds:

'Enough has been recorded to show that Federalism is no new or untried or impractical policy. It dominates half the world in all its continents. It is assumed, often unconsciously, by current discussions about international justice, international police, and the use of force for the maintenance of international relations. Without it these could not exist, for the very effort to establish them would involve some kind of Federation. This was abundantly illustrated in the last Peace Conference at The Hague by the failure, after strenuous efforts and after complete unanimity had generally been manifested, to establish a "Court of Arbitral Justice", the only thing established being that the Powers represented were not prepared for any general Court of Control' (*op. cit.*, p. 74).

In the second volume of the Publications of the Grotius Society (1916), Dr. Darby has a Paper on 'The Enforcement of the Hague Conventions', read before the Society on November 28, 1916, in which he criticizes the proposals of the American League for the Enforcement of Peace, but returns to the idea of some form of Federation or Union, which is to have an International Police and International Administration. At the same time, consistently with his well-known views, he opposes the enforcement of any Treaty by war.¹

¹ The Grotius Society has published other Papers on the subject,

He has again expressed himself at a meeting of the Peace Society as not being enthusiastic for a League of Nations for the enforcement of peace, on the grounds that peace cannot be enforced without war or the threat of war, and that the Federation of the World cannot be secured by an International Army, even if it is labelled International Police.¹ The Peace Society seems to hold the same views.¹ The Dutch Committee, Chief Justice Beichmann, Dr. Darby, and perhaps the Peace Society, are upon the whole to be treated as adherents to the older system of arbitration.

A book entitled *Towards a Lasting Settlement* (undated, but published early in the war), edited by Mr. C. R. Buxton, has among its articles one on 'The Basis of Permanent Peace', by Mr. G. Lowes Dickinson, and one on 'The Organization of Peace', by Mr. H. N. Brailsford.

Mr. Dickinson has published several other pamphlets, *The War and the Way Out*, which has gone through a second edition (again undated, but written before the Revolution in Russia and the entry of the United States into the war); a pamphlet, *After the War*, published in 1915; another, *Economic War after the War*, for the Union of Democratic Control, published in August 1916; and his last and probably most complete work, *The Choice Before Us*, published in April 1917. He is a member of the League of Nations Society.

In *The War and the Way Out*, he contemplates a future Europe rearranged on 'a basis of nationality instead of on a basis of States', which he says 'would be a Europe ripe for a permanent league'. He proceeds:

'To secure the peace of Europe, the peoples of Europe must hand over their armaments, and the use of them for any

including one by Dr. Bisschop on 'The Advantage of International Leagues', vol. ii; read before the Society, November 14, 1916.

¹ *The Herald of Peace*, October 1917.

purpose except internal police, to an international authority. This authority must determine what force is required for Europe as a whole, acting as a whole in the still possible case of war against Powers not belonging to the league. It must apportion the quota of armaments between the different nations according to their wealth, population, resources, and geographical position. And it, and it alone, must carry on, and carry on in public, negotiations with Powers outside the League. All disputes that may arise between members of the League must be settled by judicial process. And none of the forces of the League must be available for purposes of aggression by any member against any other.

‘With such a League of Europe constituted, the problem of reduction of armaments would be automatically solved. Whatever force a united Europe might suppose itself to require for possible defence would clearly be far less than the sum of the existing armaments of the separate States.’¹

In the Preface to the second edition (p. 4), he says :

‘I do not imagine a federation of Europe to be possible in an immediate future. What I do believe to be possible, as soon as the war is over, is a League of the Powers to keep the peace of Europe.’

In his pamphlet *After the War*, he writes :

‘There was a time, when the whole civilized world of the West lay at peace under a single rule ; when the idea of separate Sovereign States, always at war or in armed peace, would have seemed as monstrous and absurd as it now seems inevitable. And that great achievement of the Roman Empire left, when it sank, a sunset glow over the turmoil of the Middle Ages. Never would a medieval churchman or statesman have admitted that the independence of States was an ideal. It was an obstinate tendency, struggling into existence against all the preconceptions and beliefs of the time. “One Church, one Empire,” was the ideal of Charlemagne, of Otho, of Barbarossa, of Hildebrand, of Thomas Aquinas, of Dante. The forces struggling against that ideal were the enemy to be defeated. They won. And thought, always parasitic on action, endorsed the victory. So that now

¹ *The War and the Way Out*, pp. 41, 42.

there is hardly a philosopher or historian who does not urge that the sovereignty of independent States is the last word of political fact and political wisdom.

‘And no doubt, in some respects it has been an advance. In so far as there are real nations, and these are coincident with States, it is well that they should develop freely their specific gifts and characters. The good future of the world is not with uniformity, but with diversity. But it should be well understood that all the diversity required is compatible with political union. The ideal of the future is federation; and to that ideal all the significant facts of the present point. . . .’

‘The Powers, I propose, should found a League of Peace, based on a Treaty, binding them to refer their disputes to peaceable settlement before taking any military measures’ (*op. cit.*, pp. 20, 21, 26).

He proceeds to consider the sanction of the Treaty. His view is that men are to rely on law, not on force. But, after paying a tribute to the sincerity of those who would act up to their principles, he feels driven to admit that there must be the sanction of force. He says:

‘It will be impossible, I believe, to win from public opinion any support for the ideas I am putting forward, unless we are prepared to add a sanction to our treaty. I propose, therefore, that the Powers entering into the arrangement pledge themselves to assist, if necessary, by their national forces, any member of the League who should be attacked before the dispute provoking the attack has been submitted to arbitration or conciliation.¹

‘Military force, however, is not the only weapon the Powers might employ in such a case; economic pressure might sometimes be effective.’

And he proceeds to discuss suggestions for arbitration and for a Council of Conciliation.

¹ ‘It is in this case only that the Powers would be pledged to employ force, if other means fail. As will be seen below, it is not proposed that they should bind themselves to employ force to ensure the performance of an award of the Court of Arbitration, or the adoption of a recommendation of the Council of Conciliation’ (*op. cit.*, p. 27).

The Choice Before Us is his latest work, and the most elaborate. The first half of the book is a powerful exposition of the evils of war. Even in this there are passages which are already out of date, and there is a good deal of very controversial matter. But this does not detract from the value of the latter half of the book. He again puts forward the scheme of a League of Nations. He says :

‘A European State, and *a fortiori* a World State, even in a form of the loosest federation that could be called a State, is not at present a serious political conception.

‘But we are not therefore driven back at once upon international anarchy. The problem is to find the greatest measure of organization which the state of feeling and intelligence that will exist after the war will tolerate. I think it clear that they [*sic*] will not tolerate a World State nor yet a European State. What less than this might they tolerate?’ (*op. cit.*, p. 172).

He proceeds to contemplate a League founded upon Treaty. As to the objection that Treaties will not be observed, he remarks :

‘Grant the continued existence of independent States, and they can only organize by treaty. And the fulfilment of the treaty must depend, in the last resort, on their sense of honour or of interest, or of both. . . .

‘But a treaty that is to guarantee justice and peace must be of a new kind. Its object is not to strengthen some States against others, but to substitute in some way and in some measure (presently to be discussed) peaceable settlement for war. And the first point to be made is, that it belongs to the nature of such a treaty that it should be open to all civilized nations desiring to come in. For to exclude any nation is to announce that between it and the contracting nations war, not peaceable settlement, is to be the rule. On the other hand, a nation refusing to come in would offer a presumption that it intends to continue the way of war. It would announce itself a potential enemy of the others, against which they must continue to guard themselves. And, should any State or States announce such a policy, the treaty would in effect constitute a defensive alliance against such a State or States’ (p. 173).

He assumes that if the Great Powers come in, the smaller States will be willing to join, and proceeds :

‘The practical question would then be, not who should be admitted, but who, if any, should be excluded. The only tests to apply here would be that of capacity for deliberative action and that of public honesty. The representatives of no State must be purchasable. What States might be legitimately excluded by such tests, as these, it will be a difficult and invidious task to determine. It is superfluous and would indeed be pedantic to attempt it here. But it must be remarked that a League from which all small States, as such, should be excluded would be viewed by those States with great suspicion. For it might well look like a League for disposing unjustly of their interests. On the other hand, it is certain that in any League that might be formed the great States would predominate. The small States would have perforce to be content with the right to represent their views fairly and effectively’ (p. 175).

The primary object of this League would be to keep peace. For this purpose he proposes that there should be an obligation on all the parties to ‘refer disputes to peaceable settlement in the first instance, leaving open an ultimate resort to force’. During the interval of discussion with a view to peaceable settlement, he would forbid not only war but preparation for war. He feels the difficulty of defining ‘preparation for war’, and makes some suggestions. He holds that :

‘There must not be, during this interval, a continuance of the act that is the cause of the dispute. This means that the Court or the Council, or both, must have the power of injunction. And, if a sanction is to be applied (a point to be discussed presently), there must be a sanction against breach of the injunction’ (p. 177).

He assumes that any State would be reluctant to embark upon war in defiance of a decision of the International Authority, would be very unlikely to find allies, and would probably find the other parties to the Treaty intervening by force against it. He does not in terms

deal with the case where the State, against which the International Authority had pronounced, simply paid no attention to the decision; but apparently he would contemplate with equanimity the other State embarking upon war to enforce the decision.

He follows the League, of which he is a member, in dividing disputes into 'justiciable' and 'non-justiciable' cases, and sending the one to an International Tribunal, and the other to a Council of Conciliation.

He devotes a chapter to 'Sanctions of the Treaty', but cannot apparently make up his mind whether a sanction can be put 'behind the decisions of the International Court of Justice'. He suggests that perhaps the sanction need not be that of armed force, and that it might be possible in some cases to apply an economic boycott. He does, however, accept the use of force by the other members of the League collectively against any member who goes to war before the *moratorium* has expired. He determines that, 'if the League is to have a reasonable chance of fulfilling its purpose,' there should be a clause in the Treaty limiting armaments.

In Chapter XII, which is entitled: 'International Regulations and Administration', Mr. Dickinson makes an advance beyond the scheme of the League of Nations Society. He wishes States to 'learn to legislate and administer in common'. He contemplates the enforcement of Free Trade tempered by provisions against 'trading methods generally recognized as unfair', provisions for enforcing the open door with only certain restrictions upon immigration; and, in fact, a Federation which would absorb much of the sovereignty of the Federated States.

Mr. J. A. Hobson is another writer upon the subject. He contributed a pamphlet to the publications of the Union of Democratic Control.¹ He has also written a book

¹ *A League of Nations*, No. 15 a. Published October 1915.

entitled *Towards International Government* (1915). Much of it follows the general run of writers since the War in the division of disputes, in the reference to Court or Council as the case may be, and the desirability of a Federation for these purposes. He is, however, frankly critical of some of the proposals. For instance, he gives up the problem of a general reduction of armaments as hopeless (Chap. I). And he shows very forcibly the difficulties which would attach to the proposed economic boycott as a measure for enforcing compliance, and the great probability that any such boycott would lead to war (Chap. VII). He is strongly against Protection (Chap. XI).

He dislikes all appointments of arbitrators *ad hoc*, and indeed objects to arbitrations (as opposed to a Court) as leading to compromises, and to the neglect of opportunities of laying down sound principles of International Law.¹ He wants all orders carried out by force, even those which may be made by a Council of Conciliation, and attaches little weight to suggestions of those who, like Dr. Darby and the Peace Society (cf. p. 51), would rely 'upon conscience, the inner sense of justice, and on public opinion' (Chaps. VI, XI).

His views tend strongly towards a super-State. He thinks that International Government is the real cure; and he advocates an International Executive and a Legislature which is to have power to act upon the vote of a majority, notwithstanding the dissent of the representatives of some States, and in which the larger States are to have a preponderance of votes (Chaps. IX, X).

Mr. Brailsford, as stated above (p. 51), wrote an article on the 'Organization of Peace' in the collection entitled *Towards a Lasting Settlement*. He also contributed

¹ See pp. 40, 61. The contrary view of Chief Justice Beichmann has been mentioned, p. 49 above.

a pamphlet to the publications of the Union of Democratic Control, and he has since then written a book entitled *A League of Nations* (1917). This work is already out of date in respect of its references to the United States and to Russia. He is opposed to any trade discriminations against Germany after the peace, and he has a powerful argument in favour of Free Trade in the future (Chap. IX). Notwithstanding this argument, he admits the principle of State Control of Commerce, while he proposes, as some mitigation of the injuries which might thereby be done to certain nations, to give the aggrieved State a right to appeal to some International Commission on Commerce.

He would propose to begin his League of Peace with the Allies only (pp. 19, 81-4), an idea which many other writers have strongly deprecated as tending to form two rival camps. He is an advocate of force (pp. 194, 301), and is opposed to what he calls a 'static peace' (pp. 75-9), holding that racial, economic, and colonial problems are incapable of a permanent solution.

In his final chapter he has some new suggestions, and is at the same time somewhat critical of various other writers who are nevertheless of his School. He suggests :

' 1. That every adherent of the League must agree to respect the cultural liberty of racial minorities ;

' 2. That the obligations of allies to each other must, in case of conflict, yield to their obligation to the League ;

' 3. That the extremer uses of sea-power shall be reserved for wars declared or sanctioned by the League ;¹

' 4. That a general recognition of commercial freedom and commercial amity shall obtain within the League, which will by international commissions safeguard the "Open Door" for capital and trade, and ensure free access to raw materials in an open market' (pp. 287, 288).

He agrees with the usual division into matters for

¹ This is an ingenious suggestion and worthy of consideration.

a Court and matters for a Council; but he would not have it that

‘The States involved shall pledge themselves to accept the Council’s recommendations, nor that the League itself shall be bound to enforce them. The essence of the obligation is simply that no member of the League will go to war until his case has been submitted to the Council of Conciliation, and for some short period after it has made its report’ (p. 290).

He is not hopeful of the *moratorium* as a soother of the warlike temper, and he shows the great difficulty of enforcing it by reason of the impossibility of drawing the line where warlike preparations begin, and the advantage which any stay of preparations for war would give to a military State already prepared for aggression. Still, however, he considers,

‘The fundamental obligation is that no member of the League shall go to war [or mobilize its army or fleet?] until it has submitted its case to arbitration or conciliation and allowed an interval [of six months?] to elapse after the Council or Tribunal has issued its recommendation or award’ (p. 292).

And he thinks that

‘The possibility of a war by the League against some defiant Power cannot be ignored, and ought not to be minimized. However the obligation to join in such a war may be worded, it would be cowardly to shirk the central fact that the League must contemplate the possibility of such common wars’ (p. 293).

But, when he comes to consider how force shall be applied, his pages comprise difficulties rather than practical suggestions. He points out the vagueness of the proposals of the American League to Enforce Peace, and of the British League of Nations Society. He shows how difficult it would be for any Power which has been party to the Great War to co-operate, for many years to come, with one of its present enemies, or to coerce one of its present allies. He shows also how delicate would

be the position of small States, and how unlikely it would be for remote States to interfere, while, if the League was dominated by the Great Powers, it might 'come to bear an unpleasant resemblance to the Holy Alliance'. He concludes this part of his discussion as follows :

'The fact is that we are not yet sufficiently in possession of the continental view to carry this discussion very far as yet. It must inevitably differ somewhat from the British and American view. The question whether the League is workable depends very little upon paper treaties' (p. 296).

Notwithstanding these cautions he proceeds to provide a constitution of the League, avowedly following to a great extent the work of the Fabian Society and Mr. Woolf. He wants a Court and Council of Conciliation, an Executive, and a Legislature, in all of which the Great Powers are to have larger rights of voting than the small ones ; and his notion of an Executive is that it probably ought to represent only the Great Powers (p. 302).

He would use sea-power as a weapon for States carrying out the common interest, but would absolve neutrals from compliance with the present laws of war at sea (with certain exceptions), in cases where the war was 'undertaken by the uncontrolled will of a single State in pursuit of its own national interests, however legitimate these may be' (p. 206).

M. Auguste Schvan has written a book called *Les Bases d'une Paix durable*. The writer describes himself as a Swede who was first in the Austrian army, then in that of his own country with a training in a Prussian School of Arms, and afterwards in the Swedish Diplomatic Service, which he left in disgust to come to England. He says that he offered his services to the English army when war broke out, but was refused, and that he subsequently went to the United States and carried out a very effective anti-German propaganda.

The first part of his book is trenchantly critical of all previous proposals for securing a general peace in the future. The third chapter is called 'La Faillite du Pacifisme'. In this chapter he contends that an economic boycott would have had no effect to prevent the late War; and that the establishment of it as a future means of constraint would only mean that each State would render itself as self-sufficing and self-contained as possible. He also contends that the proposed Democratic Control, which is the panacea of some, would not tend towards peace, on the ground that democracies are 'as nationalist, as blindly patriotic, as imperialist, as full of prejudices and hypocrisy, as an aristocracy or an autocracy'.¹

He is opposed to the idea of an International Parliament (which perhaps has hardly been seriously proposed); and, with regard to the somewhat attractive proposal that all private undertakings for the manufacture and supply of armaments and munitions should be suppressed as tending to make it a commercial interest of great capitalists to promote war, he makes some shrewd suggestions (pp. 67-9). He points out that, in the event of a nation, which had not State arsenals of its own or only insufficient ones, becoming involved in war with a militarist enemy who had devoted his energies in time of peace to the perfecting of his naval and military armaments, the more peaceable and less prepared State would find itself at the mercy of the other. There would be no private commercial firms on which it could rely; and it would be a breach of neutrality for any other State to supply it from a national arsenal.

He especially attacks the American League to Enforce Peace, which, he says, does not really differ from the old European Concert; it would leave each member of the League bound to maintain its full military establishment,

¹ p. 70. The original is in French.

and just as likely to lose its head in a crisis as were several of the late belligerents.

His destructive criticisms certainly merit attention; but his constructive proposals, to which the greater portion of the book is devoted, are almost unintelligible. The main idea is that there should be a World Law and a World Court of Justice, and indeed a World State. What are now known as States are to be 'stripped of sovereignty and independence, and transformed into subdivisions of humanity' (p. 142).

His view apparently is that the present States should be reduced in area; that each entity to which it would be reasonable to grant Home Rule should become a separate subdivision of humanity; that in cases where rival nationalities are incurably intermixed the minority should be forcibly transplanted; that undeveloped countries should be administered internationally; that there should be a World Court sitting in fifty-five divisions, and composed of about 275 Judges—five for each division. Before this Court, States or Governments could not come, at any rate as plaintiffs. The plaintiffs would be individuals who would complain of injuries received from some subdivisional government. The navies and armies of the world would be reduced to a strength adequate for police purposes by land and sea.

When one asks how all this is to be effected, one gets little help. The chief effective provisions seem to be that no citizen is to swear allegiance to any State; that every man is to be a citizen of the world, subject to the administration and tribunals of the subdivision in which he happens to find himself from time to time; and that there should be universal and uncontrolled Free Trade without any Customs barriers.

Mr. Jacobs has written a very suggestive little book¹ which he has supplemented by a broadsheet, issued in

¹ *Neutrality versus Justice*, by A. J. Jacobs.

May 1918. His idea is that there should be no neutrals and no neutrality, because every war should be construed as a crime against mankind, and 'breach of the peace' between nations be treated as breach of the peace in domestic matters, and summarily restrained by the strong hand. He would have as many States as possible enter into a treaty to 'defend the territorial integrity of each, no matter by whom or for what reason attacked'. He starts with the following propositions or aphorisms:

'That the time-honoured policy of Neutrality towards Belligerents is incompatible with national safety or international justice.

'That there is a safe and practical alternative policy based on the opposite principle of Mutual Protection, requiring neither arbitration nor disarmament agreements. . . .

'That the apparent impracticability of a general defensive alliance, without the simultaneous acceptance of an international tribunal, is a demonstrable fallacy.

'That a real system of International Law and the machinery for its administration cannot be secured by any paper guarantees, but must inevitably evolve from the situation created by an international alliance for territorial defence.'

The prevailing idea of his book is that, if States be prevented from fighting, they will arrange for some method of settling their differences, and that some form or forms of international tribunals will ultimately be evolved. But he does not suggest that all forms of conflict should come to an end; he would permit of reprisals of all sorts, provided they did not take the form of invasion of territory by an armed force. In his supplementary broadsheet he has endeavoured to provide against naval or aerial attacks; but these provisions do not seem to cover warfare on the high seas. His proposals require that the territorial limits of States should be previously settled and accurately ascertained. The form which his sanction would take would be that the other States of the

Confederacy should jointly declare war against the State which invaded the territory of another. The defect of his scheme in this respect is that the States are only to be required to act jointly, so that, if any one, or at any rate any powerful one, were to hang back, the whole scheme would apparently fall through.

Notwithstanding these defects, his general idea is well deserving of further elaboration. He differs from all the associations and writers to whom reference has previously been made, in that he makes no provision for international Courts or Councils, which, indeed, he regards as for the moment impossible to create, his view being that they will be evolved in process of time, as nations find that they are debarred from serious fighting and will have to discover some other mode of settling their differences.

As the Great War proceeded, the desirability of the formation of a league for preserving peace in future received more and more adhesions. Further declarations¹ in this sense have been made by Austrian and German statesmen. The Resolution of the Conference of the Socialist and Labour Parties of Allied Nations, February 14, 1915, to this effect was reaffirmed by the Inter-Allied Labour and Socialist Conference in London, held on February 20, 1918.²

To these should be added a declaration³ by the *Comité d'Entente pour la Société des Nations*, February 1918; a letter⁴ of *L'Union fédérative de la Libre Pensée de France* to President Wilson, March 1918; and a weighty letter by the Archbishop of Canterbury and others, which appeared in *The Times*, February 22, 1918.

¹ See above, p. 22.

² *The Times*, Feb. 25, 1918; *L'Humanité*, 23 and 24 Feb., 1918; *Holland News*, vol. ii, p. 387.

³ *L'Humanité*, 25 Feb., 1918; *Holland News*, vol. ii, p. 441.

⁴ *L'Humanité*, 6 March, 1918; *Holland News*, vol. ii, p. 442.

One of the latest contributions to the literature of this subject is the inaugural address of Lord Robert Cecil as Chancellor of the University of Birmingham, delivered on November 12, 1918. In it he lays stress on the importance of the League of Nations being open to every nation which can be trusted by its fellows to accept *ex animo* the principles and basis of such a society, and suggests that possibly unwilling States should be compelled to enter by economic or other pressure.

He pronounces against an international armed force, but puts his trust in some international machinery which would prevent war, at least until the dispute has been submitted to and pronounced upon by an international Tribunal or a conference of all the Powers of the League.

This obligation to refrain from war is to be enforced by each of the signatories to the Treaty using its whole force, economic as well as military, against any nation that forces on war before a conference has been held.

V. SUGGESTIONS

In conclusion, a few practical remarks and suggestions may be made.

The principle of the *moratorium* should be accepted, and it should be obligatory to enforce it. Whether it should take the form of merely forbidding recourse to arms, or of forbidding warlike preparations, is a more difficult question. On the whole, it appears better that it should be limited to taking up arms, for two reasons: first, the difficulty of deciding whether warlike preparations are being taken, and the temptation thereby offered to any State, whether wishing or not wishing to interfere, to take that view of the facts which best coincides with its wishes or interests; secondly, because, if one State is pacific,

and has kept its armaments on a low level, and the other State has acted on a contrary policy, it is very desirable that a State with a small armament should have the time to develop its armament, and bring it up, if possible, to the same level as the State better prepared for aggression. In fact, such a provision would tend towards the reduction of armaments.

There is (as some writers have pointed out) a correlative to the *moratorium*. Supposing that one State complains of a continuing injury, and is debarred from redressing it by force of arms during the hearing of the cause, should there be a power in the Tribunal which is to hear the cause, to stay the injury *pendente lite* by an interlocutory order or injunction? This idea commends itself to Anglo-American writers, to whom the legal process of 'injunction' is familiar.¹ It is doubtful whether it is so familiar to, or would be so easily understood by, other nations. Moreover, considering that the complainant will not find a Court sitting, and that there will be considerable delay before it can be constituted, considering also the further difficulty of its making, upon preliminary materials only, what will approach to a decision upon the merits of the case, it hardly seems that the process of injunction would be suitable.

Perhaps the best provision would be that the State suffering under a continuing injury might, at any time after presenting its complaint, require the other State to desist *pendente lite*, notify the International Executive that it had so required and been refused, and then claim, and, in an exceptional case, be accorded, the benefit of a relief from the *moratorium*.

A point which seems of great importance, and is a step beyond the Hague Conventions, though there is just a suggestion of it in that of 1907, is that the

¹ See above, p. 33.

Court—and the same principle applies to the Council—should be one open to a party complaining. It should not be merely an Arbitral Tribunal invoked by joint consent, and therefore not acting until both parties consent. In this respect the Dutch scheme, for instance, and the views of all who have the old arbitration theory before their mind, are defective and weak. It is essential to any scheme for preserving peace by such means that either party should be able to invoke the action of the Court or Council, whether the other party likes it or not.

It is probably hopeless to bind the States to enforce decrees or awards; but the suggestion that all Treaties of Alliance should be deemed void, if the State claiming the benefit of such alliance is a State which has been put in the wrong, may be of some value.

The Federation or League should agree to protect its members against attacks by non-members. Schemes for creating an International Legislature are, to say the least, premature.

As to the limitation of armaments, no proposal for it appears yet to have been put forward in a practical form; but it would be a step towards the prevention of war if the nations of the world would agree to make laws determining what is not permissible in war, either as between belligerents, or as between a belligerent and a neutral, and to enforce the observance of these laws with all their power.

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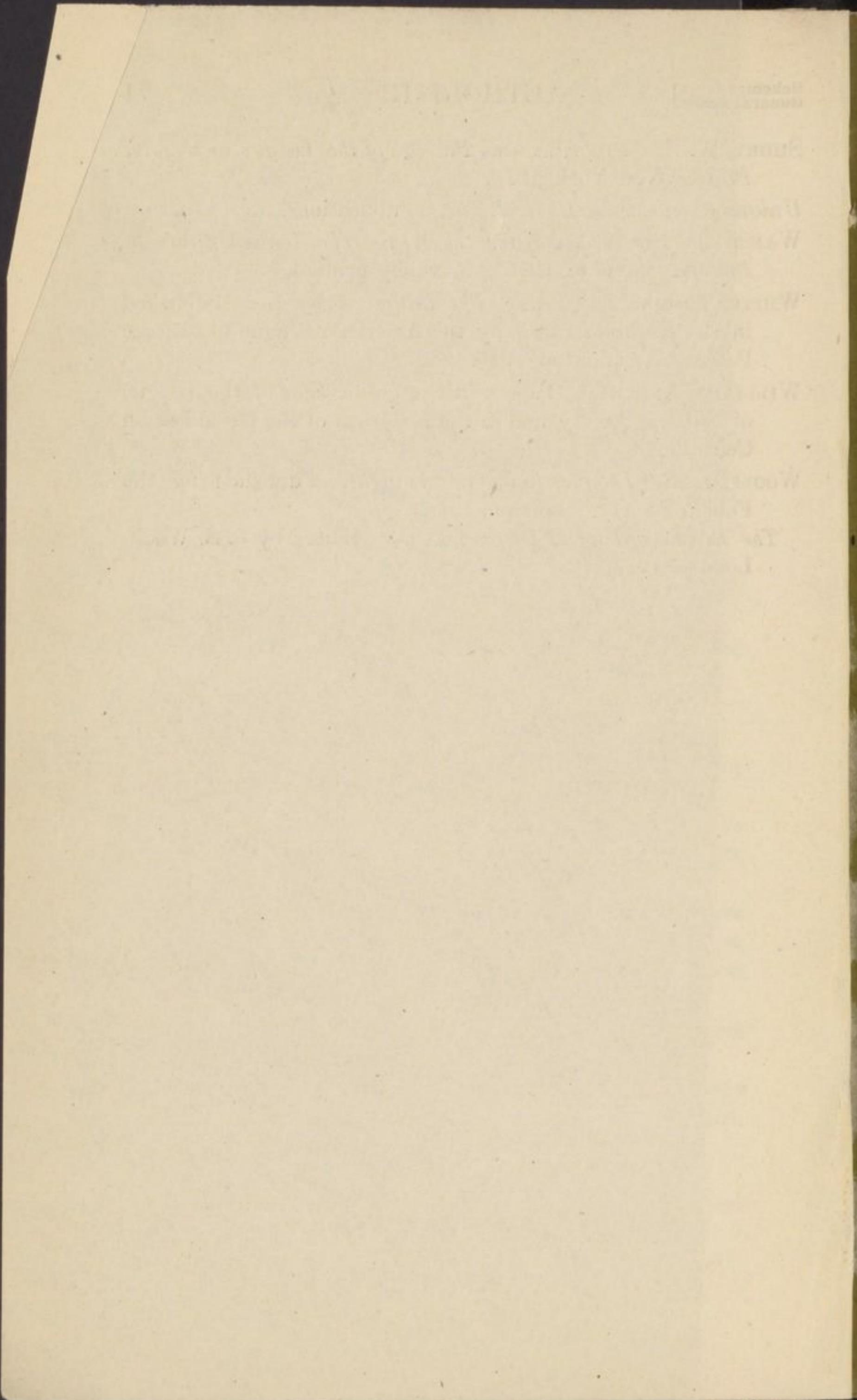
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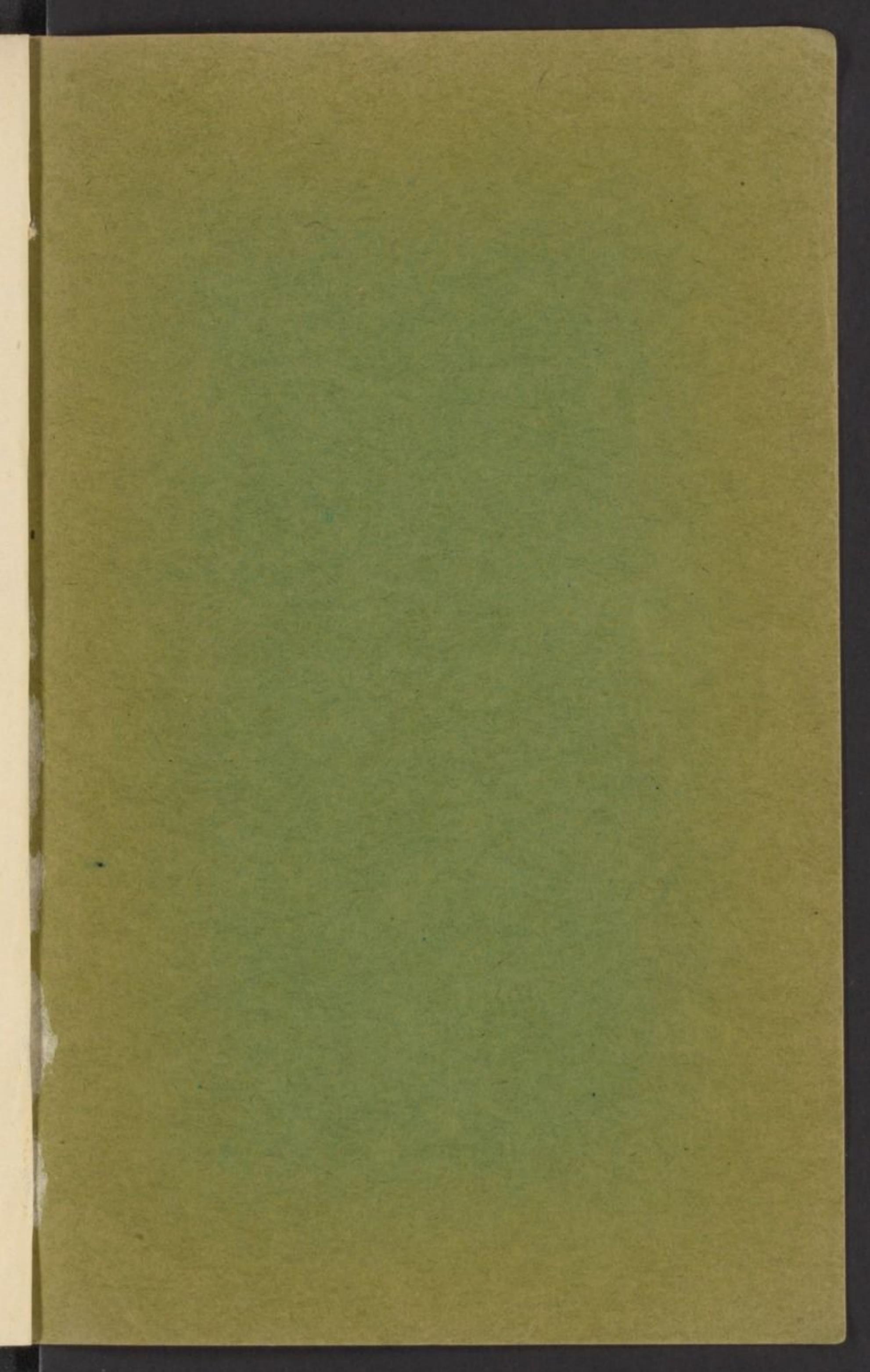
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