

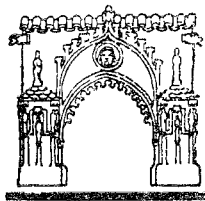
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GREAT AND SMALL POWERS  
IN INTERNATIONAL LAW  
FROM 1814 TO 1920

(FROM THE PRE-HISTORY OF THE UNITED NATIONS)



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PREFACE

The existence of great and small Powers side by side has always been a source of particular difficulties and international conflicts. Problems of a legal character only began to appear when, in international society, there developed the necessity of organization, and when the basis of international law was created at conferences. Only then the problem of participation in that creation became acute, and after that there arose the problem of directing an organized international society. The problem of what role should be allowed to the great Powers and to the rest of the States in particular came up, and in connexion with this, what position has the principle of the equality of States in the international law of today.

In practice the creators of the Charter of the United Nations admitted a privileged position for the great Powers in the management of international society, assuring at the same time in the Charter for the rest of the States, members of the Organization, "sovereign equality" and at least formal equal participation in the organs of the United Nations, with the exception of the Security Council and the Trusteeship Council.

In the theory of international law the problems arising from the co-existence of great Powers and smaller States belong to the most discussed, as they are closely linked with the very foundations of this law. Dealing with nearly every problem, writers are forced to occupy certain positions in relation to this subject. There are, however, a relatively small number of works based on first hand material devoted directly to the role of the great Powers and to the principle of the equality of States. Up to the present the works of Max HUBER, Charles DUPUIS, and above all of Edwin DE WITT DICKINSON<sup>1</sup> are recognized as essential in this field. Amongst

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<sup>1</sup> Max HUBER, *Die Gleichheit der Staaten* (*Juristische Festgabe des Auslandes zu Josef Kohlers 60 Geburtstag*, Stuttgart 1909); Charles DUPUIS, *Le droit des gens et les rapports des grandes puissances avec les autres Etats avant le pacte de la Société des Nations*. Paris 1921; Edwin DE WITT DICKINSON, *The Equality of States in International Law*, Cambridge Mass. 1920.

the latest monographs the works of J. MARKUS, R. PADIRAC, Wilfried SCHAUMANN, and the articles by Remigiusz BIERZANEK, F. I. KOSHEWNIKOW and TENEKIDES should be mentioned<sup>2</sup>. There is a special lack of essays on the investigation of the development of the practice and doctrine in certain periods of the history of international relations and international law.

The aim of this work is to show a certain important section of the practice and doctrine of this law, namely that of the period from the appearance of a major group of great Powers at the Congress of Vienna in 1814 until the first formal recognition of their leading role in the Covenant of the League of Nations and tacit in the Statute of the Permanent Court of International Justice. This review is a contribution towards a better understanding of the present status of the great Powers and the significance of the concept of "sovereign equality" in the Charter of the United Nations.

As ground for an examination of the practice international conferences have been selected, because at them international organizations had their origins; these conferences are, as ULLMAN correctly states, "those international mechanisms in which there appeared common legal convictions and the efficacious will of the subject of the Law of Nations in a specific international form"<sup>3</sup>.

A reminder should be added here that it was at just these conferences that the most important decisions were taken with regard to individual States as well as with regard to the whole of international society. Contemporary international law as well as international organizations, like the League of Nations, and lately the United Nations were the work of these conferences. From the point of view of this examination it should be stressed that conferences up to the creation of international organizations form the one and only ground for this examination, for at these on a common platform great and small States met in the persons of their representatives.

Of course not all conferences have the same significance for the development of international law and relations. Of nearly two hundred that took place during our period we have selected only the most important, the most typical

<sup>2</sup> See Bibliography. For list of abbreviations see page 135.

<sup>3</sup> "Es ist auch zuzugeben, dass Kongresse und Konferenzen jene internationale Einrichtungen sind, in welcher am unmittelbarsten und in einer spezifisch internationalrechtlichen Form die gemeinsame Rechtsüberzeugung und der rechtlich bedeutsame Wille der Völkerrechtssubjekte zum Ausdruck kommt". ULLMANN 147. POTTER thinks the Conference is the first organic form in the series of international institutions of a legislative character ("la première forme qui se présente dans la série des types organiques des institutions internationales, dont le caractère est encore législatif"). Further he writes: "... la conférence internationale apparaît comme la forme d'organisation internationale la plus dynamique, la plus créatrice, sinon la plus décisive". POTTER 84; cf. ZALEŃSKI 3; MARTENS, Friedrich I 223—224; TWISS I, VI; BONFILS 7; SIBERT 395; KAUFMANN 502.

with regard to the relations of the great Powers to the rest of the States, which constitute milestones in the development of relations and international law.

It should be remarked that we have limited ourselves to a discussion only within the main current of international law in this period, namely the European practice. Omitted here in particular is the practice of Pan-American Conferences, which had and still have a rather local significance.

Acceptance of the Congress of Vienna as our starting point in these examinations is justified because of the exceptional significance that Congress has for the development of international society and international law. It was the first great general European Congress, and it opened a new era in international life. The whole of Europe was represented at it, with the exception of Turkey, and the decisions which were taken there concerned the essential interests of the whole continent. For the first time a congress did not serve only for making peace, but also settled the order in many European matters. For the first time in history at that Congress there were created and put into the form of a multilateral treaty several norms of international law which today are still significant. The Congress of Vienna also merits being called the first modern congress, because with it concludes the period of incessant disputes for precedence among monarchs and their representatives, which made up to then international relations more difficult and even paralysed them completely<sup>4</sup>.

Of prime importance from the point of view of this examination is that at the Congress of Vienna there clearly appeared a group of great Powers as the self-appointed supreme organ of Europe<sup>5</sup>.

Besides the practice we have examined parallelly also opinions on the doctrine of international law, because it only, up till now very important, and until lately the sole means of ascertaining norms of this law, and an expression of the legal sentiment of international society, allows us to evaluate what from the practice of states has a tendency to consolidate into a norm of international life.

<sup>4</sup> KLÜBER *Uebersicht* 163—164.

<sup>5</sup> In one of the first modern monographies on the theme of the equality of States, Max HUBER, justifying the limitation of his subject of examination, writes: "Bei der Erörterung der in Betracht kommenden Vorgänge können die Ereignisse vor 1814 unberücksichtigt bleiben. Es kann nur das als positives Gewohnheitsrecht gelten, was im Verlauf der neuesten, in der Hauptsache durch den Wiener Kongress eingeleiteten Epoche der Völkerrechtsentwicklung sich als Rechtsübung nachweisen lässt. Die Periode nach 1814 ist auch deshalb für unsere Frage die allein massgebende, weil erst von jener Zeit an eine gesamteuropäische Politik und ein Konzert der Grossmächte datiert. HUBER 98; cf. BIERZANEK 57; NICOLSON 137; CMH IX, DUPUIS *Droit* 41; HUBERT, *Pravo*, I 33, 82, 83; GUGGENHEIM *Principes* 99; HOFFMANN II. At the debates of the Congress of Vienna the term "the great powers" was used for the first time. TEMPERLEY I 248 n; WEBSTER *Congress* 61.

And here, similarly as in the practice, we have limited ourselves to a discussion of only the most typical opinions contained in the systems of writers, who according to the definition in Article 38 of the Statute of the International Court of Justice are “the most highly qualified”<sup>6</sup>, or those meriting quotation because of the originality of their opinions.

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<sup>6</sup> “... the teachings of the most highly qualified publicists” (Article 38, I d).

## CHAPTER ONE

### THE FIRST PERIOD OF THE HEGEMONY OF THE GREAT POWERS

#### THE CONGRESS OF VIENNA

The formal reason for holding the Congress of Vienna<sup>1</sup> were the peace treaties concluded on the 30th May 1814 in Paris, between France and the main allies: Austria, Great Britain, Prussia, and Russia, after the defeat of Napoleon. The treaties were also later signed by France, and, in nearly the same form, by Portugal, Spain, and Sweden. In these treaties the four great allied Powers had already disposed of, with regard to the most important points, the territories of those countries previously defeated by Napoleon, and had declared among themselves what were going to be the main principles for the system of future Europe. In Article 32, however, they added:

Dans le délai de deux mois, toutes les Puissances qui ont été engagées de part et d'autre dans la présente guerre, enverront des plénipotentiaires à Vienne, pour régler, dans un congrès général, les arrangements qui doivent compléter les dispositions du présent traité<sup>2</sup>

In fact, the negotiators, to provide for the division of work at the Congress, and primarily to guarantee that their decisions should be exclusive in the most important matters, held unofficial conferences previous to the Congress among the four main allies, namely, Austria, Great Britain, Prussia, and Russia. In a separate protocol dated the 22nd September, 1814, they decided:

les quatre Puissances seules peuvent convenir entre elles sur la distribution des pouvoirs (pays ou provinces) devenus disponibles par la dernière guerre et la paix de Paris...

les Plénipotentiaires des quatre Puissances n'entreront en conférence avec les deux autres sur cet objet, qu'à mesure qu'ils auront terminé entièrement, et jusqu'à un parfait accord

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<sup>1</sup> Part of this chapter was published by the author in an article entitled: *Great and Small Powers at the Congress of Vienna. The practice and doctrine*. "Państwo i Prawo", 4/1949, 29—44 (in Polish).

<sup>2</sup> NRT II 12.

entre eux, chacun des trois points de la distribution territoriale du duché de Valcoviu, de l'Allemagne, et de l'Italie<sup>3</sup>.

As reasons for this decision, they gave:

La disposition sur les provinces conquises appartient, par sa nature même, aux Puissances dont les efforts en ont fait la conquête<sup>4</sup>

They referred by this to the first secret article of the Treaty of Paris, which distinctly gave decisions with regard to territorial matters into the hands of the four great allies<sup>5</sup>.

Only due to the clever action of Talleyrand, who, while conforming to the instructions of his monarch, played the role of defender of the rights and interests of small States, was France successful in gaining the right to participate in this company<sup>6</sup>.

Delaying actions, especially those of Metternich, made preparations for the Congress late<sup>7</sup>. Not before the 31st October did all the signatories to the Treaty of Paris publish a common declaration, in which they referred to the above mentioned Article 32. They affirmed:

après avoir mûrement réfléchi sur la situation dans laquelle ils se trouvent placés, et sur les devoirs qui leur sont imposés, ils ont reconnu, qu'ils ne sauroient mieux les remplir, qu'en établissant d'abord des communications libres et confidentielles entre les Plénipotentiaires de toutes les Puissances. Mais ils sont convaincus en même temps, qu'il est de l'intérêt de toutes les parties intervenantes de suspendre la réunion générale de leur Plénipotentiaires jusqu'à l'époque où les questions, sur lesquelles on devra prononcer, seront parvenues à un degré de maturité suffisant pour que le résultat réponde aux principes du droit public<sup>8</sup>, aux stipulations du traité de Paris, et à la juste attente des contemporains<sup>9</sup>

<sup>3</sup> AWC IX 168—9 Spain and France are meant, Portugal and Sweden aren't even mentioned.

<sup>4</sup> Ibid.

<sup>5</sup> Ibid. " la disposition à faire des tentatives sera réglée au Congrès sur les bases arrêtées par les Puissances alliées entre elles".

<sup>6</sup> DUPUIS *Le Droit* 61—63. France was not admitted formally to the European Concert until the Congress of Aix-la-Chapelle, see below. An interesting illustration of the activity and arguments of Talleyrand is this extract of his letter to the British representative, Castlereagh, of the 5th October, 1814 " l'Europe ne tiendra aux arrangements, qui seront faits, ne laissant au Congrès autre chose à faire que d'approuver, on ne manquera pas de prétendre, que parmi ces puissances il y en avait quatre qui, par leur union, formaient une majorité constante, ce qui leur avait donné une autorité absolue dans la commission préparatoire, et que, par leur influence individuelle et collective, elles avaient ensuite forcé l'approbation du Congrès, de sorte que c'était leur volonté particulière seule, qui était devenue la loi de l'Europe". AWC VIII 67—68.

<sup>7</sup> *Histoire* I 372.

<sup>8</sup> The term "droit public européen" or just "droit public" corresponds to international law today.

<sup>9</sup> AWC I, bk. I, 33—34.



They decided to delay the opening of the Congress until the 1st November<sup>10</sup>.

The representatives of 62 monarchies, principdoms, provinces, and free towns, numbering in all 216 plenipotentiaries, with moreover two Emperors and 5 other monarchs, arrived in Vienna. This number even for today would be staggering. Only a small number of them, however, had to take any part whatever in the debates.

In spite of an announcement neither an official opening nor any full session ever saw the light of day<sup>11</sup>. What are called the debates of the Congress of Vienna, and thus first of all the sessions, which can be traced from very inaccurate minutes, were formally nothing other than preparatory work.

The recorded sessions took place in two groups. The group of all eight representatives, the signatories to the Treaty of Paris, namely, Austria, France, Great Britain, Prussia, Portugal, Russia, Spain, and Sweden held discussions rather in the first period of the Congress<sup>12</sup>, i. e. from the beginning until the end of March 1815. They were occupied with such matters as the annexation of Genoa by Sardinia, the free navigation of international rivers, the abolition of the slave trade, and the working out of regulations regarding diplomatic rank. The first session, in which Metternich was chosen chairman, was also held in this company<sup>13</sup>.

On the other hand, the group of representatives of the main allies alone, Austria, Great Britain, Prussia, and Russia, together with France, held sessions in the second, decisive part of the debates, namely, from January 1815 until the end. This "Committee of Five" formed the real Congress of Vienna<sup>14</sup>. In this group the most important territorial decisions and those with regard to the final draft were determined. This Committee had four times as many sessions as did the group composed of all eight allies<sup>15</sup>.

The above mentioned groups, coming to debates on concrete matters, sat in council as a whole, or in part as commissions. From the twelve commissions given by KLÜBER, excluding the drafting committees, the plenipotentiaries of all eight signatories of the Treaty of Paris only took part in four<sup>16</sup>. The States which were signatories to the Treaty of Paris, with a small number of exceptions, had no active part in the debates, not even in those of their own matters. Their role was limited to submitting motions, explanations, or protests. Judging from the whole course of the Congress, such intervention was practically without meaning.

The first session already gives us a certain illustration of the treatment of States not belonging to the eight allied Powers, when a quite unusual, accor-

<sup>10</sup> AWC I, bk. I, 35.

<sup>11</sup> SATOW I 79

<sup>12</sup> The Congress lasted from the 30th October 1814 until the 9th June 1815, counting from the election of the chairman to the signing of the general act

<sup>13</sup> AWC VIII 81—82.

<sup>14</sup> WEBSTER *Congress* 75.

<sup>15</sup> AWC IX 1—166.

<sup>16</sup> KLÜBER *Uebersicht* 44—52.

ding to contemporary diplomatic practice, decision was taken, in that the plenipotentiaries of these States were invited by means of a public notice to invest their full powers upon the secretariat of the Congress<sup>17</sup>.

A typical example of the illusory part played by small States in settling their territorial matters through the Congress was the annexation of Genoa by Sardinia, already decided upon in the Treaty of Paris (Secret Article 2), as was the case with most of the matters which were subject to settlement by the Congress. News of the above mentioned article was given to the King of Sardinia. The envoy of Genoa was informed of it in writing in the form of an extract from the protocol, in which it was decided amongst other things:

les Puissances admettront les conditions les plus libérales pour la réunion du territoire de Gênes au Piémont, et consulteront autant qu'il pourra se faire, dans l'exécution de cette mesure, l'intérêt et la satisfaction des Gênois<sup>18</sup>.

Furthermore it was decided that the representatives of Sardinia and Genoa should be invited to the debate on a means of reaching agreement regarding their interests with the delegates of Austria, France, and Great Britain, and that these plenipotentiaries should then draw up a plan containing all the detailed decisions<sup>19</sup>.

The facts clearly prove that the union of Genoa was already decided in advance. The participation of that republic's plenipotentiary was limited solely to the agreement of his own country's liquidation. He had to express this agreement in the face of the great Powers and of the British army of occupation. The eloquent protest of Genoa concluded with the following words:

Les villes de Chaumont et de Châtillon-sur-Seine retentissent encore de ces nobles assurances que les nations respecteraient désormais, leur indépendance réciproque; qu'on n'élèverait plus d'édifice politique sur les ruines d'Etats jadis indépendants et heureux; que l'alliance des monarques les plus puissants de la terre avait pour but de prévenir les envahissement qui depuis tant d'années, ont desolé le monde<sup>20</sup>;

This protest, on the proposal of Talleyrand at a meeting of the "Eight", was entered in the acts of the Congress without being read<sup>21</sup>.

The great Powers treated differently Switzerland, who, to a certain extent, had sought their intervention. In this case the commission acted through the "Great Five" under the name of "the intervention of the Powers in the question of Switzerland", and was composed of all five plenipotentiaries, who had the character of official arbiter<sup>22</sup>. The plenipotentiaries of Switzerland were invited only to outline the aim of their mission. They expressed the

<sup>17</sup> AWC VIII 81.

<sup>18</sup> AWC VIII 88.

<sup>19</sup> AWC VIII 85—89.

<sup>20</sup> The place where the allies met before the conclusion of the peace. AWC VII 420—421.

<sup>21</sup> AWC VII 418.

<sup>22</sup> AWC V 158.

wishes of their country: an assurance of her independence and a guarantee of her neutrality. The committee next issued appropriate orders for keeping the peace, "while they were busy in Vienna discussing the internal matters of that country"<sup>23</sup>. After this they summoned envoys from individual cantons to hear their views<sup>24</sup>. When the work of the committee was completed, a declaration was published by all the eight signatories to the Treaty of Paris, which contained decisions regarding the external and internal frontiers of Switzerland. On its reception in the Swiss Parliament depended the conferring of independence and the recognition of that country's neutrality<sup>25</sup>.

When the plenipotentiaries of Switzerland speaking in presenting this declaration in their own parliament, complained of the inadequate definition of the frontiers, the "Great Five" explained: "on n'a pu reconnaître en eux la qualité de pouvoir adhérer ou ne pas adhérer à la dite Déclaration" and resolved that they should not interfere with anything in the discussion<sup>26</sup>. As a result of that the Swiss parliament accepted the declaration with the minimal number of votes necessary for passing this kind of bill<sup>27</sup>.

The part played by great and small Powers merits particular attention in the commissions which had as their aim the projecting of certain general principles, which in the future would mark universal obligations.

Only the representatives of those courts "more interested" were allowed, on the decision of the "Eight", to form part of the commission regarding navigation on the Rhine and other international rivers; these were Austria, Great Britain, France, and Prussia<sup>28</sup>. At this point the States lying on the banks of these rivers were admitted to the debate for working out details regarding navigation on the Rhine and its tributaries<sup>29</sup>.

The draft of the article enacting freedom of navigation on international rivers as a general principle was signed only by the original members of the commission, namely, by the representatives of Austria, France, Great Britain, and Prussia, but the draft regarding the Rhine and its tributaries was signed by "all present and interested"<sup>30</sup>.

An expression of the realisation of the rights of small nations may be seen in the reservation made by the representative of Hesse in signing the fore-mentioned draft. The protocol summarised it as follows:

vu l'égalité des droits de souveraineté de la maison électorale de Hesse, sur sa petite portion de la rive droite du Rhin, il aurait dû s'attendre à être invité à participer aux con-

<sup>23</sup> Ibid. 184; "... durant le temps qu'on s'occupera à Vienne des affaires intérieures de cet état".

<sup>24</sup> Ibid. 181—184.      <sup>25</sup> Ibid. 310, 319.

<sup>26</sup> "Mrs les Plenipotentiaires ont jugé, qu'il n'y avoit pas lieu à entrer en discussion avec les dits députés". AWC IX 71.      <sup>27</sup> AWC V 319—320.

<sup>28</sup> AWC VIII 100—101 "les plénipotentiaires des cours plus directement intéressés".

<sup>29</sup> Ibid. III 12.      <sup>30</sup> Ibid. 251.

férences tenue sur la navigation de ce fleuve, mais, que leur résultat utile pour l'intérêt général du commerce de l'Allemagne, l'avait engagé à joindre sa signature à celle des membres des susdites conférences<sup>31</sup>.

When the group of eight came to select the commission on the problem of the slave trade, the representatives of Spain and Portugal demanded a limit to the composition of the commission, similar to that on the question of the rivers, namely to States particularly interested, which meant in this case colonial countries. However, Great Britain's representative together with others fiercely opposed this. The British representative observed:

la question de la traite des nègres ne devant pas être considérée uniquement dans ses rapports avec tel ou tel intérêt local, ou avec la législation particulière de tel ou tel pays, mais comme une question intéressant essentiellement l'humanité entière<sup>32</sup>.

At last the whole "Eight" met on this matter. Non-colonial countries like Austria, Prussia, and Russia played a part in three special meetings, but to colonial countries, such as Denmark and Holland, was sent only the extract from the protocol of the session and the concluded declaration condemning that commerce, even though they expressed particular interest in the abolition of the slave trade<sup>33</sup>. This is how the question of participating in the debates looked on a matter "of great interest to all humanity", where, as it is known, not a small role behind the scenes was played by the factor of economic competition.

Among the most important achievements of the Congress of Vienna was the solution of the problem of precedence between monarchs and their representatives. Right from the very beginning of the debate, a single dispute in this matter, which took place between Wirtemberg and Hanover, gave Metternich a chance to publish the principles of equality of monarchs as to their rank<sup>34</sup>. According to the decisions of the Treaty of Paris, a special commission was created for this problem, composed of the representatives of the eight Powers<sup>35</sup>. The establishment of a classification of countries was, however, unsuccessful. It established instead directions for the rank of diplomatic representatives, to which they invited the remaining monarchs to accede<sup>36</sup>.

With regard to the role of small States and as an illustration of their claim to equal rights it is still necessary to mention the debates over the constitution of the union of German States, which constituted a completely different part of the Congress. The debates on this matter, as was the case with the whole course of the Congress, must be divided into two phases: before the return of Napoleon from Elba, and after his return, when the

<sup>31</sup> Ibid. 252. The representatives of Hesse were invited after the beginning of the debates.

<sup>32</sup> AWC VIII 4.

<sup>33</sup> AWC VIII 47.

<sup>34</sup> AWC II 76.

<sup>35</sup> The protocols of this commission are lacking.

<sup>36</sup> AWC VIII 106—107.

common danger again united the powers and forced them to hastily conclude the debates.

In the first phase it formed itself into a committee for the problem of Germany with the representatives of only five German monarchs taking part, namely Austria, Prussia, Hanover, Bavaria, and Wirtemberg. At one of the first sessions it was decided that such a composition was correct rather than any other, for this reason that a bigger number was not indicated for the efficient progress of the work; the fore-mentioned courts were recognised as the most powerful<sup>37</sup>. The debates of this committee led to nothing, amongst other reasons, because of the determined protests at their non-representation by German princedoms and towns<sup>38</sup>.

In the second phase, at a general meeting of German princedoms and towns, the basis was decided upon for working out a united constitution for Germany. A delegation was chosen to confer with the great Powers, who demanded a meeting of the plenipotentiaries of all countries represented at the Congress<sup>39</sup>. Commencing with the third session, the princedoms and towns were already represented individually<sup>40</sup>.

On the proposal of Metternich, the five great Powers resolved to place all decisions in the general act of the Congress, not only those concluded in a protocol session, but also other bilateral contracts concluded at Vienna in union with the Congress, many matters were concluded over and above the protocol sessions<sup>41</sup>. All, however, which had to be contained in the general act, were subject to the approval of the "Great Five", in reality the most important organ of the Congress. In this way the draft of the first article announced by the plenipotentiary of Czar Alexander regarding the frontiers of the Duchy of Warsaw was admitted amongst others, but, for instance, the draft of Article 12, regarding the pretensions of Saxony to a part of Schwarzenburg, was unanimously omitted by the "Five"<sup>42</sup>.

The decision regarding the number of parties who had to sign the general act was altered many times. At the beginning it had to be ratified only by the five great Powers<sup>43</sup>. At the next session, it was decided that all representatives of princedoms would be invited to sign<sup>44</sup>. At last on the 6th June, it was finally decided that, "the fore-mentioned treaty will be concluded between the Powers, who signed the Treaty of Paris..." (namely by the Eight)<sup>45</sup>. At the same time Article 119 of this general act invited the rest of the delegates to the Congress solely to give their assent<sup>46</sup>.

<sup>37</sup> AWC II 71—72. ... "theils weil eine grossere Zahl uberhaupt zur Beforderung des Geschafes nicht rathsam sey, gleichwohl die hier benaunte funf Hofe, als die machtigsten in Teutschland anzusehen seyen".

<sup>38</sup> AWC IV 45; AWC I, bk. I 68—71, 97—99.

<sup>39</sup> AWC IV 392—393.

<sup>40</sup> AWC III 339, 342.

<sup>41</sup> AWC IX 152.

<sup>42</sup> AWC IX 30 i 85.

<sup>43</sup> Ibid. 156.

<sup>44</sup> Ibid.

<sup>45</sup> Ibid. 164.

<sup>46</sup> NRT II 430.

Not all, however, signatories to the Treaty of Paris availed themselves of the doubtful privilege of signing this act. Spain, unhappy with the decisions taken by the Congress, refused her signature, and the reasons, which her plenipotentiary gave in a note to Metternich, as the chairman of the Congress, was an expressive, and without doubt, accurate characteristic of the proceedings at Vienna, and an illustration of the interpretation of the law of nations in the Europe of that time. Making a protest against the unequal treatment of States at the Congress, the note only mentioned the subject of the signatories to the Treaty of Paris, of which Spain was a member. The plenipotentiary of Spain wrote that he could not sign the general act because of the following reason, among others:

Parce qu'il n'y a dans le très grand nombre d'articles dont le traité est composé, qu'un très petit nombre dont on ait fait le rapport dans les conférences des plenipotentiaires des huit puissances qui signèrent le traité de Paris: et, comme tous ces plenipotentiaires sont égaux entre eux, et que les puissances qu'ils représentent, sont, également indépendantes, on ne saurait point accorder à une partie d'eux le droit de discuter et d'arrêter, et aux autres celui seulement de signer ou de refuser leur signature, sans un oubli manifeste des formes les plus essentielles, sans la plus criante violation de tout les principes, et sans l'introduction d'un nouveau droit des gens que les puissances de l'Europe ne pourront admettre sans renoncer de fait à leur indépendance, et qui quand même il fût admis généralement, ne le sera jamais au-delà des Pyrénées<sup>47</sup>.

#### THE ORIGINS OF THE EUROPEAN CONCERT

The Congress of Vienna was not only the first, but for a long time, the only general European conference, and the political affairs of Europe remained nearly completely in the hands of the great Powers, who became known collectively in the history of the 19th century as the "European Concert of the Great Powers"<sup>48</sup>, also in the first half of the century as the "Holy Alliance"<sup>49</sup>, the "European System", or the "Pentarchy".

The origin of the Concert goes back to the anti-Napoleonic coalition. Charles DUPUIS<sup>50</sup> sees the beginning of the Concert in the contents of the declaration, which the allies issued on the 5th February, 1814, at the Peace Congress of Chatillon. At the first session of this Congress the representative of the allies informed the plenipotentiary of Napoleon I:

<sup>47</sup> NRT II 472.

<sup>48</sup> That name was officially introduced only at the Congress of Paris in 1856.

<sup>49</sup> The so-called "Holy Alliance" in its strict sense was solely the personal alliance of the three monarchs of Austria, Prussia, and Russia, signed 14/26th September, 1815, in which the majority of European monarchs took part, but without Great Britain. SRT VI 656—658; cf. DUPUIS *Antécédents* 73; *Histoire* I 380; NICOLSON 265—266; WEBSTER *The Foreign Policy* 58—59.

<sup>50</sup> DUPUIS, *Antécédents* 5—108.

ils ne se présentent point aux conférences comme uniquement envoyés par les quatre Cours de la part desquelles ils sont munis de pleins pouvoirs, mais comme se trouvant chargés de traiter de la paix avec la France au nom de l'Europe ne formant qu'un seul tout...<sup>51</sup>

As a date for the formal creation of the Concert we should take the conclusion of the treaty of alliance between the Four, who were formerly the allied Powers, Austria, Great Britain, Prussia, and Russia, on the 20th November, 1815, i. e. the same day on which the final peace treaty with France was signed.

The aim of this alliance was a common organization for the occupation of France, and a continuation in peace time as well of that policy of close understanding which had existed in the period of the coalition. In Article VI the powers decided amongst other things:

Pour assurer et faciliter l'exécution du présent traité, et consolider les rapports intimes qui unissent aujourd'hui les quatre souverains pour le bonheur du monde, les hautes parties contractantes sont convenues de renouveler, à des époques déterminées, soit sous les auspices immédiats des souverains, soit par leur ministres respectifs, des réunions consacrées aux grands intérêts communs et à l'examen des mesures qui, dans chacune des ces époques, seront jugées les plus salutaires pour le repos et la prospérité des peuples, et pour le maintien de la paix de l'Europe<sup>52</sup>.

This treaty, particularly the last mentioned clause, we may consider as the first attempt of the great powers at creating a political organization for Europe, and the formal ratification of their leading role<sup>53</sup>.

The European Concert was established by the great Powers themselves from the Congress of Aix-la-Chapelle onwards, where the four great Powers adopted France to its number.

In May 1818 the ministers of the four allied Powers at Paris sent their representatives in other capitals a circular, in which they informed them that the signatories to the treaty of the 20th November, 1815, agreed to meet in the autumn to consider the question of the further occupation of France. In this circular, however, they added:

Their Imperial and Royal Majesties desire to avoid any unfounded interpretations which might tend to give to their meeting the character of a Congress<sup>54</sup>, and to set aside (écarter) at the same time the intervention of the other princes and cabinets in the discussions of which the decision is expressly reserved to themselves (i. e. by Article 5 of the said treaty)<sup>55</sup>.

<sup>51</sup> *Correspondence, Despatches and other papers of viscount Castlereagh*, third series t. 1, p. 294 (see DUPUIS, *Antécédents* 67).

<sup>52</sup> NRT II 734—737.

<sup>53</sup> "La Sainte Alliance constitue le premier essai d'organisation politique durable du monde européen. On a même pu, non sans raison, la comparer à la Société des Nations". RUYSSSEN 207; cf. DUPUIS René 88; BOURQUIN *Alliance* 381; LEONARD 29—35; HOFFMANN 21—37.

<sup>54</sup> The name "congress" was applied to the debates of Aix-la-Chapelle only later.

<sup>55</sup> *British Foreign State Papers*, v. 1216, quoted after SATOW II 82.

According to this notice the Czar of Russia, the Emperor of Austria, the King of Prussia, and the representative of Great Britain took part in this Congress. Only at the beginning did the plenipotentiaries of France take part from time to time. The Congress began on the 29th September, 1818, and already in the seventh session on the 9th October four treaties of the same tenor were signed, in which the decision to terminate the occupation of France was taken. The rest of the signatories to the Peace were merely informed of this decision<sup>56</sup>.

The debates of the Congress were continued further. Besides matters connected with the occupation of France, there were also discussions and even decisions on many matters which concerned the remotest frontiers of Europe and her colonies, as, for instance: mediation between Spain and Portugal with regard to the occupation of Uruguay by Brazil; the Swedo-Danish dispute; pirates on the Spanish Main; the possession of the Duchy of Bouillon; complaints by the people of Monaco against the system of regency; the ranks of diplomatic representatives; and the slave trade. Besides this, the great Powers signed a separate protocol, in which they refused the request of the Elector of Hesse to be granted the title of king<sup>57</sup>. The Congress had in all 47 sessions and came to a conclusion on the 22nd November, 1818.

For the position which the great Powers have occupied in Europe since that time the most important decision of the Congress was the settlement of the principles which formed the "System of Europe" and their invitation to France to participate in it. This invitation was addressed by the four courts of Austria, Great Britain, Prussia, and Russia to the Duke of Richelieu, the representative of France, in a note, on the 4th November, 1818, in which was written amongst other things:

Considérant maintenant comme le premier de leur devoir. celui de conserver à leur peuples les bienfaits que cette paix leur assure, et de maintenir dans leur intégrité les transactions qui l'ont fondée et consolidée, L. M. I. et R. se flattent, que Sa Majesté Très-Chrétienne, animée des mêmes sentimens, accueillera, avec l'intérêt qu'elle attache à tout se qui tend au bien de l'humanité et à la gloire et à la prospérité de son pays, la proposition que L. M. I. et R. lui adressent d'unir dorénavant ses conseils et ses efforts à ceux qu'Elles ne cesseront de vouer à l'accomplissement d'une oeuvre aussi salutaire.

Les soussignés ... invitent en même tems son Exc. à prendre part à leurs délibérations présentes et futures, consacrées au maintien de la paix, des traités sur lesquels elle repose.

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<sup>56</sup> SATOW II 34—85.

<sup>57</sup> Ibid. At the Congress of Aix-la-Chapelle the permanent conference of the representatives of the great Powers in London finished its work, on combatting the slave trade, fruitlessly. It was called mainly on the initiative of Castlereagh for the purpose of working out common action in this direction. Its discussions took place from December 1817; from the 24th October they were transferred to the forum of the Congress of Aix-la-Chapelle. NSRT III 48—127.



des droits et des rapports mutuels établis ou confirmés par ces traités et reconnus par toutes les puissances européennes<sup>58</sup>.

On the 15th November all five powers signed the Protocol in which they made mention of an assurance for France of a proper place for her in the "System of Europe" in five points, formulating the following main principles of that system:

1<sup>o</sup> Qu'elles sont fermement décidées à ne s'écarter, ni dans leurs relations mutuelles, ni dans celles qui les lient aux autres états, du principes d'union intime qui a présidé jusqu'ici à leur rapports et intérêts communs; union devenue plus forte et indissoluble par les liens de fraternité chrétienne que les souverains ont formés entre eux.

2<sup>o</sup> Que cette union, d'autant plus réelle et durable, qu'elle ne tient à aucun intérêt isolé, à aucune combinaison momentanée, ne peut avoir pour objet que le maintien de la paix générale, fondé sur le respect religieux pour les engagements consignés dans les traités, pour la totalité des droits qui en dérivent.

3<sup>o</sup> Que la France, associée aux autres puissances par la restauration du pouvoir monarchiques, légitime et constitutionnel, s'engage à concourir désormais au maintien et à l'affermissement d'un système qui a donné la paix à l'Europe, et qui seul peut en assurer la durée.

4<sup>o</sup> Que si, pour mieux atteindre le but si-dessus énoncé, les puissances qui ont concouru au présent acte, jugeaient nécessaire d'établir des réunions particulières, soit entre les augustes souverains eux-mêmes, soit entre leurs ministres et plénipotentiaires respectifs, pour y traiter en commun de leurs propres intérêts, en tant qu'ils se rapportent à l'objet de leur délibérations actuelles, l'époque et l'endroit de ces réunions seront, chaque fois, préalablement arrêtés au moyen de communication diplomatiques, et que, dans le cas où ces réunions auraient pour objet des affaires spécialement liées aux intérêts des autres états de l'Europe, elles n'auront lieu qu'à la suite d'une invitation formelle de la part de ceux de ces états que les dites affaires concerneraient, et sous la réserve expresse de leur droit d'y participer directement, ou par leur plénipotentiaires<sup>59</sup>.

5<sup>o</sup> Que les résolutions consignées au présent acte, seront portées à la connaissance de toutes les cours Européennes, par la déclaration ci-jointe, laquelle sera considérée comme sanctionnée par le protocole en faisant partie<sup>60</sup>.

In this declaration the delegates to the Congress further stressed:

Les souverains en formant cette union auguste, on regardé comme la base fondamentale, leur invariable résolution de ne jamais s'écarter, ni entre eux ni dans leurs relations avec d'autres états, de l'observation la plus stricte des principes du droit des gens, principes qui dans leur application à un état de paix permanent, peuvent seuls garantir efficacement l'indépendance de chaque gouvernement et la stabilité de l'association générale.

Fidèles à ces principes, les souverains les maintiendront également dans les réunions auxquelles ils assisteraient en personne, ou qui auraient lieu entre leur ministres, soit qu'elles aient pour objet de discuter en commun leur propres intérêts, soit qu'elles se rapportent à des questions dans lesquelles d'autres gouvernements auraient formellement réclamé leur intervention; le même esprit, qui dirigera leurs conseils, et qui régnera dans leurs commu-

<sup>58</sup> GHILLANY I 411.

<sup>59</sup> It is the famous Paragraph 4 of the Protocol of Aix-la-Chapelle, to which small States and the doctrine often made reference in the nineteenth century. See below.

<sup>60</sup> GHILLANY I 413.

nications diplomatiques, présidera aussi à ces réunions, et le repos du Monde en sera constamment le motif et but<sup>61</sup>.

In other words, the five great Powers formed between themselves a strict union, whose sole purpose was the maintenance of peace in Europe, and, what would be more important for the further development of events, they promised to enforce the principles of the law of nations, and in matters of particular interest to other countries, to commit them immediately to take part in discussions.

In order to complete the rather obscure picture of the debates at Aix-la-Chapelle, owing to the lack of source material, especially regarding the relations of the great Powers to the others, we may quote here the opinion contained in the well known monograph of WEBSTER:

(The Congress at Aix-la-Chapelle) never "degenerated into a Congress" and the very fact set the seal on the primacy of the Great Powers which had only just been revealed to Europe. But it was only with a good deal of grumbling and protests that this situation was accepted<sup>62</sup>.

In another place WEBSTER adds:

At the same time, the Great Powers were conscious that in some of these questions they had no legal basis of action. The Smaller Powers had never agreed to surrender to them any rights of governance in these questions... The Declaration had indeed promised that if the rights of a Small Power were involved in a future Conference it would be summoned to a place. Yet Spain, Portugal, Bavaria, Baden, Sweden, to say nothing of minor princelings, had seen their affairs discussed and important decisions virtually arrived at, without their having an opportunity of stating their case<sup>63</sup>.

In conjunction with these facts, an interesting reflection is suggested by WEBSTER's general conclusion about the debates of Aix-la-Chapelle: "Never again in the course of the nineteenth century did the diplomatic machine apparently function so smoothly"<sup>64</sup>.

#### THE FIRST CONGRESSES OF THE EUROPEAN CONCERT

The mechanism of the European System was set in motion by Metternich in the face of a violently spreading struggle in support of national liberation.

In 1820, the Czar of Russia, the Emperor of Austria, the King of Prussia, together with their plenipotentiaries and the representatives of France and Great Britain met at Troppau. There was also present the Viennese representative of Naples, who refused to accept any changes for his country<sup>65</sup>.

The rulers of the three eastern powers held the stage, while the representatives of Great Britain and France remained rather more as observers<sup>66</sup>.

<sup>61</sup> GHILLANY I 414.

<sup>62</sup> WEBSTER *The Foreign* 133.

<sup>63</sup> *Ibid.* 172.

<sup>64</sup> *Ibid.*

<sup>65</sup> GHILLANY II 416—417.

<sup>66</sup> WEBSTER *The Foreign* 285.

The former also signed between themselves the protocol in which they introduced the principle of armed intervention. Great Britain and France refused to sign it. In reply, in order to deny the pretended rumours, the representatives of Austria, Prussia, and Russia issued a short review of the results of the Congress of Troppau, in which, referring to the events in Spain, Portugal, and Naples, they wrote:

Il n'était pas moins naturel que ces Puissances pour la combattre (la révolution) une troisième fois, eussent recours aux mêmes moyens dont elles avaient fait usage avec tant de succès dans cette lutte mémorable qui a délivré l'Europe d'un joug qu'elle a porté vingt ans...

Les puissances ont exercé un droit incontestable en s'occupant de prendre en commun des mesures de sûreté contre des états dans lesquels le renversement du gouvernement opéré par la révolte...<sup>67</sup>

Furthermore, deciding among themselves to invite the King of Naples to the next stage of the Congress, already announced to be held at Laibach, these three powers decided "not to recognise governments created by open revolution" as a general principle. Finally they invited Great Britain and France to take part in their demarche, and they confirmed that the newly established principles were in harmony with the principles which formed the foundation of the alliance of European States<sup>68</sup>.

The British, however, dissented from such a wide interpretation of the responsibilities of the European System. This dissent was expressed in the circular sent on the 19th January, 1821 to British diplomatic representatives:

les principes qui servent de base à ces mesures, ne peuvent être admis avec quelques sûreté comme système des lois entre les nations. Le gouvernement du Roi pense que l'adoption de ces principes sanctionnerait inévitablement et pourrait amener par la suite de la part de souverains moins bienveillans une intervention dans les affaires intérieures des Etats, beaucoup plus fréquente et plus étendue que celle, dont il est persuadé que les augustes personnages ont l'intention d'user, ou qui puisse se concilier avec l'intérêt général, ou avec l'autorité réelle et la dignité des souverains indépendans. Le gouvernement de S. M. ne croit pas que d'après les traités existants, les alliés aient le droit d'assurer aucuns pouvoirs généraux de cette espèce, et il ne croit pas d'avantage qu'ils puissent s'arroger des pouvoirs aussi extraordinaires ... sans s'attribuer une suprématie incompatible avec les droits d'autres Etats ou même, en acquérant ces pouvoirs du consentement spécial des dits Etats, sans introduire en Europe un système fédératif, oppresseur.<sup>69</sup>

This despatch was, in fact, mainly a means of influencing public opinion. The British government was, in reality, favourably disposed towards Austrian intervention in Italy<sup>70</sup>. This was not exactly the breaking up of the hegemony of the great Powers, but rather an example of using principles of law recognised at that time for tactical ends.

<sup>67</sup> GHILLANY II 427—428.

<sup>68</sup> GHILLANY II 428—429.

<sup>69</sup> GHILLANY II 429—430.

<sup>70</sup> WEBSTER *The Foreign* 321-326, GHILLANY II 418—419.

The Congress of Troppau after only eight sessions was adjourned to the next meeting to be called at Laibach<sup>71</sup>.

At the Congress of Laibach in 1822, which saw a continuation of the discussions of Troppau, also present were the Czar of Russia, the Emperor of Austria, representatives of Prussia and France, and the representative of Great Britain, but without full powers. In addition to these, there was also invited the King of Naples, representatives of the Papal States and other small Italian States. The representatives of the small Italian States, as WEBSTER says: "were only summoned together to receive the decisions of the Conference, upon which they had no influence whatever"<sup>72</sup>.

Finally the leaders of the Holy Alliance, Austria, Prussia, and Russia decided on armed intervention in Italy; in reply to this Great Britain and France left the discussions. Eighty thousand troops crushed the revolution in northern Italy<sup>73</sup>.

Last of the series of congresses which historians count as belonging to the European System in the spirit of the Holy Alliance was the Congress of Verona in 1823 announced at Laibach. The Czar of Russia, the Emperor of Austria, the Kings of Prussia, Naples and Sardinia, and the representatives of Great Britain and France took part in it. There were discussions on the situation in Spain. This time, France, in spite of her negative position towards intervention, undertook military intervention in Spain, restoring the old order with the help of ninety-two thousand troops. This was done with the agreement of the rest of the powers (with the exception of Great Britain)<sup>74</sup>.

At the Congress of Verona, because of the break-away of Great Britain and the position of the United States, co-operation amongst the five great Powers stopped for a certain time. And this concludes the first period of their collective supremacy in Europe<sup>75</sup>.

From among the conferences up to the year 1830 we must mention those of the great Powers in London in a marginal European Concert, with the participation of only Russia, Great Britain and France, in connexion with their common intervention in the affairs of Greece. The result of this intervention was the destruction of the Turkish fleet at Navarino, and in 1830 in London the three Powers announced the independence of the kingdom of Greece<sup>76</sup>.

<sup>71</sup> SATOW II 89.

<sup>72</sup> WEBSTER *The Foreign* 312.

<sup>73</sup> GHILLANY II 420.

<sup>74</sup> GHILLANY II 441—448; SATOW II 90.

<sup>75</sup> cf. DUPUIS *Equilibre* 192, *Histoire* I 386—393.

<sup>76</sup> SATOW II 109—113.

In spite of the lack of protocols, for the debates were largely conducted in secret, merely from the composition of the conferences, from the official declarations, and from the decisions and their consequences, we may conclude, without doubt, that the discussions amongst the members of the European System<sup>77</sup>, were an expression of a more or less open dictatorship by the great Powers over other States, above all with the aim of stifling revolutionary struggles for freedom. Neither an appeal to the honoured word and principles of the law of nations in the published declaration, nor a promise of full and direct participation for States interested in the discussions (in paragraph 4 of the Protocol of Aix-la-Chapelle)<sup>78</sup> changed the fact that the participation of the most directly interested States was without meaning.

#### THE LONDON CONFERENCE ON THE QUESTION OF BELGIUM

This conference, in which the European Concert again appeared *in corpore*, this time in the character of an arbiter, was a conference to consider the separation of Belgium and Holland.

In the year 1830 the August revolt in Belgium forced the Dutch government to beg assistance from the five main signatories to the Peace Treaties of Paris and Vienna, namely from Austria, France, Great Britain, Prussia, and Russia. As a result of the initiative of Great Britain, a conference of the members of the Concert met in London, whose aim was, as given in the first protocol: "à délibérer, de concert avec Sa Majesté (le Roi des Pays Bas), sur les meilleurs moyens de mettre un terme aux troubles qui ont éclaté dans ses Etats"<sup>79</sup>.

It is necessary to underline that the powers distinctly referred to the Concert, especially to the Protocol of Aix-la-Chapelle, deciding amongst other things that they would invite the Dutch ambassador to take part in the discussions: "aux termes du par. 4 de leur Protocole de 15 Novembre 1818". It did not, however, have to be full participation, which followed from further action of the first protocol, that was besides only signed by the five members of the Concert:

les Cours ci-dessus nommées ayant éprouvé, avant même d'avoir reçu cette invitation, un vif désir d'arrêter, dans le plus bref délai possible, le désordre et l'effusion du sang; ont concerté, par l'organe de leurs Ambassadeurs et Ministres accrédités à la Cour de Londres, les déterminations suivantes: ...

After an enumeration of the conditions for a cessation of the struggle, there was added:

La proposition de cet Armistice sera faite au Gouvernement de sa Majesté le Roi des Pays-Bas, par l'intermédiaire de son Ambassadeur présent aux délibérations.

Les termes de ce même Armistice seront communiqués en Belgique au nom de 5 Cours<sup>80</sup>.

<sup>77</sup> cf. WEBSTER *The Foreign* 119—401.

<sup>78</sup> See above.

<sup>79</sup> NRT XI 78.

<sup>80</sup> NRT XI 78—79.

The London Conference, in the period from the 4th November, 1830, until the 1st October, 1832, had roughly seventy sessions, and the representatives of Holland only sat in the first seven of these. Their participation consisted only of being present, submitting notes, and of expressing agreement in the decisions reached. Only on three protocols of the sessions can the signatures of the representatives of Holland be seen<sup>81</sup>.

The Belgian representatives did not take any part at all in the Conference. Contact with the provisional Belgian government was maintained by a special intermediary mission sent to Brussels as an "Organ of the Conferences" and by reading in the sessions the declarations and notes of that government<sup>82</sup>. In the seventh protocol there is the following resolution:

La Conférence ... engagera le Gouvernement Provisoire de la Belgique à envoyer à Londres, le plutôt possible, des Commissaires munis d'instructions et de pouvoirs assez amples, pour être consultés et entendus sur tout ce qui pourra faciliter l'adoption définitive des arrangements dont il a été fait mention plus haut<sup>83</sup>.

The appointed commissaries were not, however, even once present at a session. Their function was limited merely to submitting notes in writing<sup>84</sup>.

Such procedure by the great Powers met with protests from the interested parties on both sides. Holland, first of all, confirmed this, in a note of the 4th January, 1831:

La Conférence de Londres se réunit, il est vrai, sur le désir du Roi, mais cette circonstance ne conférait point à la Conférence le droit de donner à ses Protocoles une direction opposée à l'objet pour lequel son assistance avait été demandée, et au lieu, de co-opérer au rétablissement de l'ordre dans les Pays-Bas, de les faire tendre au démembrement du Royaume<sup>85</sup>.

Further, in a note of protest on the 25th January the representatives of Holland declared amongst other things:

En effet, la réunion de la Conférence, dont est résulté le 9 Protocole, a eu pour objet une affaire spécialement liée aux intérêts du Royaume des Pays-Bas, sans que les Plénipotentiaires du Roi y aient participé directement,—droit qui leur a été réservé par le Par. 4 du Protocole d'Aix-la-Chapelle du 15 Novembre, 1818. Il y a plus. Ce principe ne fut que surabonamment rappelé à Aix-la-Chapelle, car aucune réunion de Plénipotentiaires, quelque nombreuse qu'elle soit, et quelque puissant que soient les Etats qu'ils représentent, n'a qualité pour régler les intérêts particuliers et territoriaux d'autres Peuples<sup>86</sup>.

The Belgian National Congress<sup>87</sup> next protested against the protocol of the 20th January, 1831, in which the Powers decided on the principles for

<sup>81</sup> NRT XI 77—291, XII 274—534.

<sup>82</sup> NRT XI 81—120.

<sup>83</sup> Ibid. 125—126.

<sup>84</sup> Ibid. 220.

<sup>85</sup> Ibid. 144.

<sup>86</sup> Ibid. 175—176. It referred to the cessation by Holland of military action and navigation on the Scheldt.

<sup>87</sup> The national representation of the Belgians in session at Brussels.

the future partition of Belgium and Holland<sup>88</sup>. The representatives of the Belgian Congress wrote, amongst other things:

que c'est dénaturer le but de la suspension d'armes et de l'armistice, et la mission de la conférence de Londres, que d'attribuer aux cinq Puissances le droit de résoudre définitivement des questions dont elles ont annoncé elles-même vouloir seulement faciliter la solution...

Que d'ailleurs, c'est violer, de la manière la plus manifeste, le principe de non-intervention, principe fondamental de la politique européenne...

Le Congrès proteste contre toute délimitation de territoire et toute obligation quelconque qu'on pourrait vouloir prescrire à la Belgique sans le consentement de sa représentation nationale<sup>89</sup>.

Finally the Dutch note was read at the session of the 4th January, 1832, which explained why Holland did not sign the treaty regarding the partition of Belgium and Holland. Holland did not subscribe to the view that the fourth paragraph of the protocol of Aix-la-Chapelle gave the London Conference complete freedom of action in the way in which it communicated with her, which, in fact, was limited to written contact. In his note the plenipotentiary of Holland called the attention of the conference to the fact that the conference appointed itself in its first session through paragraph four, and to begin with, according to that paragraph, it invited the Dutch ambassador to participate in its sessions, but after several sessions, this was stopped. Later it refused to admit the representative of Holland to the discussions and limited itself to demanding explanations from time to time and to taking written statements from him. Holland did not consider this compatible with her right to full participations<sup>90</sup>.

Further, in reference to the proposed treaty the note reads:

Les Soussignés avouent avec la franchise due à la Conférence, qu'ils en vain cherché à concilier avec le Protocole l'Aix-la-Chapelle, l'absence totale du fond et de l'esprit du dit Protocole, et des premiers principes du Code des Nations, dans certaines clauses que les 24 Articles produisirent pour la premier fois, ...<sup>91</sup>

The general characteristic of the London Conference from the point of view of the members' participation in its work can be found in the report of the Belgian minister for foreign affairs of the 15th March, 1831. He wrote as follows:

Il est important d'étudier tous les Actes qui se sont succédé depuis le 4 Novembre, 1830, jusqu'au 6 Février, 1831. On verra, d'un côté, la Conférence de Londres marchant d'empiétements en empiétements, et, par des nuances d'abord presque imperceptibles, mais plus tranchées par la suite, cherchant à faire dégénérer une simple médiation en une intervention directe et positive ...<sup>92</sup>

<sup>88</sup> Ibid. XI 158—161.

<sup>89</sup> Ibid. 182—183.

<sup>90</sup> Ibid. XII 285—286.

<sup>91</sup> NRT XII 286.

<sup>92</sup> NRT XI 212.

To the Dutch and Belgian protests the conference gave a reply which, with regard to the fresh arguments put forward by the great Powers as reasons for their role in Europe, opened the next stage of their hegemony. The reply argued:

Chaque nation a ses droits particuliers; mais l'Europe aussi a son droit: c'est l'ordre social qui le lui a donné.

Les Traités qui régissent l'Europe, la Belgique devenue indépendante les trouvait faits et en vigueur; elle devait donc les respecter, et ne pouvait pas les enfreindre. En les respectant, elle se conciliait avec l'intérêt et le repos de la Grande communauté des états européens; en les enfreignant, elle eût amené la confusion et la guerre. Les Puissances seules pouvaient prévenir ce malheur, et puisqu'elles le pouvaient, elle le devait; ...<sup>93</sup>

Thus the fresh argument which outlined the right of the great Powers to play a leading role on behalf of Europe is their real strength. The new argument imposed on them duties towards international society.

The final result of the London Conference was the treaty signed on the 15th November, 1831 by the five Powers and Belgium, in which the great Powers defined the frontiers of Belgium and recognised the independence of that country, which was to remain permanently neutralised. At the same time they imposed upon her a number of conditions of a financial nature regarding the navigation of Belgian and other rivers.

In spite of the long drawn out written negotiations, lasting nearly a year, with the Dutch government, they were not successful in getting its agreement to this treaty. As a result, Great Britain and France, in the last session, proposed immediately introducing effective coercive measures with the aim of enforcing the decisions of the said treaty. Austria, Prussia, and Russia, however, opposed coercion, and suggested that pressure of a financial nature should be put off till later.

The Conference finished without undertaking any concrete proposals for carrying out its decisions<sup>94</sup>. Diplomatic negotiations with the aim of reaching agreement between Holland and Belgium lasted for several years more. The London Conference carried on performing the role of reconciliation without the participation of either interested party. The final solution of the conflict came in the year 1839 with the signing of the direct Dutch-Belgian treaty<sup>95</sup>.

#### THE DOCTRINE

For an exponent of the doctrine of international law which dominated the period of the Congress of Vienna we may cite two famous scholars as early as the eighteenth century, VATTEL, a naturalist, and the positivist, George MARTENS.

<sup>93</sup> NRT XI 199.      <sup>94</sup> NRG XII 526—534.

<sup>95</sup> NRT XV 448—501; DUPUIS *Equilibre* 229.



VATTEL, although himself a practising lawyer, in his work, *Le droit des Gens ou principes de la loi naturelle*, published in 1758, sacrificed only a small part to actual international relations. Like his great predecessors, he affirmed:

Puisque les hommes sont naturellement égaux, & que leurs droits & leurs obligations sont les mêmes, comme venant également de la Nature, les Nations composées d'hommes, & considérées comme autant de personnes libres qui vivent ensemble dans l'état de Nature, sont naturellement égales, & tiennent de la Nature les mêmes obligations & les mêmes droits. La puissance ou la faiblesse ne produisent, à cet égard, aucune différence. Un Nain est aussi bien un homme, qu'un Géant: Une petite République n'est pas moins un Etat souverain que le plus puissant Royaume.

Par une suite nécessaire de cette égalité, ce qui est permis à une Nation, l'est aussi à toute autre, & ce qui n'est pas permis à l'une, ne l'est pas non plus à l'autre<sup>96</sup>.

VATTEL recognised exceptions to this principle only in the sphere of precedence as a voluntary concession by small Powers in favour of the great:

Cependant, comme un Etat puissant & vaste est beaucoup plus considérable dans la Société universelle, qu'un petit Etat, il est raisonnable que celui-ci lui cède, dans les occasions où il faut que l'un cède à l'autre, comme dans une Assemblée, & lui témoigne des déférences de pur Cérémonial, qui n'ôtent point au fonds l'égalité, & ne marquent qu'une priorité d'ordre, une première place entre égaux<sup>97</sup>.

This pretended liberty never extended to republics, because "the monarchs of Europe—as VATTEL put it—meeting only weak republics refused to allow them to come to equality"<sup>98</sup>.

The positivist George MARTENS already paid greater attention to the divergence between theory and practice. Though he repeated the formula that States independently of their size profit from full equality of rights between themselves, as do all people in a state of nature, he, nevertheless, put more emphasis on deviations from this principle in practice, writing:

Doch können schwächere Staaten sich leicht veranlassen sehn, mächtigeren, deren Freundschaft sie bedürfen, und deren Feindschaft sie zu fürchten haben, gutwillig den Rang und andere vorzügliche Rechte einzuräumen, zumal sie nicht verhindern können, dass dritte Staaten, da wo dies von ihrer Willkür abhängt, sie den mächtigeren nachsetzen<sup>99</sup>.

He did not hide, as we can see, the compulsory character of this pretended liberty, and that concessions of weaker countries did not limit themselves to rank, but also to other rights.

Yet in several other places MARTENS paid attention to the divergence between theory and practice. Writing, for instance, about the freedom to make contracts, he gave to it a special paragraph, entitled *Exceptions to this in practice*, in which he stressed:

<sup>96</sup> VATTEL I 5—6.

<sup>97</sup> Ibid. I 122.

<sup>98</sup> Ibid.

<sup>99</sup> MARTENS G.. *Einleitung* 147—148.

Wie sehr auch diese Grundsätze von den Europäischen Mächte in der Theorie anerkannt werden, so leiden sie doch in der Praxis manche Abfälle. ... viele minder mächtige Staaten in Europa sehen sich durch politische Rücksichten verhindert sich ihrer natürlichen Freyheit Verträge zu schliessen in ihrer ganzen Ausdehnung zu bedienen, und manche derselben sind bey aller ihnen zustehenden förmlichen Unabhängigkeit, in einer sehr reellen Abhängigkeit, von ihren mächtigen Nachbarn<sup>100</sup>.

For writers contemporary to the first period of the hegemony of the great Powers, the practice of the Concert is only a further example of the breaking of international law by politics, worthy of condemnation.

SCHMALZ, whose work was written in 1817, i. e. almost immediately after the Congress of Vienna, did not deal with the equality of States separately, and about the practice of the Congress he wrote as follows:

Bis jetzt, was wir der Vorsehung danken sollen, ist das System der europäischen Völker keine Völker-Republik geworden, wie Viele dergleichen von dem Wiener Congress erwarteten. Jedes Volk ist selbständig und unabhängig. Kein gemeinsames Oberhaupt wird anerkannt, und auch die entschiedenste Mehrheit der Stimmen gilt für übrigen an sich weder als gesetzgebende Macht, noch als Richtern in in Streitigkeiten<sup>101</sup>.

In his opinion, power neither gives the foundation to claim greater rights, nor does weakness entail a refusal to equality of rights. Only an unworthy politics can allow action against a weaker State which it would not dare to take against a stronger<sup>102</sup>.

Ludwik KLÜBER, an eye-witness of the Congress of Vienna and editor of its protocols, saw a deviation from the legal equality also only in the ranks and honours given to monarchs<sup>103</sup>.

In the meaning of the law of nations there is no difference, according to him, between more powerful and weaker sovereign States. Differences in power, especially military, enter greatly into our calculations when we consider the political importance of single States. However, there is a lack of basis for a fixed and general differentiation between States<sup>104</sup>; he added:

gewiss ist die oben angeführte (Abtheilung), so wie die von einigen gewählte, in Staaten der ersten, zweiten, dritten und vierten Ordnung ganz willkürlich und unbestimmt<sup>105</sup>.

An opinion on the practice contemporary to KLÜBER we find in the declaration on the subject of a system of balance, to which the Congress

<sup>100</sup> Ibid. 140.

<sup>101</sup> SCHMALZ 32.

<sup>102</sup> Ibid. 34.

<sup>103</sup> KLÜBER *Europäisches* 149—150.

<sup>104</sup> "Im völkerrechtlichen Sinn, ist kein Unterschied zwischen grossen und kleinen oder zwischen mächtigen und mindermächtigen souverainen Staaten. Wohl aber kommt die Verschiedenheit der Machtverhältnisse, besonders der militärischen, sehr in Betracht, wenn von politischer Wichtigkeit der einzelnen Staaten die Rede ist; doch fehlt es auch hier an gehöriger Grundlage zu einer festen und durchgreifenden Abtheilung der Staaten". Ibid. 67.

<sup>105</sup> Ibid.

of Vienna returned. According to him, a so-called system of the balance of power is built on the basis of strength and superior force<sup>106</sup>.

In this group of authors we may also mention the Polish scholar, Feliks SŁOTWIŃKI, who, in his system, *The Law of Nations connected to the Practice of European Nations*, published in Polish in Cracow in 1822, advanced the contemporary opinion that "the primary equality of nations is the result of their personality and independence"<sup>107</sup>. The deviations from this equality in practice are, according to him, the result of various political relations, which "cause among nations precedence, and more especially prerogatives establishing a ceremonial between nations"<sup>108</sup>.

The first author to clearly distinguish and define the category of great Powers was Friedrich VON SAALFELD. In his work of 1833 he was in favour, as were his predecessors, of the equality of nations without regard to their power<sup>109</sup>, while he sacrificed much space to the criteria by which countries may be grouped; he distinguishes six. Among other classifications, he grouped them according to power. He wrote:

Auf doppelte Weise werden die Staaten nach der Macht eingetheilt, theils in Mächte des ersten, zweiten, dritten u. s. w. Ranges, theils in Land- und Seemächte. Die erstere Eintheilung ist jedoch nur in den Mächten des ersten, höchstens einigermaßen in denen des zweiten Ranges durch den Sprachgebrauch fixirt ... Zu den Mächten des resten Ranges, oder der *grossen Mächten*, hat der allgemeine Sprachgebrauch der neuesten Zeit die fünf Mächte Oesterreich, England, Frankreich, Preussen und Russland gerechnet<sup>110</sup>.

The use of the term "great Power", even in its colloquial meaning in a volume of international law is a fact which merits attention in the evolution of opinions on the problem of research of this work<sup>111</sup>.

With regard to the originality and penetration of these opinions on the practice and doctrine, the view of Heinrich OPPENHEIM deserves quoting<sup>112</sup>. In the introduction to his system he sharply criticised contemporary authors, asserting:

Im Allgemeinen aber geht die heutige Völkerrechtswissenschaft zu sehr auf veraltete Autoritäten, auf überlebte politische Zustände zurück. Selten wird die neueste Gestaltung des Staatensystems in's Auge gefasst. Wenn Pufendorf die Bundestaaten nicht erwähnt, so blieben sie auch in den neuesten Kompendien unberührt, die Schlacht von Pavia und der Friede von Madrid waren diesen Büchern heimischer, als die neuesten Ereignisse...<sup>113</sup>

<sup>106</sup> Ibid. 81. "System der politischen Gleichgewichtes gebaut auf die Idee von Macht und Uebermacht". Ibid.

<sup>107</sup> SŁOTWIŃSKI 45.      <sup>108</sup> Ibid. 47—48.      <sup>109</sup> SAALFELD 32.

<sup>110</sup> Ibidem 31—32. The author's underlining.

<sup>111</sup> In practice the term "great Powers" was used for the first time in the discussions at the Congress of Vienna, See above.

<sup>112</sup> *System des Völkerrechts* 1845.

<sup>113</sup> OPPENHEIM H., VII.

He declared himself in favour of the equality of States, by which he understood an equal right to a free and independent existence. This principle, according to his thought, had not yet been realised<sup>114</sup>. Inequality and difference of rights in international law, according to him, have been overcome to a much smaller extent than in private and public law<sup>115</sup>. Oppenheim criticised international practice in the period of the Holy Alliance ruthlessly, although he was conscious of the new structure of international society. We read in his introduction:

Geht das so fort, so mag der europäischen Fürst folgerichtig an die Gesamtheit der absolutistischen Grossmächte gegen die Majoritäten seiner Kammeropposition appellieren. So droht in diesen traurigen Tagen das Staatsrecht ganz im Völkerrecht unterzugehen...<sup>116</sup>

Further in the introduction he writes on sovereignty as follows:

Die neuere Zeit hat diesen einfachen Grundsatz in Europa, leider! modifizirt. Ganz Europa bildet ein einziges Staaten-System, in welchem die Grossmächte herrschen, und die Staaten zweiten und dritten Ranges durch die Gleichgewichtsbestrebungen jener in einer halben Selbständigkeit erhalten werden<sup>117</sup>.

The creation of that system, which he calls "an international aristocracy of great Powers" he attributed clearly to the "Festival of Vienna"<sup>118</sup>.

OPPENHEIM also mentioned the Congresses of Troppau and Laibach, where Prince Metternich secured general recognition of the right of intervention by the great Powers, and then tried to make this principle sacrosanct by precedents in Naples and Spain. This principle, according to OPPENHEIM, completely excludes the independence of small Powers, while for the stronger it opens an unlimited field of intrigue<sup>119</sup>.

Besides those authors who decidedly refused the practice of the European Concert any legality whatever and whose views unyieldingly stood for the traditional principle of the equality of States, there appeared, however, a compromise position. Here we should mention, first of all, the great American scholar, Henry WHEATON, whose well known work, *Elements of International Law* appeared in its first edition in 1836<sup>120</sup>. He maintained the position that, "all sovereign States are equal in the eye of international law, whatever may

<sup>114</sup> OPPENHEIM H. 187. "Jeder Staat hat, schon als Persönlichkeit, als moralische Person, als sittliche Organismus, dieselbe Berechtigung auf eine freie, unabhängige und selbständige Existenz, nach eigenem Gutdünken, zu eigenem Selbstzweck, ohne Richter und ohne Gesetzgeber über sich!"

<sup>115</sup> Ibid. 9.

<sup>116</sup> Ibid. XI—XII.

<sup>117</sup> Ibid. 207.

<sup>118</sup> "die auf der Wiener Tafelrunde begründete Völker-Aristokratie der Grossmächte"; ibid. 50.

<sup>119</sup> Ibid. 59. "Dieser Grundsatz hebt die Unabhängigkeit der kleineren Staaten ganz auf, während er unter den stärkeren Mächten nur der Intrigue ein unendliches Feld eröffnet". Ibid.

<sup>120</sup> The author has made use of the sixth edition of 1855 by William Beach LAWRENCE, based upon the last original edition of 1848.

be their relative power"<sup>121</sup>. WHEATON did not give, in the company of many other authors also, a more detailed description of what he understood by such equality.

The compromise tendency may be seen distinctly in his further description:

The sovereignty of a particular State is not impaired by its occasional obedience to the commands of other States, or even the habitual influence exercised by them over its councils"<sup>122</sup>.

In WHEATON's opinions there is not such a definite condemnation of the hegemony of the great Powers as there is, for example, in OPPENHEIM; on the contrary, we can sense in his work even agreement with recognition of their action as a part of the law of nations. It can be seen when he writes on the partition of Belgium and Holland:

The five great powers, representing Europe, consented to the separation of Belgium from Holland and admitted the former among the independant States of Europe, upon conditions which were accepted by her and have become bases of her public law<sup>123</sup>.

WHEATON also distinctly mentions the organisation of the great Powers into a solid coalition from the year 1815, which, as he writes, in the year 1818 created "a sort of superintending authority in the power over the international affairs of Europe, the precise extent and object of which were never very accurately defined"<sup>124</sup>.

WHEATON is also the author of a history of the development of international law, in which, in a systematic way, he describes the more important international events, which are essential for the development of the law of nations, mainly congresses and conferences<sup>125</sup>.

#### SUMMARY

The group of great Powers which originated from the anti-Napoleonic coalition comprised, from the beginning of the Congress of Vienna, the actual hegemony of Europe. It decided the fate of smaller countries, intervened in their internal affairs, and attributed to itself a right to create the rules of international law.

At the Congress of Vienna, the great Powers justified their leading role in concluding a peace treaty with France on the argument that "the disposal of occupied provinces belonged to those whose efforts had contributed to the victory". The remaining States did not recognise this dominating role, but could do nothing but make a formal protest. Only Spain, a former great Power, divided from the rest of Europe by the Pyrenees, refused to agree to "a decision taken in violation of every principle".

<sup>121</sup> WHEATON *Elements* 45.

<sup>122</sup> *Ibid.*

<sup>123</sup> *Ibid.* 105.

<sup>124</sup> *Ibid.* 94.

<sup>125</sup> WHEATON *Histoire* passim.

The European Concert, created in the years 1815 and 1818, gave as reason for its leading role co-operation for the peace and prosperity of Europe, and even the whole world, based upon the law of nations. These documents, especially the protocol of Aix-la-Chapelle, established the first statute of a general international organization, and they remind us in their contents of the main points of the Covenant of the League of Nations or even of the Charter of the United Nations. In practice this system was till the year 1830 primarily the means of supervising France and of suppressing revolutionary movements, disregarding the principles of law which it itself had accepted.

Contradictions in the midst of the great Powers, and the ever growing nationalistic revolutionary movements, that is, in other words, a completely altered political situation, seemed as if they would bring an end to the European Concert. In spite of this, the London Conference of 1830 proved that the mechanism of co-operation amongst the great Powers lasted, preserving its continuity, and showing a new and important argument for its leading role, namely that the great Powers possessed the means, and hence the duty, of keeping the peace.

The representatives of the doctrine of international law in this period at first repeated mechanically the naturalist formulas on the equality of States and peoples, as their predecessors had done in a previous era. They saw in the activity of the great Powers only a continuation of the violation of law by politics. However, near the end of this period there already appeared the tendency to reconcile their views with the new structure of international society.

## CHAPTER TWO

### THE REGENERATION OF THE EUROPEAN CONCERT

#### THE CONGRESS OF PARIS

After the period of revolutionary struggles in Europe, the next great congress of the European Concert was the Congress of Paris of 1856. Its main purpose was the final settlement of questions arising from the Crimean War.

The war was formally ended on the 1st February, 1856, by the signing of a protocol at Vienna by Austria, France, Great Britain, Turkey, and Russia. In this protocol they established as temporary conditions for peace five points:—(1) the abolition of the Russian Protectorate over the Danubian Provinces, and the establishment of a new organisation for them, (2) freedom of navigation on the Danube, (3) the neutralisation of the Black Sea and the closing of the Straits to warships, (4) the patronage of Christian Turkish subjects, and (5) the following general decision which is in close connection with the Concert: “Les puissances belligérantes réservent le droit qui leur appartient de produire, dans un intérêt européen, des conditions particulières en sus des quatre garanties”<sup>1</sup>. Besides this, the Powers agreed to send plenipotentiaries to Paris for the purpose of drawing up a final peace treaty<sup>2</sup>.

The opening of the Congress was on the 25th February, with the participation of Austria, France, Great Britain, Russia, Sardinia, and Turkey<sup>3</sup>. The participating rights of these Powers were various. Turkey, Great Britain, France, and Sardinia were present as victorious Powers in the Crimean War, Russia as the defeated one; Austria as mediator in the long drawn out negotiations, which took place at Vienna between the two sides engaged in the struggle, in intervals between military action. At the eleventh session, the representative of Prussia joined the discussions, as a signatory to the Treaty of 1841 regarding the Straits, which had to be revised.

In the plenary sessions all the participants took a formally equal part. Only Prussia, who was not a combattant in the Crimean War, was absent from

<sup>1</sup> NRG I série XV 703—704.

<sup>2</sup> Ibid. 702.

<sup>3</sup> Ibid. 700.

the discussions on drawing up a peace treaty. She figured, however, as a party to the final treaty. Her representative appeared solely at the discussions on the revision of the decisions with regard to the Black Sea Straits, and other general European matters<sup>4</sup>.

Besides the plenary sessions, there were sessions of various commissions, for which the protocols are missing. From the constitutions that were laid down for the commissions it appears that there was no discrimination between participants at the Congress. There may be certain doubt, however, on the participation of Turkey and Sardinia. It should be remembered that, at this Congress alone Turkey was allowed "to take a part, availing herself of public law and the European Concert". This participation depended, distinctly but very discreetly, on the granting of certain guarantees by Turkey for the benefit of her Christian subjects<sup>5</sup>. Attention should also be called to the fact that the representative of Turkey had no voice in the discussion on European matters, in which, besides the representative of Turkey, all the other plenipotentiaries took part<sup>6</sup>.

The position of Sardinia is also not very clear, although she took part in all the discussions. This does not yet signify, however, her reception into the Concert, which is demonstrated by the following incident. When the representative appointed by Sardinia allowed himself to criticise many times the occupation of the Italian peninsular, the representative of France drew his attention to the fact that the occupation was demanded at Laibach, and that it was a result of a resolution taken by all the great Powers. He added by this that "he does not acknowledge that intervention carried out as a result of agreement amongst the five great Powers could be subject to the demands of a secondary State"<sup>7</sup>.

On the basis of the draft of the debates it is impossible to establish any essential differences in the treatment of individual States participating in the Congress of Paris. On the other hand, the relation of the participants to the remainder of European States is that of a clearly self-appointed re-

<sup>4</sup> Ibid. 700—769.

<sup>5</sup> Article IX of the Peace Treaty said: "Sa Majesté Impériale le Sultan, dans sa constante sollicitude pour le bien-être de ses sujets, ayant octroyé un firman qui, en améliorant leur sort, sans distinction de religion ni de race, consacre ses généreuses intentions envers les populations Chrétiennes de son Empire, et voulant donner un nouveau témoignage de ses sentimens à cet égard, a résolu de communiquer aux Puissances Contractantes ledit firman, spontanément émané de sa volonté. — Les Puissances Contractantes constatent la haute valeur de cette communication. Il est bien entendu qu'elle ne saurait, en aucun cas, donner le droit aux dites Puissances de s'immiscer, soit collectivement, soit séparément, dans les rapports de Sa Majesté le Sultan avec ses sujets, ni dans l'administration intérieure de son Empire". NRG 1 série XV 774—775.

<sup>6</sup> See below

<sup>7</sup> Ibid. 766—767. "... devenir l'objet des reclamations d'un Etat de second ordre".



presentation through the Congress of the interests of all Europe. As proof of this it is sufficient to look at the decisions of the Congress and the manner in which general European affairs were discussed.

In regard to the decisions taken in the name of the whole of Europe, we should quote first of all the above mentioned Article VII of the peace treaty:

Sa Majesté l'Empereur des Français, Sa Majesté l'Empereur d'Autriche, Sa Majesté la Reine du Royaume-Uni de la Grande Bretagne et d'Irlande, Sa Majesté le Roi de Prusse, Sa Majesté l'Empereur de toutes les Russies, et Sa Majesté le Roi de Sardaigne, déclarent la Sublime Porte admise à participer aux avantages du droit public et du Concert Européens...<sup>8</sup>

Further in Article XI:

La Mer Noire est neutralisée: ouverte à la marine marchande de toutes les nations, ses eaux et ses ports sont formellement et à perpétuité interdits au pavillon de guerre, soit des Puissances riveraines, soit de toute autre Puissances, sauf les exceptions mentionnées aux Articles XIV et XIX du présent Traité<sup>9</sup>.

Finally in Article XV:

L'Acte du Congrès de Vienne ayant établi les principes destinés à régler la navigation des fleuves qui séparent ou traversent plusieurs Etats, les Puissances Contractantes stipulent entre elles qu'à l'avenir ces principes seront également appliqués au Danube et à ses embouchures. Elles déclarent que cette disposition *fait, désormais, partie du droit public de l'Europe, et la prennent sous leur garantie*<sup>10</sup>.

For the execution of this decision the Congress created a European Danubian Commission, with the membership of one representative of every country participating in the Congress, *i. e.* with the participation of Great Britain or Sardinia, but without, for instance, that of Bavaria, a Danubian State<sup>11</sup>.

The representatives of Austria, the Sublime Porte, and Wirtemberg were appointed to the Permanent River Commission. Later it was foreseen that the commissioners of the Danubian Provinces, agreed to by Turkey, should also join. It should be stressed that neither Bavaria nor Wirtemberg had, being absent, any influence on these decisions.

The relation of the participants in the Congress to the remainder of Europe is clearly seen in the wide scope of discussions on various matters with reference to the most distant parts of Europe. This was begun by the representative of France, and an active part in it was taken by all the plenipotentiaries, with the exception of that of Turkey. Firstly the delegate of France expressed a point of view, which was a novel and distinct reference to the European System:

Quoique réuni spécialement pour régler la question d'Orient, le Congrès pourrait se rapprocher de ne pas avoir profité de la circonstance qui met en présence les Représentants des principales Puissances de l'Europe, pour élucider certains principes, exprimer des intentions,

<sup>8</sup> NRG 1 série XV 774.

<sup>9</sup> Ibid. 775.

<sup>10</sup> NRG 1 série XV 776. The author's underlining.

<sup>11</sup> Ibid.

faire enfin certaines déclarations, toujours et uniquement dans le but d'assurer, pour l'avenir, le repos du monde, en dissipant, avant qu'ils ne soient devenus menaçants, les nuages que l'en voit encore poindre à l'horizon politique<sup>12</sup>.

Next the representative of France occupied himself with the situation in Greece, saying amongst other things:

L'anarchie à laquelle a été livré ce pays, a obligé la France et l'Angleterre à envoyer des troupes au Pirée dans un moment où leurs armées ne manquaient cependant pas d'emploi. Le Congrès sait dans quel état était la Grèce; il n'ignore pas non plus que celui dans lequel elle se trouve aujourd'hui est loin d'être satisfaisant. Ne serait-il pas utile, dès lors, que les Puissances représentées au Congrès manifestassent le désir de voir les trois Cours protectrices prendre en mûre considération la situation déplorable du Royaume qu'elles ont créé, en visant aux moyens d'y pourvoir?<sup>13</sup>

The French representative followed this with a warning to the Congress about the situation in Italy:

les Etats Pontificaux sont également dans une situation anormale, que la nécessité de ne pas laisser le pays livré à l'anarchie a déterminé la France, aussi bien que l'Autriche, à répondre à la demande du Saint Siège, en faisant occuper Rome par ses troupes, tandis que les troupes Autrichiennes occupaient les Légations<sup>14</sup>.

As justification for his progress, he gave the following argument:

la tranquillité des Etats-Romains, dont depend celle de toute l'Italie, touche de trop près au maintien de l'ordre social en Europe pour que France n'ait pas un intérêt majeur à y concourir par tous les moyens en son pouvoir<sup>15</sup>.

Further as a conclusion to the situation on the Italian peninsular, he suggested that the Congress should call upon the governments of the Italian peninsular to liquidate all anarchist activity<sup>16</sup>. Finally this representative complained of the defamatory campaign of the Belgian press directed against France, which according to him, "... is of no less regard to the interests of all European Powers"<sup>17</sup>.

In turn the representative of Great Britain, speaking about Greece, expressed the following opinion:

représentant les principales Puissances de l'Europe, le Congrès manquerait à son devoir, si, en se séparant, il consacrait par son silence des situations qui nuisent à la équilibre politique, et qui sont loin de mettre la paix à l'abri de tout danger dans un des pays les plus intéressants de l'Europe<sup>18</sup>.

Regarding the Papal States, he pointed out that the administration of the Church's territories caused difficulties which could give birth to dangers, which "the Congress has the right to try to avoid"<sup>19</sup>.

Speaking on the government of Naples he stressed amongst other things the principle of non-intervention:

<sup>12</sup> Ibid. 755.

<sup>13</sup> Ibid.

<sup>14</sup> Ibid. 756.

<sup>15</sup> Ibid.

<sup>16</sup> Ibid.

<sup>17</sup> Ibid. 757.

<sup>18</sup> Ibid. 758.

<sup>19</sup> Ibid. "Que le Congrès a le droit de chercher à conjurer".

on doit sans nul doute reconnaître en principe qu'aucun Gouvernement n'a le droit d'intervenir dans les affaires intérieures des autres Etats<sup>20</sup>.

He recognised, however, exceptions to this principle:

il est des cas où l'exception à cette règle devient également un droit et un devoir. Le Gouvernement Napolitain lui semble avoir conféré ce droit et imposé ce devoir à l'Europe; et puisque les Gouvernements représentés au Congrès veulent tous au même degré soutenir le principe monarchique et repousser la révolution, on doit élever la voix contre un système, qui entretient au sein de masses ... l'effervescence révolutionnaire, ... nous devons donc faire parvenir au Roi de Naples le vœu du Congrès pour l'amélioration de son système de gouvernement — vœu qui ne saurait rester stérile...<sup>21</sup>

The representative of Austria agreeing to many of the already expressed opinions declared himself, however, decidedly against intervention, because according to him "it would not be possible to intervene in the internal situation of independent States, which were not represented at the Congress"<sup>22</sup>. In favour of it the French representative gave the following reconciliatory explanation, which is an expression of the new distribution of power and the new current which was moderating a little the bullying of the great powers:

qu'il ne s'agit d'arrêter des résolutions définitives, ni de prendre des engagements, encore moins de s'immiscer directement dans les affaires intérieures des Gouvernements représentés ou non représentés au Congrès, mais uniquement de consolider, de compléter l'oeuvre de la paix en se préoccupant d'avance des nouvelles complications qui pourraient surgir, soit de la prolongation indéfinie ou non justifiée de certaines occupations étrangères, soit d'une licence perturbatrice contraire aux devoirs internationaux<sup>23</sup>.

The representative of Prussia, referring to this discussion, remarked on the situation at Neufchâtel: "...le seul point en Europe où contrairement aux Traités et à ce qui a été formellement reconnu par toutes les grandes Puissances, domine un pouvoir révolutionnaire, qui méconnaît les droits du Souverain"<sup>24</sup>.

The views cited here in these discussions remind of the debates from the first congresses of the time of the Holy Alliance. Their tune, however, is already other. This difference is expressed in the stress laid on the principle of non — intervention in the internal affairs of States, and the necessity of extensively justifying would be rights to abandon this principle by the Congress representing Europe.

The Congress of Paris also took, in the name of Europe, a serious initiative in the development of international law. At this time, however, without unilaterally enforcing norms, but on the contrary, stipulating that they should be obligatory solely to States who acceded to them<sup>25</sup>.

<sup>20</sup> Ibid. 759.

<sup>21</sup> Ibid.

<sup>22</sup> Ibid. 761. "Il (lui) serait impossible, en effet, de s'entendre de la situation intérieure d'Etats indépendants qui ne se trouvent pas représentés au Congrès".

<sup>23</sup> Ibid.

<sup>24</sup> Ibid. 762.

<sup>25</sup> NRG I serie XV 768; cf. HUBERT *Prawo* I, 100—103.

The representative of France proposed to the Congress that it should complete its debates with a declaration which would establish a remarkable step in international law and which would be accepted by the whole world with great gratitude<sup>26</sup>. He added that the Congress of Westphalia had confirmed liberty of religious belief, that the Congress of Vienna had abolished the slave trade, and that a worthy problem for the Congress of Paris would be the laying of a foundation of uniform maritime law in wartime<sup>27</sup>.

The representative of Great Britain on his part confirmed that the new horrors of war inclined all to search for a means of obviating its return. He suggested inserting into the Treaty of Paris a resolution which would recommend an appeal to mediation before States resolved upon force in a conflict between the Sublime Porte and Powers who were signatories to the treaty<sup>28</sup>.

Finally, after a longer discussion these plans were accepted by the Congress in the form of a declaration, famous to this day, respecting naval warfare, and of a resolution inserted in the protocol. This stated that countries who had a serious dispute with one another should, before having recourse to arms, call upon, if the circumstances allowed, the good offices of a friendly State<sup>29</sup>.

In conclusion the Congress of Paris can be described as one further typical business meeting of the Concert of the great Powers transacting political and legislative functions in the name and for the benefit of all Europe. This time the term "European Concert" was even officially introduced into the final draft<sup>30</sup>. A new spirit and distribution of power found their expression in the stressing of the principle of non-intervention and a distinct reservation that the rules of international law which were elaborated by the Congress should be obligatory upon only those countries which accede to them.

#### THE LONDON CONFERENCE ON THE QUESTION OF LUXEMBURG

Conferences and commissions which met in Europe after the Congress of Paris were in general a consequence of or a simple continuation of its work. Certain new elements that enlighten the mutual relations of great and small States can be found in the discussions on the question of the neutralisation of Luxemburg. It was here that a formal invitation was made to Italy to join the European Concert.

<sup>26</sup> NRG 1 série XV 757.      <sup>27</sup> Ibid.      <sup>28</sup> NRG 1 série XV 765.

<sup>29</sup> "... les Etats entre lesquels s'élèverait un dissentiment sérieux, avant d'en appeler aux armes, eussent recours, en tant que les circonstances l'admettraient, aux bons offices d'une Puissance amie". Ibid. 765, 767. The acceptance of the British plan by the Congress only in the form of a non-compulsory request given in the protocol of the debates is an expression of the apprehension of States with regard to the limitation of their freedom of action in any way; HUBERT, *Pravo* I 101—103.

<sup>30</sup> See above Article VII.

This conference was called in London in 1867 on the invitation of the King of Holland and the Grand Duke of Luxemburg, with the participation, at first, of only the signatories to the treaty on the Belgian question of 1839. These were the representatives of the great Powers: Austria-Hungary, France, Great Britain, Prussia, and Russia—and the representatives of Belgium and Holland. Amongst the representatives of Holland was a representative of Luxemburg.

At the first session the president also proposed that an invitation should be made to the Italian representatives to participate in the sessions, because:

la présence au sein de la Conférence du Représentant de Sa Majesté le Roi d'Italie contribuerait au succès de ses délibérations.

All agreed to this proposal. The representative of Holland, however, stipulated that the discussion should only be limited to the treaty of 1839<sup>31</sup>.

In his thanks for the invitation the representative of Italy said in reply, amongst other things:

J'aime à y voir une preuve de plus des bons rapports, qui existent entre l'Italie et les principales Puissances Européennes, ainsi que de leur opinion que dans les questions Européennes il est désirable que sa voix se fasse entendre.

Nous n'avons pas, ainsi que d'autres Puissances, les droits antérieurs pour prendre part à la Conférence. Nous le devons à une marque de déférence de leur part<sup>32</sup>.

The invitation to Italy to full participation in the discussions and decisions without any formal or meritorial basis was her official adoption into the European Concert. Italy had participated in it from the Congress of Paris till this time in practice only.

How far without significance was the participation of the representatives of Holland and Luxemburg in the Conference, that is the countries most directly interested, is illustrated in a disarming note at the introduction of the debates. Namely at the opening of the discussions on the neutralisation of Luxemburg the president expressed the opinion that, as the conference met on the invitation of the King of Holland and the Grand Duke of Luxemburg, the representative of the Grand Duke should be called upon to show the reasons for which he had taken this step. The representative of the Grand Duke spoke quite directly (a summary of the protocol):

sa connaissance de la marche des communications diplomatiques qui ont eu lieu récemment entre les Grandes Puissances relativement à la question du Luxembourg est insuffisante pour le mettre à même de répondre à cette demande<sup>33</sup>.

This statement gives a good picture of whose hands European affairs were in at this period.

<sup>31</sup> NRG 1 série XVIII 433.

<sup>32</sup> Ibid. 434.

<sup>33</sup> Ibid.

## THE PARIS CONFERENCE ON THE GREEKO-TURKISH DISPUTE

This Conference merits attention as an example of efficacious police action by the Concert of the great Powers. It was called in 1869 for the purpose of settling the dispute which arose between Turkey and Greece, and which was connected with the rising in Crete in 1866. The protocol of the first session of the Conference said:

Les Puissances signataires du Traité du 30 mars 1856, après s'être entendues pour rechercher en commun, et conformément au Protocole du 14 avril<sup>34</sup> suivant les moyens d'aplanir le différend survenu entre la Turquie et la Grèce, ont autorisé leurs Représentants à Paris à se réunir en Conférence<sup>35</sup>.

The task of the conference came down in reality to the ratification of the demand contained in the Turkish ultimatum sent to Greece<sup>36</sup>. The representative of Greece was not admitted to full participation in the Conference, however, they decided it was just to hear the Greek point of view. And it was also decided that a representative of the Greek government should be called upon in an advisory capacity<sup>37</sup>.

Before the opening of the Conference the representative of Greece declared to the president, that according to the instructions he was given he was not empowered to participate in the debates unless he was admitted on exactly the same terms as the Turkish ambassador<sup>38</sup>. This demand for equality he repeated once more before the Conference, when he was admitted on the motion of the representative of Russia. He added that he had received orders to retire from the debates if his demand did not receive satisfaction<sup>39</sup>.

This threat caused the conference indignation. It was explained that the Conference was called for the signatories to the Treaty of Paris and in accord with the protocol of the 14th April of the same year. Here is an extract from the protocol of this session:

La Grèce n'a pas été partie contractante dans les grandes transactions de cette époque. C'est par cette unique raison, a dit M. le Plenipotentiaire de France, et non dans la pensée de méconnaître sa situation, sa dignité ou ses droits, qu'elle n'a pas été invitée au même titre que la Turquie.

Reconnaissant la grave responsabilité que le Gouvernement hellénique assumerait, s'il persistait dans la résolution inattendue de s'abstenir, la Conférence a décidé que le Président, au nom de tous et avec l'appui des autres Cours, ferait une démarche auprès du Cabinet d'Athènes pour l'engager instamment à revenir sur une détermination de nature à compromettre l'oeuvre conciliatrice proposée à leurs efforts<sup>40</sup>.

At the conclusion of the discussions on this theme, the Conference sent a telegram by means of the French representatives in Constantinople and

<sup>34</sup> See above 38.

<sup>35</sup> NRG 1 série XVIII 81.

<sup>36</sup> Ibid.

<sup>37</sup> Ibid.

<sup>38</sup> Ibid. 81.

<sup>39</sup> NRG 1 série XVIII 81.

<sup>40</sup> Ibid. 82.

Athens, which called on both sides to maintain the *status quo* and to refrain from all military action<sup>41</sup>. The president also sent a telegram to the Greek government, informing it of the decision of the Conference with regard to its participation in the debates, and warning it of its responsibility in case it refused to participate in the Conference<sup>42</sup>.

At the next session the Conference decided to continue its work without the participation of Greece with the proviso that the representative of Russia should take upon himself the defence of her interests<sup>43</sup>. Contact between the Conference and the Greek government in the period of the debates consisted solely of accepting memoranda or unofficial notes through the president, who showed them in turn, in copy form, to the participants<sup>44</sup>. The president on his side communicated with the representative of Greece in Paris, informing him of the progress of the work<sup>45</sup>.

As a result of these debates the Conference issued a declaration, which sounds like a verdict given in the name of the six great Powers. As a reason they gave their fears of the danger which could arise from a dispute. The declaration was issued on the basis of an accurate study of the documents. They established here the guilt of Greece in violating the principles of the law of nations. They called her attention to the fact that she should comply with the principles of international behaviour common to all governments and she ought to satisfy the demands of the Sublime Porte (—here follows the enumeration of two points). Finally the hope is expressed that normal relations will be restored between both countries, which would be understood, as is further explained in the protocol, by the acceptance of the declaration. In the same protocol there is mention of a summons to the representatives of the Powers participating in the conference at Athens to support the mission entrusted to the president of the Conference<sup>46</sup>. We can be convinced of the gravity attributed to the declaration by the participants in the Conference from the decisions on the form of this document. The president confirmed that the insertion of it into the protocol of the session or into a special protocol “would have in this way the sanction of Europe”<sup>47</sup>.

The Greek government accepted the declaration and in this way the conflict was resolved<sup>48</sup>. In his reply the representative of Greece, however, expressed the complaint that he was not able to participate in the work of the conference, because of the lesser position he was offered in relation to the representative of Turkey<sup>49</sup>.

The settlement of the Greeco-Turkish dispute by the Concert of Europe is an example of effective police action by the great Powers, with a vio-

<sup>41</sup> Ibid. 83.

<sup>42</sup> Ibid. 85.

<sup>43</sup> Ibid. 86.

<sup>44</sup> Ibid. 98.

<sup>45</sup> Ibid. 101.

<sup>46</sup> Ibid. 104—105.

<sup>47</sup> Ibid. 92. “Il aura ainsi la sanction de l'Europe”.

<sup>48</sup> Ibid. 109.

<sup>49</sup> Ibid.

lation, however, of the elementary principle of the equality of the two sides in the dispute to the disadvantage of the smaller State, which did not belong to the Concert. On the other hand, it should be noted, that in spite of this trial, the great Powers were not successful in forcing Greece to formally recognise the imposition on her of discrimination.

#### THE LONDON CONFERENCE ON THE NEUTRALIZATION OF THE BLACK SEA

From the conferences of this period we have yet to mention the London Conference of 1871 devoted to a revision of the decisions of the Treaty of Paris concerning the neutralization of the Black Sea, because of its importance for the development of international law and of the characteristic statements here of the delegates.

Agreement by the signatories to the Treaty of Paris for the holding of this Conference provided an occasion for the confirmation of the principle *pacta sunt servanda*. The representative of Great Britain confirmed:

Cette unanimité fournit une preuve éclatante que les Puissances reconnaissent que c'est un principe essentiel du droit des gens qu'aucune d'elles ne peut se délier des engagements d'un Traité, ni en modifier les stipulations, qu'à la suite de l'assentiment des parties contractantes, au moyen d'une entente amicale<sup>50</sup>.

In the declaration of the representatives the idea was manifested of co-operation among the great Powers in the name of and for the good of all other States. For example the delegate of Turkey expressed his opinion as follows:

Toutefois, dans une question de si haute importance, la Sublime Porte ne croit pas devoir consulter exclusivement ses intérêts, sans tenir compte des intérêts et des vues des autres Grandes Puissances, ses amies et alliées, aux efforts et aux concours desquelles elle doit en grande partie l'oeuvre qu'il s'agit maintenant de modifier<sup>51</sup>.

The representative of France then thanked the Conference for the adjournment of the debates until his arrival, and in turn declared:

(Le Gouvernement Français) saisit aussi avec empressement l'occasion de maintenir la règle salubre de la société européenne, — à savoir, de n'apporter aucun changement essentiel aux relations des peuples entr'eux, sans l'examen et le consentement de toutes les Grandes Puissances, — pratique tutélaire, véritable garantie de paix et de civilisation, à laquelle trop de dérogations ont été apportées dans ces dernières années<sup>52</sup>.

The declarations given here are a token of the persistence and continuity in the co-operation of the Concert in spite of a change in the political situation.

<sup>50</sup> NRG 1 série XVIII 275.

<sup>51</sup> Ibid. 281.

<sup>52</sup> Ibid. 296.



## THE DOCTRINE

As a typical representative of the period of the victory of national constitutionalism may be cited August HEFFTER, who in his system of 1844, on the one hand declared himself on the side of revolution against the reactionary arbitrariness of the great Powers, and on the other he was inclined to recognise the existence of legal inequality between States as a consequence of political inequality. Here are two declarations which merit quotation in their entirety.

Writing about the Holy Alliance and about the agreement of the great Powers concluded at the Congress of Aix-la-Chapelle, HEFFTER in this way characterizes the hegemony of the great powers:

Seit dieser Zeit und auf dem Grund der damals getroffenen Verabredungen bildeten jene Grossmächte gewissermassen ein Völkertribunal, wo die wichtigsten politischen Angelegenheiten nicht nur dieser Staaten selbst, sondern auch dritter Staaten, berathen und festgestellt wurden. Die hiendurch unterstützte Reaction gegen die noch fortglühende Revolution rief letztere im J. 1830 um so entschiedener hervor, und natürlicher Weise kann das revolutionaire Princip noch auch selbst der basirte nationale Constitutionalismus mit einer derartigen regulatorischen Gewalt der Grossmächte sich einverstanden erklären<sup>53</sup>.

The right of equality he recognised as belonging to all countries without regard to their political situation. It is the result of the conception of sovereign States itself. To this principle, according to him, there exist, however, partly natural and partly arbitrary modifications:

Auf höchst natürlichem Wege endlich bringt politische Machtungleichheit auch eine gewisse Rechtsungleichheit mit sich. Minder mächtige Staaten können sich meist nur durch Anlehnung an mächtigere behaupten; es fehlt ihnen an Mitteln sich in allen Stücken in gleicher Linie mit diesen mächtigeren auf würdige Art zu behaupten. Hieraus entstehen Zugeständnisse und Maximen des Erhaltens, die unter anderen im Europäischen Staatensystem ein eigenes Rangrecht erzeugt haben<sup>54</sup>.

Recognition of legal inequality between States, although it refers only to inequality of rank, is a new development in the doctrine. It is seen also in the most important representative of the doctrine in this period, BLUNTSCHLI, whose ambition was to become a modern scholar. Stressing the law as a living order in human society, and not a dead one<sup>55</sup>, he expressed the following point of view:

Die Rechtswissenschaft darf daher meines Erachtens nicht bloss die schon in früheren Zeiten zur Geltung gelangten Rechtssätze protokolliren, sondern soll auch die in der Gegenwart wirksame Rechtsüberzeugung neu aussprechen und durch diese Aussprache ihr Anerkennung und Geltung verschaffen helfen. Je empfindlicher der Mangel Gesetzgeberischer Organe ist, welche für die Fortbildung des Völkerrechts sorgen, um so weniger darf sich die Wissenschaft dieser Aufgabe entziehen<sup>56</sup>.

<sup>53</sup> HEFFTER 9—10.

<sup>54</sup> Ibid. 44—45.

<sup>55</sup> BLUNTSCHLI VI.

<sup>56</sup> Ibid. VII.

There is no mention here of equality of rights, but rather of a limited equality, which reduces itself to equality before the law, that is equal protection by the law. In Article 81 of his Codex he writes:

Jeder Staat ist als Rechtsperson dem andern Staate gleich. An dem Völkerrecht haben alle Staaten gleichen Antheil und Anspruch auf Achtung ihrer Existenz.

Die Rechtsgleichheit der Staaten ist ebenso zu verstehen wie die Rechtsgleichheit der Privatpersonen. Der Unterschied der Grösse, der Macht, des Ranges ändert an der wesentlichen Gleichheit Nichts, welche in der Annerkennung aller dieser Personen als Rechtswesen und der gleichmassigen Anwendung der völkerrechtlichen Grundsätze auf Alle besteht<sup>57</sup>.

If it refers to the rank of States, the understanding of the principle of equality of States as equality of their rights is, according to him, false, because "rank, as is applied to a State in the society of the remainder of States, is not ordinarily the result of its legal personality, but is a result of its position according to its power (Machtstellung) and influence, which are various"<sup>58</sup>.

Further developing this line of thought in Article 85, BLUNTSCHLI gives a definition of a great Power:

Auf Kaiserlichen Rang und Titel haben nur diejenigen Staaten einen natürlichen Anspruch, welche nicht eine blosse nationale, sondern eine universelle Bedeutung haben für die Welt oder mindestens einen Welttheil und insofern Weltmächte sind oder welche doch als Grossstaaten verschiedene Völker in sich einigen oder auf verschiedene Völker einen staatlich bestimmten Einfluss haben<sup>59</sup>.

The legality and continuity of the Concert of the great Powers is directly recognised in a special sub-chapter with the title Pentarchy. In Article 103 Bluntschli wrote:

Der in Aachen 1818 befestigte Verband der fünf europäischen Grossstaaten England, Frankreich, Oesterreich, Preussen und Russland bedeutet nicht einen festen völkerrechtlichen Senat für Europa, sondern nur, dass diese Staaten zur Zeit die Macht haben und es als gemeinsame Aufgabe erkennen, bei der Regulierung, der europäischen Angelegenheiten mitzuwirken<sup>60</sup>.

In small type, however, he added an essential comment:

Die sogenannte Pentarchie mag als Anfang einer Organisation Europas, aber sie kann nicht als ihre Vollendung betrachtet werden<sup>61</sup>.

In the following articles (105 and 106) he referred to the fourth paragraph of the Protocol of Aix-la-Chapelle, where in spite of reservations we can also see an acknowledgement of the predominate role of the great Powers:

<sup>57</sup> Ibid. 91.

<sup>58</sup> Ibid. 92.

<sup>59</sup> Ibid. 92—93.

<sup>60</sup> Ibid. 100.

<sup>61</sup> Ibid.

Jeder europäischen Staat hat ein Recht darauf, dass seine besondern Angelegenheiten nicht von den Grossstaaten gemeinsam verhandelt werden, ohne dass er zu den Verhandlungen eingeladen und zugezogen werde. (Aachener Protokoll)..

Das Recht des Staates, über dessen Verhältnisse in der Versammlung der europäischen Grossstaaten verhandelt wird, zugezogen zu werden, erstreckt sich auf alle Verhandlungen. Er steht dabei den Grossstaaten nicht wie eine Partei ihrem Richter, sondern als vollberechtigte Person und wesentlich gleichberechtigtes Mitglied der europäischen Staatengenossenschaft zur Seite.

As typical congresses, where justice was not done, BLUNTSCHLI gives the congresses of Laibach and Verona, on the contrary he characterises the Congress of Paris as a meeting in which this principle was better observed<sup>62</sup>.

Amongst other authors of this period we should mention Adolf HARTMANN'S *Institutionen des praktischen Völkerrechts in Friedenszeiten* (1874), in which great attention is paid to the fact that, although the reaction of the Holy Alliance or Pentarchy did not directly create a law of nations, however, "under the influence and pressure of such kinds of systems there developed lawful opinions which later appeared in practice"<sup>63</sup>.

#### SUMMARY

After a stormy interval in co-operation amongst the great Powers, the activity of the European Concert was revived at the Congress of Paris for settling matters connected with the conclusion of the common war. If we consider the importance of the decisions which the great Powers took in the name of Europe at that Congress, we cannot not only speak of a lessening of the leading role of the great Powers, but on the contrary it is possible to see a consolidation in the power of the Concert, whose name was officially inserted into the Treaty of Paris. The durability of the Concert can be seen in the fact that it functioned efficiently in solving many important matters, in spite of the presence together of the combattants at the round table of debate, even when the defeated party was one of the most important members of the Concert, Russia.

We cannot fail to note, however, certain essential changes in the functioning of the Concert compared with the previous period. Above all the debates of the great Powers completely lose that regular character which they had in the period of the Holy Alliance. National revolutions left their mark, which is manifested among other things in the more frequent underlining by members of the Concert of the principle of non-intervention in the internal affairs of other countries. Most of all, however, these changes were expressed in the admission of a united Italy into the Concert, and, although

<sup>62</sup> Ibid. 101—102.

<sup>63</sup> HARTMANN 19: "Unter dem Einflusse und dem Drucke derartiger politischer Systeme bilden sich aber Rechtsüberzeugungen aus, welche dann in Tatsachen sich offenbaren".

not as a member with full rights, Turkey, a non-Christian State from beyond Europe<sup>61</sup>.

Further conferences of this period confirmed this conclusion. The Concert worked energetically to solve the Greeko-Turk dispute, and the League of Nations or the United Nations might well be envious of this dexterity. Finally it put great emphasis on the development of international treaty law.

The doctrine of international law contemporary to these events did not have and could not have any reaction, because of the lack of perspective in time, on the practice of this period in such a way as it deserved. An important fact, however, in comparison with recently previous opinions, was a tendency towards the further adoption of the principle of the equality of States — not equality of rights, but rather equality of lawful protection, and a tendency towards the recognition of the continuity and even the legislating role of the European Concert.

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<sup>61</sup> Paul BASTID was correct when he wrote that the Revolution of 1848 at first paralysed the European System and that in the following years there was no sign of the Concert's activity. Further, however, he added: "Le concert européen allait se reconstituer après la tourmente, lorsque les révoltes seraient définitivement vaincues. Au Congrès de Paris de 1856, couronnant l'action collective de la France ... contre la Russie, il devait trouver une renaissance éclatante, non seulement régler des questions territoriales d'une immense portée, mais encore formuler des règles de droit international aussi importantes dans leur domaine que celles du Congrès de Vienne, et attester par la son autorité. Sans doute s'agissait-il à nouveau d'un concert entre des nations attachées au principe dynastique. Mais ce concert différerait malgré tout assez profondément de l'ancien, parce que précisément le souffle de 1848 avait passé par là". BASTID *Révolution* 273—274.

## CHAPTER THREE

### THE ENTRANCE INTO THE ARENA OF THE SMALL STATES

#### THE DUAL PRACTICE OF THE SECOND HALF OF THE NINETEENTH CENTURY

The practice in conferences in the second half of the 19th century, and more particularly in the last quarter century, is characterized by a definite duality.

The conferences discussed up till now belong historically to the first type of international meeting. They had as their aim discussion on concrete, mainly vital, and at the same time contradictory interests by a certain limited group of States<sup>1</sup>. For the purpose of this work we may call them *closed conferences*, because the group of countries directly interested in the subject of the debate was limited, and even more limited was the circle of States admitted to the debates as participants with full rights. Often, as we have seen in the examples we have discussed, the very countries most interested were the ones passed over. Typical closed conferences were from the nature of things peace conferences, as well as meetings of the great Powers within the framework of the European Concert. The most recent period of classic conferences of this kind were the deliberations of the Grand Alliance during and after the last war<sup>2</sup>.

A completely different type of international conference was ushered in by the industrial revolution and the triumph of liberalism. Changes which this revolution caused in nearly all spheres, especially in the sphere of communications, violently increased the pace of international exchange. More and more matters up till now in the sphere of interest of one particular country took on international significance. Completely new fields of co-operation amongst countries were also created<sup>3</sup>.

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<sup>1</sup> Comp. HUBERT *Prawo* I 25.

<sup>2</sup> The Congress of Vienna of 1814/1815, Paris 1856, and the Conference of Paris of 1919 were also occupied with questions of common significance, but these were only marginal for them and were treated in a very arbitrary manner. Comp. HUBERT *Prawo* I 105, see below.

<sup>3</sup> HUBERT *Prawo* I 41; comp. *ibid.* 28, 34—40.

Professor HUBERT has defined these changes in his description of this period:

it was no longer a matter for France of indifference how, for example, communications were organised in Belgium. Progress in medicine and the biological sciences taught that the limitation of action to one country was not sufficient in fighting epidemics and epizootics...<sup>4</sup>

More and more urgent, therefore, became the regulation of these many matters in the same common interest of all international society. Beginning with the middle of the 19th century this was achieved with the help of a new democratic instrument of co-operation amongst nations, namely conferences, which, unlike those previously discussed, we shall call in short *open conferences*, because the universality and conformity of their aims made them open to all interested States, and even to the representatives of non-independent provinces, and what is most important that the conventions worked out by them were also open<sup>5</sup>. In spite of the fact that such conferences occupied themselves with very varied matters, they are clearly distinguishable from closed conferences to this degree that the discussions of both these types of conference together has led and is still leading to too ready and even false generalizations<sup>6</sup>. Amongst open conferences should be counted also those to which all countries were not in fact invited, but in which the aim of the debates was general, the prepared convention had an open character, or where other circumstances deserve such a classification<sup>7</sup>.

Beyond the already mentioned essential characteristic of the freedom to take part for all interested countries, and the lack of a basis for discrimination against participants in the debates, typical of these conferences was often the appearance of another phenomenon, namely a greater or lesser circumspection and even dislike, depending on the subject of the debates, against the participation of the great Powers in this kind of conferences. States, especially the great Powers, were simply afraid that a too ready participation in these conferences, which had as their aim the regulation for the future of certain spheres of co-operation between countries, might limit their independence too far.

This circumspection appeared in different ways, from a reservation in discussion, which tended to take away from the debates their binding character, and the dispatch of delegates with only limited powers, to a refusal to participate in such a conference at all.

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<sup>4</sup> HUBERT *Prawo* I 35.

<sup>5</sup> That is to say they made an accessive clause.

<sup>6</sup> See below.

<sup>7</sup> For instance the Brussels Conference of 1874 and the first Hague Conference, 1899· see below.

On the other hand, when countries decided on full participation in an open conference, it is possible to observe an unprecedented unanimity in these conferences in the acceptance of resolutions by a majority vote, or even an expression in advance of agreement for all the resolutions which the conference would consider.

In connection with the frequently special character of the subject of debate, it was also typical for such conferences to have specialists as delegates, that is with the participation of military, medical, technical, and other departmental personnel besides or even instead of diplomatic representatives. It should be further mentioned that the number of open conferences at the end of the 19th century several times exceeded the number of closed conferences, in spite of the fact that the practice of open conferences went back only to the middle of that century.

In this work, as similarly in the discussions of the closed conferences, we must limit ourselves to a discussion of only some of the most typical conferences, which in this period had a particularly important meaning for the development of international law. Giving examples only of open conferences is all the more justified, because the subject of their discussions, as was already mentioned, did not give so much occasion for different treatment of participating States according to their size, moreover these conferences followed a pattern of their own<sup>8</sup>.

## A.—Open Conferences

### FIRST POSTAL CONFERENCES

In spite of the fact, as we have already mentioned, that the practice of open conferences had only lasted from the fifties of the 19th century, the most typical of these conferences are considered only those whose aim was the organization on a full international scale of the spheres in international administration through the working out of conventions and the creation of international offices. In particular, attention deserves to be paid to the first postal conferences, because they were clearly a model for many of the following conferences of this type<sup>9</sup>.

The first postal conference under the title of "The International Postal Commission" was called on the initiative and invitation of the United States in Paris in 1863, having as its purpose the discussion of a series of introductory problems before going on to the working out of a postal convention<sup>10</sup>. It followed from the sending off of circulars the intention of the organizers

<sup>8</sup> See below.      <sup>9</sup> See below.

<sup>10</sup> *Commission internationale des Postes, Paris 1863.*

being the participation without any limitation of all interested contemporary States and postal Administrations.

In the first published circular of the General Postal Administration of the United States we find the following clause:

je vous prierais respectueusement d'appeler l'attention des Administrations étrangères sur cet sujet, et de demander leur concours dans la Conférence qui je propose<sup>11</sup>.

In the second circular:

je vous prie... de vouloir bien communiquer, aussitôt que possible, les Articles précédents aux diverses Administrations qui ont exprimé leur volonté de participer à la conférence, aussi bien que toute autre intéressée et disposée à y coopérer<sup>12</sup>.

Finally fifteen postal Administrations from European and American countries took part in the debates of the Commission, including the Sandwich Islands and the Hanseatic towns amongst others<sup>13</sup>. However the representatives of Russia and the petty German States did not appear, not because they were not invited, but, as it was admitted, because they did not receive notice in time<sup>14</sup>.

The Postal Commission of the year 1863 is thus a typical open conference. The subjects of its debates were technical matters, and at any rate neither vital nor controversial. At every step it was emphasized that the debates had only the character of non-compulsory discussions. The decisions resolved upon by a majority of votes merely formed material for regulations for the working out of future conventions<sup>15</sup>. During the debates all participants benefited from a complete equality.

To emphasize the differences of open conferences it is valuable to quote an extract from the address delivered by the host of the Conference, the Director-General of the French Post Office, which formed a sort of ideological declaration of the new era in international relations, the evidence of which are the open conferences themselves:

Le temps n'est plus, Messieurs, où les Nations, obéissant à un esprit de jalousie mal entendu, tendaient à circonscrire leur relations dans l'intérieur de leurs frontières...; en même temps que les grands travaux de l'industrie applanissaient les montagnes, rapprochaient les continents et triomphaient de la distance et du temps, les peuples ont cherché, par des rapprochements mutuels, à s'éclairer, à mettre leurs lumières en commun et à s'inspirer de toutes les idées utiles, qu'elles qu'en fussent l'origine et la nationalité. L'esprit d'émulation a fait place à l'esprit d'exclusion...<sup>16</sup>

Another glaring token which proves the completely different character of open conferences is for instance the note, which, on the basis of the practice described up to now, it is not difficult to imagine could not possibly

<sup>11</sup> Ibid. 14.

<sup>12</sup> Ibid. 16.

<sup>13</sup> Ibid. 3—4.

<sup>14</sup> Ibid. 10.

<sup>15</sup> Ibid. 7, 9, 82—83.

<sup>16</sup> Ibid. 7.



have referred to a closed conference. In this note the government of Ecuador resigned from active participation in the debates of the conference, agreeing in advance to all its resolutions:

Le Gouvernement de l'Equateur, convaincu de l'importance des arrangements proposés, ne fera aucune difficulté d'adhérer à tout ce qui sera agréé par la Commission, comme si son délégué avait fait partie. Votre Excellence aura la bonté de faire cette communication au Maître Général des Postes des Etats-Unis, afin que l'Equateur puisse être considéré comme un des Etats participants<sup>17</sup>.

Finally, typical of all open conferences, and as was the case here, was the participation as delegates taking part, not only, as up to now, statesmen and diplomatic representatives, but also directors of postal administrations and secondary diplomatic staff. Only Switzerland and the Sandwich Islands delegated to the conference their envoys accredited to Paris<sup>18</sup>.

The first postal congress, which took place at Berne in 1874, is perfect example of an open conference in every sense. Its work was the Universal Postal Union. This time twenty two countries and postal Administrations were represented in the persons of the directors of their post offices. Amongst others, Norway, Serbia, and Rumania sent their own delegates, although these States were at this time not recognised as subjects of international law<sup>19</sup>.

At the first session of the Congress regulations governing the debates were resolved upon in a similar sense to those which we shall meet in other conferences of this kind. In these regulations there was a guarantee of the right to participate for all countries and postal administrations based on the principle of complete equality. Characteristic was also the limitation to the drafting of a summary protocol, which unfortunately excluded the transcription of many possibly interesting from the point of view of this work moments<sup>20</sup>. The resolutions were agreed to by majority voting, not excluding voting on the whole draft-convention, which was resolved upon by the abstention of the vote of France<sup>21</sup>.

<sup>17</sup> Ibid. 27.      <sup>18</sup> Ibid. 3—4.

<sup>19</sup> DCP II, 12. Serbia and Rumania were recognised from the Congress of Berlin: Norway was divided from Sweden only in 1905.

<sup>20</sup> *Règlement pour les conférences*. — Art. 1. Chaque Etat ou Administration peut se faire représenter soit par un ou par plusieurs délégués, soit par la délégation d'un autre Etat ou Administration... Art. 5. Tout délégué peut prendre part à la discussion des propositions soumises à la Conférences. Pour la votation, chacun des Etats et des Administrations contractants a droit à une voix et à une seule... Art. 6. En règle générale on ne produit, dans les procès-verbaux, que la marche générale de la séance... Art. 7. Chaque proposition mise en délibération est soumise à la votation. Le vote a lieu par appel nominal et suivant l'ordre alphabétique des Etats ou Administrations représentés". Ibid. 15—16.

<sup>21</sup> Ibid. 127

At this Congress a greater reserve and caution by the participants may also be seen. Of the twenty-two States and postal Administrations represented, only thirteen delegates had unlimited powers. The representatives of Great Britain through a large part of the debates, and those of France through the whole of the debates, had no authorisation to vote on the conclusions<sup>22</sup>.

The stipulation in the regulations about the equality of all participants did not prevent, however, the basis of merit becoming a cause of introducing certain differences. As for instance Belgium and with her Switzerland, because of their geographical positions and the great weight of their transit traffic, called for a special payment for transit<sup>23</sup>. The representative of the United States in his turn demanded a special higher rate for his country, considering the huge distances and difficulties in transport<sup>24</sup>. These demands, however, did not meet with a favourable reception, because they made a breach in the clear principle of free transit<sup>25</sup>.

We cannot count either as discrimination towards small States the introduction, on the proposal of Belgium, of a division of the members of the Union into six classes, on the pattern of the Telegraphic Union, as a basis for calculating the costs to the participating members of maintaining the International Postal Office, because each country had the opportunity of declaring into which class it wished to be placed. In the protocol there is no trace of any opposition to the introduction of this classification<sup>26</sup>.

A result of the first postal congress was an open convention, whose first article contained the following important decision:

Art. 1. Les pays entre lesquels est conclus le présent traité formeront, sous la désignation de l'Union Générale des postes, un seul territoire postal pour l'échange réciproque des correspondances entre leur bureaux de poste<sup>27</sup>.

This work was achieved moreover in an atmosphere of co-operation which was in fact without precedent. This was witnessed amongst other things in the speech made at the conclusion of the debates by the main initiator, the director, Stephan:

L'harmonie générale et parfaite qui a régné pendant le cours de nos délibérations et de nos négociations est du plus heureux présage, et l'on peut affirmer hardiment qu'une telle unanimité des Gouvernements de la grande majorité des peuples civilisés du globe constitue un fait sans égal dans l'histoire!<sup>28</sup>

The first postal congress became a real inspiration in the creation of many other unions and international offices. This found its expression in the protocols

<sup>22</sup> Ibid. 17, 20, 74, 109.

<sup>23</sup> Ibid. 37, 48.

<sup>24</sup> Ibid. 49.

<sup>25</sup> Ibid. 38, 48, 49.

<sup>26</sup> Ibid. 55, 57, 58, 80—81. Such a classification was introduced for the first time at the Telegraphic Conference in Vienna in 1868. *Documents de la Conférence télégraphique internationale de Vienne* (1868) p. 453, 30, 82.

<sup>27</sup> DCP 139.

<sup>28</sup> DCP 134.

of those conferences. For instance in the protocol of the conference on the subject of railway goods transport of 1881, we read:

Il est d'un heureux augure pour les résultats de la Conférence que ses délibérations aient lieu sur le sol de la Suisse, où se sont déjà discutées et résolues des questions semblables. Ces Conférences antérieures pourront servir de modèles à suivre. M. le Conseiller fédéral cite le Congrès postal de 1874, dont les décisions ont eu une influence si grande que l'on peut dire sans exagération qu'il a inauguré une ère nouvelle dans la vie postale des peuples<sup>29</sup>.

Similarly at the conference called with the aim of regulating the protection of industrial property, the postal congress and other open conferences were mentioned many times as examples worthy of imitation<sup>30</sup>.

Though in the course of all open conferences at which administrative organisations were set up, it is difficult to find any example of the classification of, or discrimination against participating States, however, in their statutes and at the periodical congresses of these organizations some members were given either directly or indirectly an additional number of votes. This privilege mainly relied on the admission in their own name of non-independent territories which were dependent on members of the colonial countries. Sometimes also the number of votes cast depended on objective measurable criteria, as for instance the amount of the contribution made by a member to the union, or the figure of its population<sup>31</sup>. A demand for extra votes in the administrative organization was made, however, not only by the great Powers, but by all States who considered that they had a right to this. Besides, this demand was not merely a unilateral importunity upon the organisation, but it had to be discussed and approved by all members by means of voting<sup>32</sup>.

The practice of international administrative organizations, forming now a huge separate part of international practice is not embraced in this work. Undoubtedly it merits a careful and penetrating examination to a greater extent than up till now, amongst other reasons because it gives rich experience in the application of objective criteria to the division of States for the needs of international organizations.

#### THE GENEVA CONFERENCES

Another, maybe yet more important kind of open conference, from the point of view of the development of international law, were those which we can name the legislating conferences, because their main aim was the creation of new, or the codification of customary rules of international law in the

<sup>29</sup> NRG 2 Série XIII, 61 (La Conférence internationale des transports par chemin de fer).

<sup>30</sup> NRG 2 série, X, 5, 9, 10.

<sup>31</sup> DICKINSON 310—321; SOHN 71—99.

<sup>32</sup> SOHN, *ibid.*; see HUBER 103.

sphere of the law of war and of peaceful means of settling international disputes.

To the most important conferences of this kind belong above all the Geneva Conferences (especially the first of 1864), the Brussels Conference of 1874, and the Hague Conferences of 1899 and 1907.

In 1864 on the invitation of a small neutral country, namely Switzerland, a conference was called at Geneva on the problem, as it was called, of "the neutralization of military health services on the field of battle". To this conference were invited all countries with whom Switzerland then maintained diplomatic relations. The high humanitarian aim alone, the alleviation of the fate of the sick and wounded on the field of battle, did not allow of any discrimination whatsoever in admission to the debates of this conference. Those States who were governed by the fore-mentioned typical circumspection in these matters did not participate, or participated only to a limited extent there<sup>33</sup>.

At the Geneva Conference this circumspection appeared striking. Of fourteen European nations, which were joined later by the United States and Denmark, only the delegates of two states, France and Switzerland, arrived at the commencement without any limitation on their full powers, and till the end of the debates seven delegations<sup>34</sup> did not have the power to sign the project of the convention, among them Great Britain and the United States. Russia did not participate at all in the conference<sup>35</sup>.

It is not difficult to discover reasons for this fact. The humanitarian aim of this conference touched a very delicate and vital matter: the diminution of the up till now unlimited rights of both sides fighting on a battlefield. This mistrust becomes even more understandable if we add that Geneva Conference belonged to the first of the open conferences with such ambitious aims<sup>36</sup>.

The debates took place with the complete maintenance of equality amongst the participants. The principle of unanimity was absolutely obligatory<sup>37</sup>. Characteristic was the participation of large numbers of doctors and military men. Only two diplomatic representatives took a part in the Conference<sup>38</sup>. As a result the open convention worked out regarding the protection of wounded on the battlefield and ambulances was at first signed by only twelve States. The majority joined them later, among these three great powers (Austria, Great Britain, and Russia)<sup>39</sup>.

At the second Geneva Conference of 1868 the mistrust of States had not yet diminished. At this Conference, whose aim was, amongst others, the

<sup>33</sup> NRG 1 série XX 379, 394—5; comp. HUBERT, *Prawo* I 105—106.

<sup>34</sup> NRG 1 série ,XX, 379, 394—395.

<sup>35</sup> Ibid. 398.

<sup>36</sup> Ibid.

<sup>37</sup> Ibid. 380.

<sup>38</sup> Ibid. 375—376.

<sup>39</sup> NRG I série, XVIII, 607—611.

extension of the results of the Geneva Conference of 1864 to sea warfare, invitations were sent out in the form of a circular. In the debates only fourteen nations participated, of which only eight sent delegates empowered to sign a convention<sup>40</sup>. Among the delegations this time five high ranking naval officers took part<sup>41</sup>.

An interesting innovation was the introduction of voting by a majority of participating persons (and not States) in matters of order, but voting remained by a majority of States in matters of the daily agenda. The principle of unanimity was kept only for resolutions on their merits<sup>42</sup>.

In the third Geneva Conference of 1906 thirty six nations took part, even distant Korea. Regulations were passed in the debates guaranteeing the complete equality of all participants<sup>43</sup>.

### THE BRUSSELS CONFERENCE

Because of its significance, which it has kept till today in the history of international law, the Brussels Conference of 1874 merits our attention. Its aim was the codification of the law of land warfare<sup>44</sup>.

On the initiative of Russia only fifteen countries, including Turkey, participated in this conference<sup>45</sup>. In spite of an invitation the United States did not send a representative, and the countries of South America were not invited, even though they expressed a wish to take part in the debates<sup>46</sup>. This was not, however, sufficient discrimination to remove from the Brussels Conference the character of an open conference. The countries which were not invited were not done so for practical considerations. The resolution of the full conference on this matters says:

la tâche de la Conférence n'étant point de faire un travail définitif, mais seulement d'étudier la matière au point de vue des principes qui pourraient servir de base à une entente générale, elle juge plus pratique et plus conforme à la pensée qui a présidé à sa convocation, de restreindre pour le moment la délibération entre les représentants des Gouvernements du Continent européen. Et cela d'autant plus que le Gouvernement des Etats-Unis de l'Amérique du Nord, qui aurait été le plus naturellement appelé à y participer, vu qu'il a le premier donné l'exemple d'une réglementation des droits et coutumes de la guerre, n'a pas jugé lui-même devoir envoyer un représentant à la Conférence de Bruxelles<sup>47</sup>.

Considering that the subject of the debates was even more delicate and disputable than at the Geneva Conference, namely the rights and customs of war, it is not surprising that great caution and reserve on the part of

<sup>40</sup> NRG I série XX, 401, 407—408.

<sup>42</sup> Ibid. 403.

<sup>44</sup> HUBERT *Prawo* I 112—113.

<sup>46</sup> NRG 2 série IV 47.

<sup>41</sup> Ibid. 400—401.

<sup>43</sup> NRG 3 série II, 321—619.

<sup>45</sup> NRG 2 série IV 1—2, 44, 140—141.

<sup>47</sup> Ibid.

the participants appeared at this conference. The representatives of Russia, Italy, Sweden-Norway, and Turkey appeared at first at this Conference without full powers<sup>48</sup>. The instructions given to the representative of Great Britain had the following characteristic reservation:

Vous vous abstenrez de prendre part à aucune discussion sur aucun point qui pourrait être mis en avant et qui vous paraîtrait s'étendre à des principes généraux du droit international non encore universellement reconnus et acceptés<sup>49</sup>.

The president had to quieten many times during the debates the anxiety of the participants, stressing the limited introductory character of the debates<sup>50</sup>. During the debates all had an equal voice in the discussions. To the commission, which was set up for the purpose of examining the draft came representatives of all the participating countries, mainly military men.

A distinct division between great and small States could be felt in the position they took when faced by particular problems. For instance, for small countries characteristic was their fear when faced by a limitation on their means of self-defence, in the case of attack. The Belgian delegate, who was further joined by the delegates of Holland, Portugal, Switzerland, and Spain, declared that he could not vote for any motion that would limit the right of his country to self-defence, stressing amongst other things, that there was a difference in the situation of a great country in the case of attack, since only a part of its territory was generally subjected to war<sup>51</sup>.

The outcome of this conference was the famous international declaration with regard to the rights and customs of war; even though not ratified, it plays an important role to this day. More especially it established a basis for the work of the Hague Conferences<sup>52</sup>.

#### THE HAGUE CONFERENCES

The Hague Conferences had an exceptional meaning in the development of international society and law, to which was added, only partly justified, the great hope of all civilised people. From the point of view of the problem

<sup>48</sup> Ibid. 15, 110.      <sup>49</sup> Ibid. 24.

<sup>50</sup> Ibid. 24, 28, 33, 91, 101, 111, 171.

<sup>51</sup> Ibid. 21, 71, 83; comp. HUBERT *Prawo* I 109—110.

<sup>52</sup> NRG 2 série, IV, 219—226; see below. Among the important conferences of yet another type should be added with a certain reservation the Conference of Berlin of 1884/5 on the question of West Africa. Fourteen countries participated in this Conference, namely those which were interested in trade with West Africa, among them all the great Powers. Classification of States more or less interested in the question of Africa was introduced at it. It was not, however, discrimination against small countries, because among the less interested found themselves three great Powers. At the conclusion of this Conference there was an open convention, thanks to which the rivers of West Africa were internationalized, and this part of Africa was opened to all countries on the principle of equality. NRG 2 série X, 199—427.

examined here the conferences are interesting, because for the first time on a free platform, as is a conference of the open type, there met together all great Powers and practically all the smaller States in order to discuss important matters regarding the problem of war and peace.

*The First Hague Conference.*—It began on the 18th May, 1899, on the initiative of Czar Alexander II and on the invitation of the Queen of Holland. Delegates from twenty six countries of the whole world met together there, *i. e.* twice as many as at the Brussels Conference of 1874. Only countries which had no representative at Petersburg did not participate, such as Liechtenstein, San Marino, and Monaco, and besides these European countries, countries from Central and South America. Brazil was invited, but declined to participate<sup>53</sup>.

The main purpose of the Conference was the permanent restriction of the growing arms race in the world, and combined with it the economic burden. The detailed plan of Muraviev was sent as a circular on the 30th December, 1898, establishing later a sort of programme for the Conference; it foresaw:—(1) a cessation to the increase in armaments for land and sea forces in peacetime, and a prohibition of the introduction of new kinds of weapons and means of destruction, (2) the extension of the Geneva Convention to sea warfare, (3) a revision of the Brussels Convention regarding the principle of conducting continental warfare, and (4) the acceptance of good offices, mediation, and arbitration as a means of avoiding war<sup>54</sup>.

The organisation of the Conference was clearly suited to this programme. The work was divided between three commissions, which in turn were divided into sub-commissions<sup>55</sup>. Within the framework of the commissions and sub-commissions were further chosen the drafting committee and the technical committee. At the sixth full session a general drafting committee was created for working out the final act of the Conference.

The debates of the Conference had no binding character for the governments of participating States. The final act had merely to confirm that the Conference had reached an understanding on certain matters<sup>56</sup>.

In the debates there was no formal difference between the participants. The president, at the beginning of the debate, declared:

Chaque Etat aura la faculté de se faire représenter dans chacune des commissions... chaque Etat n'aura qu'un vote unique dans chaque commission.

Les délégués, représentant des Gouvernements, pourront prendre part aux travaux de toutes les séances des commissions, ...

Les commissions constitueront elles-mêmes leurs bureaux et régleront l'ordre de leurs travaux<sup>57</sup>.

<sup>53</sup> Comp. WHITE 396; STRUPP I 449—450.

<sup>54</sup> STRUPP I 449.

<sup>55</sup> I H I 14.

<sup>56</sup> I H I 72.

<sup>57</sup> *Ibid.* 14.

The procedural equality of all participants, thanks to which the Hague Conference has such a reputation for the scrupulous observation of equality between States<sup>58</sup>, does not mean, however, that there was no division or even sharp conflicts between great and small States. On the contrary, the formal equality brought into sharper focus these differences by putting all States together on one common platform. It could be seen in the characteristic declarations of the delegates, worthy of quotation, especially in the first and third commissions, and in both in different ways.

In the first commission, which was occupied with the limitation of armaments, it is possible to see from the side of the great Powers a trace of disregard for small countries, and the latter had a streak of suspicion and irritation, and even what we may call a feeling of inferiority. For instance the president of the first commission at a certain moment in the debate proposed the creation of a special committee for the examination of the Russian plan with regard to the limitation of armed forces "... where the great Powers would be represented, on whom, according to him, the solution of this problem solely depended"<sup>59</sup>.

In the second sub-commission of the first commission characteristic are the terms used by the delegate of Great Britain on the subject of the prohibition of submarines:

son pays consentirait à l'interdiction dont il s'agit (des sous-marins), si toutes les grandes Puissances étaient d'accord sur ce point. Il s'inquiéterait peu de la décision que prendraient les petits pays<sup>60</sup>.

From the speeches of the delegates of small States we must quote the declaration of the delegate of Serbia referring to the plan for limiting armaments. He declared amongst other things:

Nous n'avions pas l'intention de prendre dès aujourd'hui parole au sujet de la question qui est à l'ordre du jour, parce que nous avons pensé qu'il appartenait aux Grandes Puissances de se prononcer en premier lieu.

L'accord entre les Grandes Puissances aurait, nous semble-t-il, faciliter une entente entre les petites, tandis qu'une déclaration de la part des petits Etats, disant qu'ils acceptaient ou n'acceptaient pas la proposition faite, ne nous semblait pas contribuer d'une manière décisive ou entraver sérieusement le succès de l'oeuvre qui nous réunit ici...

And further:

Nous avons, en effet, la conviction ferme que le grand mouvement d'idées élevées, provoqué dans le monde entier par la généreuse initiative de Sa Majesté l'Empereur de Russie, ... finira par donner un appui décisif aux petites Puissances qui, dans leurs aspirations nationales, ne demandent que le respect de leur indépendance, la justice de l'équité<sup>61</sup>.

<sup>58</sup> DICKINSON 130.

<sup>59</sup> I H II 30 "...où seraient surtout représentées les grandes Puissances, dont seules dépend une solution".

<sup>60</sup> I H II 66.      <sup>61</sup> I H II 31.



For a trace of healthy realism we should turn to the step taken by the delegate of Switzerland. When it came to voting on the Dutch plan for limiting the calibre of rifles to 8 mm., the delegate of Switzerland abstained from voting, because, as he put it: "the great Powers will have the deciding voice on this matter, so I think it unnecessary to cast my vote without practical meaning..."<sup>62</sup>

In the third commission which was occupied with the peaceful means of settling international disputes, the conflict between great and small States appeared in the form of deep mistrust of some small countries, namely, Rumania, Serbia, and Greece, towards the great Powers. This mistrust especially found its expression in the discussion on the institution of an commission of enquiry, to which these three countries were unfavourable.

The representative of Serbia, in connection with the proposed clause which excluded from the competence of the examining commission disputes where national honour or vital interests of states were involved, put the question:

si, en pratique, les grandes Puissances se montreront toujours disposées à reconnaître aux petites Puissances les mêmes susceptibilités en matière d'honneur et d'intérêts vitaux qu'elles ne manqueront certainement pas d'avoir elles-mêmes. Les petites Puissances ne seront-elles pas quelquefois entraînées dans des discussions humiliantes sur la question de savoir si, dans tel ou tel cas, leur honneur national est réellement engagé, tandis qu'au contraire, il suffira le plus souvent aux grandes Puissances d'invoquer l'honneur national pour mettre immédiatement les petites Puissances dans l'impossibilité morale de provoquer déceamment une discussion à cet sujet.

Il y a donc dans la clause d'honneur de l'art. 9 une source d'inégalité de traitement entre les grandes et les petites Puissances, inégalité que nous pourrions, quelquefois, étant les plus faibles, être forcés de subir en fait, mais qu'il nous est absolument impossible de consacrer en droit et de sceller par nos signatures dans une convention internationale.

He spoke further on the reservation "when circumstances allow", confirming:

il n'est pas nécessaire d'être initié à la vie politique internationale pour savoir que les circonstances permettent bien souvent beaucoup de choses aux grands et aux forts uniquement parce qu'il sont grands et forts...

Le vague de cette disposition se traduira le plus souvent, en pratique, par la possibilité pour les grands Etats d'imposer aux petits la nomination d'une commission internationale d'enquête toutes les fois qu'ils le jugeront à propos; le cas inverse, au contraire, ne pourra jamais avoir lieu<sup>63</sup>.

The delegate of Greece subscribed completely to his opinion. In further discussions the delegate of Rumania complained that the first Russian plan

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<sup>62</sup> Ibid. 56 "le mot décisif sera prononcé par les grandes Puissances, il croit inutile d'émettre un mot sans portée utile".

<sup>63</sup> I H IV 38—39.

had never been subject to general discussion<sup>64</sup>. This objection, without regard to its reasonableness, was in itself a token of grave mistrust. Immediately after his speech the president invited the representatives of Rumania, Serbia, and Greece to the committee<sup>65</sup>.

Similarly, further signs of mistrust can yet be seen in the discussions over the introduction of compulsory arbitration. The delegate of Serbia declared himself against Article 27 of the plan, which anticipated the right of drawing the attention of the sides to the peaceful means at their disposal for settling their dispute; he said amongst other things:

on a représenté l'article 27 comme inspiré par un sentiment de bienveillante sollicitude des grandes Puissances vis-à-vis des faibles. S'il est exact que les grandes Puissances sont animées de ce sentiment, rien ne les empêchera de la manifester en dehors de la convention...

In connexion with this the representative of Italy, Nigra, stressed:

il n'y a ici ni grandes ni petites Puissances, mais des représentants de Gouvernements complètement égaux entre eux, qui discutent d'une façon indépendante et qui sont réunis dans la seule pensée de faire une oeuvre utile à la Paix<sup>66</sup>.

Referring to this declaration the delegate of Serbia, amongst other matters expressed (a summary in the protocol):

c'est de contenir une sorte d'invitation pour les grandes Puissances de se livrer à des démarches blessantes pour l'amour propre légitime et la dignité des petits Etats. Car on a beau proclamer qu'il n'y a pas de grandes et de petites Puissances, cela ne changera rien à la réalité des faits et cette réalité ne permettra jamais de donner à l'article 27 le caractère de réciprocité, en vertu de laquelle les petites Puissances pourraient, sans manquer aux convenances internationales, faire usage des dispositions de cet article vis-à-vis des grandes Puissances<sup>67</sup>.

The final result of this conference were three conventions, three declarations, one resolution and six requests signed by 11 participating countries with small exceptions and reservations<sup>68</sup>.

*The Second Hague Conference.*—This conference was a continuation of the first. It met on the 15th June, 1907, at The Hague on the proposition of Theodore Roosevelt, invitation of the Czar of Russia, and convened by the Queen of Holland. Its programme for the most part were extensions and improvements to the conventions taken in 1899 at the finish of the first conference<sup>69</sup>. An essential difference, however, was the participation this time of all Powers who signed or adhered to the conventions of the first con-

<sup>64</sup> Ibid. IV 43. The committee of the third commission on the motion of Belgium was chosen by the officers of the commission. Eight delegates joined the committee, among them three delegates from small States. It occupied itself with examining submitted drafts.

<sup>65</sup> I H IV 45.

<sup>66</sup> I H IV 54.

<sup>67</sup> Ibid. 55.

<sup>68</sup> I H I Annexes (33, 34).

<sup>69</sup> II H I 54—60.

ference, practically speaking all the countries of the world, at a general figure of 44.

The equality of the participants in the debates was observed more strictly than at the first conference. First of all, there were no exclusions this time among the invitations to participate, besides this, during the period of the debates themselves none of the countries complained (not even unreasonably) of infringements of procedure. An instance of this preservation of equality may be, for example, the speech of the representative of Persia, who said:

Le grand mérite de cette Conférence, aux yeux du Monde, est que toutes les consciences nationales y sont égales, est que chacun des Etats que nous représentons ici, a droit à sa part de justice et de vérité<sup>70</sup>.

It should be stressed that we may rely completely upon the opinions of the representatives of small countries at the second Hague Conference, when we consider their sensibility and immediate reaction to any attempt to violate the principle of equality of States at this Conference. This fact can be explained by the reinforcement of the position of small States by the eighteen new participants, mainly countries of Central and South America, who transplanted to European soil the fierce struggle for the principle of equality of States which they brought from the Pan-American Conferences. The main supporter of the principle of equality was the representative of Brazil, Barbosa. His strong words at the second Hague Conference went down in the history of the law of nations.

Because of this principle of equality of States the first commission on discussion of a plan for a permanent arbitral tribunal and international prize court was short circuited. Opening the discussion on the plan of the three great powers, Germany, Great Britain, and the United States, which envisaged a permanent place on a future arbitral tribunal for the eight great Powers, and for the rest only membership on a rotary system, the representative of Great Britain, Scott, said amongst other things:

Il est évident aussi qu'aucun plan ne sera satisfaisant s'il ne reconnaît à chaque Etat le droit de représentation, car, en droit international, l'égalité des droits est un axiome<sup>71</sup>...

Si nous proposons que les juges nommés par l'Allemagne, l'Amerique (Etats-Unis de), l'Autriche-Hongrie, la France, la Grande Bretagne, l'Italie, le Japon et la Russie, siègent pendant toute la durée de la Convention, ce n'est pas parce que nous perdons de vue le principe d'égalité juridique des Etats, mais parce que nous devons reconnaître que la plus grande population, le plus grand développement de commerce et de l'industrie de ces pays leur donnent des droits à une représentation à la Cour proportionnellement plus grande...<sup>72</sup>

Barbosa showed himself sharply hostile to this plan, calling it a proclamation of inequality. Here is an extract from his speech:

il nous a donné les instructions les plus formelles, pour nous opposer, en ne souscrivant aucune combinaison, qui n'ait pour base l'égalité entre les Etats...

<sup>70</sup> II H II 81.

<sup>71</sup> Ibid. 606.

<sup>72</sup> Ibid. 606—609.

Considérant que, si l'on a invité à la Deuxième Conférence de la Paix les Etats exclus de la Première, ce n'est pas pour les faire singer solennellement un acte de diminution de leur souveraineté, en les réduisant à une échelle de classification que les nations plus puissantes voudraient bien reconnaître...

La Délégation du Brésil, d'accord avec les instructions les plus précises de son Gouvernement, ne saurait pas acquiescer à la proposition en débat<sup>73</sup>

In another speech Barbosa declared:

Nous n'acceptons pas les rangs. Nous ne disputons pas les places. Le Brésil, comme Etat souverain et sous cet aspect égal à tout les autres Etats souverains, quelle que soit leur importance, n'aspire qu'à une place, dans la Cour d'arbitrage, égale à celle du plus grand ou de plus humble Etat du monde. Nous croyons à la sincérité des grandes paroles de M. Root dans son mémorable discours du 31 juillet 1906 au congrès pan-américain de Rio de Janeiro. .. ("We deem the independence and equal rights of the smallest and weakest member of the family of nations as entitled to as much respect as those of the greatest empire"). Ces mots ont résonné partout dans notre continent comme l'évangile américain de la paix et du droit. . .

Jusqu'ici les Etats, si divers par l'étendue, la richesse, la force, avaient, pourtant, entre eux un point de commensurabilité morale... Maintenant qu'irait-on faire? On se mettrait autour d'une table, grands et petits, dans un concert de touchante amitié internationale, pour souscrire une convention, qui établirait le tarif de la valeur pratique des souverainetés, en leur distribuant des portions d'autorité proportionnelles à l'estimation plus ou moins injuste des faibles dans la balance de la justice des puissants<sup>74</sup>.

Further on in the same speech:

On nous a bien fait remarquer les inégalité matérielles entre les différents Etats, dont nous avons associé la cause à la nôtre. Nous n'avions pas oublié ces différences. Mais elles n'atteignent point le champ du droit<sup>75</sup>.

Supporting the words of Barbosa, the representative of Mexico said:

tous les pays convoqués à la Deuxième Conférence de la Paix, grands ou petits, forte éu faibles, doivent être représentés sous la base de la plus absolue, de la plus parfaits ogalité!<sup>76</sup>

Characteristic also was the voice of the representative of Panama, who, however, referred with enthusiasm to the American plan for the creation of a permanent arbitral tribunal:

De nos jours les principes de droit sont conservés aux bureaux des Ministères des Grandes Puissances, qui à chaque occasion tirent de leur correspondance les dépêches et les écrits qui leurs donnent raison et si cette raison n'est pas très bonne il leur reste toujours la force brutale pour la faire accepter. Tout petit Etat a bien senti cette triste vérité<sup>77</sup>.

Finally it is worth quoting the declaration of the representative of Portugal, D'Oliveira, in the discussion on the question of compulsory arbitration:

<sup>73</sup> Ibid. 618—620.

<sup>74</sup> Ibid. 644—645.

<sup>75</sup> Ibid 650; this refers to the speech of Scott (see above).

<sup>76</sup> Ibid. 650.

<sup>77</sup> Ibid. 336.

Je sais bien qu'on nous déclare tous les jours, qu'en théorie, il n'y a pas des petits et des grands Etats, et que tous les Etats sont égaux devant la justice et la conscience internationale: ce sont des paroles que j'aime bien entendre, mais j'aimerais encore mieux voir la réalité à laquelle elles devraient correspondre .."<sup>78</sup>

In the discussion on the organization of a prize court there were no sharp protests by small countries against the agreed plan of the four great Powers (France, Germany, Great Britain, and the United States), even though it was also not based on the principle of the equality of States. Of the fifteen judges the plan envisaged eight permanent places, appointed by the eight great Powers, and the rest of the places nominated on a rotary system according to a table. This table classified States according to the tonnage of their merchant navies.

The reasons for not taking steps against this inequality, Barbosa explained in the following words:

L'organisation de la Cour internationale des prises et celle de la Cour internationale d'arbitrage sont deux problèmes de nature tout à fait différente, qui évidemment doivent obéir dans leur solution à des principes divers. La constitution de la cour permanente d'arbitrage est une affaire d'intérêt universel. Elle ne regarde pas les nations d'après leur importance relative. On n'y pourrait reconnaître de différences d'intérêts, si ce n'est en faveur des faibles contre les forts.

La constitution de la Cour internationale des prises, au contraire, n'affecte que les Etats qui ont des intérêts sur la mer, c'est-à-dire presque exclusivement ceux qui possèdent une marine marchande. C'est donc en proportion de la valeur de cette marine que l'on aurait à mesurer leurs droits dans la question<sup>79</sup>.

In the final voting on the proposed plan only Brazil took steps against it, not, however, because of the dropping of the principle of equality, but because of the unjust placing of Brazil in the proposed table. From among other small States ten announced formal reservations with regard to just Article 15, which mentioned the privileged position of the great Powers<sup>80</sup>.

After these few illustrations from the debates, which portray the atmosphere of the Conference and the true mutual relations of great and small States, as a conclusion we should quote, so as to form a complete picture, the words addressed to the debate of the Conference at its solemn farewell session by the delegate of the Argentine:

La justice trouve souvent sa récompense et cette convocation en a la sienne. Elle signale un bienfait qui nous est commun, marque un progrès et accuse un perfectionnement du Droit Public, lequel, en raison de sa nature universelle, réclamait le "consensus" de toutes les souverainetés, sans distinctions d'Etats ou de continents. Nous pourrions affirmer désormais que l'égalité politique des Etats a cessé d'être une fiction et demeure consacrée comme une évidente réalité...<sup>81</sup>

<sup>78</sup> Ibid. 421.

<sup>79</sup> Ibid. 332.

<sup>80</sup> II H I 169.

<sup>81</sup> Ibid. 593.

Characteristic was, however, that the great Powers, with the exception of the United States, did not sign any of the thirteen conventions resolved upon, in a period of three months from the end of the Conference. They signed only the final act<sup>82</sup>.

At The Hague Conferences, particularly at the second, there reigned, as in all the open conferences discussed up till now, perfect formal equality among the participants. Each of the delegates could easily declare and defend his own interests. At the voting the voice of the smallest State was equal to that of the most powerful country.

We cannot draw, however, too far reaching conclusions from this. As at the first, so also at the second Hague Conference, the aim of the debates and the character of the decisions was very limited, namely the non-obligatory, for participating States, elaboration of plans. The final result, especially at the second conference, was small in comparison with the hope which it aroused. Only a small number of plans were resolved upon, and even less were accepted by States, the reason being, according to British opinion, just that very maintenance of the principle of equality of States. Here is an extract of an article in *The Times* of the 19th October, 1907, quoted by DICKINSON:

Everybody knows that all sovereign States are not equal. ... By pretending to ignore this fundamental and essential truth, the Conference condemned itself to impotence<sup>83</sup>.

## B.—*Closed Conferences*

### THE CONGRESS OF BERLIN

The above description of the new practice of open conferences forms only a secondary current in the stream of international life. Alongside ran uninterrupted the main channel of high politics at the closed conferences.

After discussing the Congress of Paris in the previous chapter, we come now to the next great congress of the Concert of great Powers, which was the Congress of Berlin of 1878. The huge significance which is attributed by historians to this Congress is deserved, first of all, because of its settling of the Balkan question, its outline of the frontiers in the Balkan peninsular, and its recognition of the independence of three States.

The formal reason for the Congress was the revision of the temporary peace treaty imposed on Turkey by Russia in 1878 at San Stefano. Changes which Russia wanted to make this time in the Balkan peninsular were, according

<sup>82</sup> *Ibid.* 710—719.

<sup>83</sup> DICKINSON 286; comp. HICKS *passim*.

to Austria-Hungary and Great Britain, contrary to the Treaty of Paris of 1856 and of London of 1871, and, what is more important, they were contrary to the vital interests of those great Powers. Thanks to their pains, after nearly half a year of disputes and threats, Russia was forced to submit the question of peace in the Balkans to the debate of all the signatories to the Treaty of Paris of 1856, namely, Austria-Hungary, France, Germany, Great Britain, Italy, and Turkey.

Analysing the position of the countries at the Congress, first of all there was a division between those which took part and took decisions and those about whom the decisions were taken and which did not take any part or nearly no part in the debates.

In the first group of States were the signatories to the Treaty of Paris: Austria-Hungary, France, Germany, Great Britain, Italy, Russia, and Turkey. Of these only five (without Turkey) participated at the Congress on the principle of equality, and in the name of Europe to alter the political map of the whole Balkan peninsular. We must not forget that Turkey was introduced into the Congress as a defeated State, which greatly weakened her position. This was emphatically defined by the representative of Great Britain in the discussion on the question of Bulgaria:

L'effet le plus frappant des articles des Traités de San Stefano qui ont rapport à la Bulgarie — (je ne dis pas l'effet qu'on a eu l'intention de leur donner) — est d'abaisser la Turquie jusqu'au niveau d'une dépendance absolue envers la Puissance qui a imposé ce Traité.

Il est notre tâche de la replacer, non sur le pied de son indépendance antérieure, car on ne saurait entièrement anéantir les résultats de la guerre, mais de lui rendre une indépendance relative qui lui permettra de protéger efficacement les intérêts stratégiques, politiques et commerciaux dont elle doit rester le gardien<sup>84</sup>.

In another place the president reminded the representative of Turkey:

le Congrès est réuni, non pas pour sauvegarder les positions géographiques dont la Porte désirerait le maintien, mais pour préserver la paix de l'Europe<sup>85</sup>.

Similarly the representative of France explaining the position of the Congress, confirmed:

le Congrès, en demandant à la Turquie de consentir d'importants sacrifices, avait en vue de préserver de toute atteinte le souveraineté du Sultan dans l'ensemble réduit mais compacte de provinces qui formera désormais son empire. Or, la rédaction proposée à la haute Assemblée paraît consacrer une sorte de tutelle permanente imposée au Gouvernement Ottoman...<sup>86</sup>

After such speeches we ought to be rather surprised that this unprofitable position of Turkey did not appear more conspicuous, besides the small number of exceptions to her formal participation in the Congress. With this kind of exceptions we may count her exclusion from an invitation to the debates of

<sup>84</sup> NRC 2 série, III, 286.

<sup>85</sup> Ibid. 339—340.

<sup>86</sup> Ibid. 435—436.

the powers particularly interested in the question of southern Bulgaria<sup>87</sup>. Further, when the method and time of concluding the Russian occupation of Rumania and Bulgaria was dealt with, Turkey not only did not have a voice, but was omitted from the voting, and the president confirmed, "that there was agreement on this matter..."<sup>88</sup>

Besides the differences between Turkey and the rest of the participants, there was yet a further distinction in the group of the main participants between "Powers more or less interested". There was no discrimination against small States in this distinction when we learn that among the so called less interested states were France, Germany, and Italy<sup>89</sup>.

To form a general picture of the position of the participants in the Congress vis-à-vis the rest of the States it is necessary to stress that this Congress was a classical congress of the European Concert of the great Powers. We can conclude from its constitution and from the stress on it at every step in the debates that to a greater extent than at Paris it represented Europe. For example in the discussion on the question of admitting Greece to the debates the protocol said:

(La Russie) ... est satisfaite de voir, par les propositions de MM. les Pléipotentiaires de Grande Bretagne et de France, que l'Europe partage ces vues...<sup>90</sup>

In the discussions on the conditions for recognising the independence of Serbia the representative of France thought:

il est important de saisir cette occasion solennelle pour faire affirmer les principes de la liberté religieuse par les représentants de l'Europe<sup>91</sup>.

Finally in his farewell speech the president declared:

J'ai le ferme espoir que l'entente de l'Europe, avec l'aide de Dieu, restera durable ..<sup>92</sup>

States were also recognised in the name of Europe and conditions were imposed on them for this recognition. Speaking on the recognition of the independence of Rumania by some States before the Congress, the president confirmed:

Toutefois, l'Europe seule a le droit de sanctionner l'indépendance, elle doit donc se demander sous quelles conditions elle prendra cette importante décision...<sup>93</sup>

Here it should be stressed that Turkey, similarly as at the Congress of Paris in 1856, was not distinctly excluded, in spite of her political situation and in spite of the fact that for a long time she was not recognised as a true

<sup>87</sup> Ibid. 288—289.

<sup>88</sup> Ibid. 313.

<sup>89</sup> Ibid. 288—289.

<sup>90</sup> Ibid. 291.

<sup>91</sup> Ibid. 342.

<sup>92</sup> Ibid. 448.

<sup>93</sup> Ibid. 362.



European State<sup>94</sup>. On the contrary, Turkey's integral part in Europe is underlined, as is proved, for example, in the speech of the representative of Great Britain:

Il demeure, en effet, établi, d'un assentiment unanime, que le Sultan, comme membre du Corps politique de l'Europe, doit jouir d'une position qui lui assure le respect de ses droits souverains<sup>95</sup>.

That Turkey did not count as Europe can be seen only during the discussion on the frontiers of Montenegro, where the president considered:

... on doit toujours compter que la S. Porte maintiendra les engagements qu'elle a pris à San Stefano sauf modification acceptée par l'Europe<sup>96</sup>.

The position of the countries, which at the beginning were counted in the second category, namely those about which decisions were taken even though they did not participate in the Congress, was varied. The fact that some of them had a voice in the Congress was not recognised as participation. We may clearly conclude this from the protocol of the debates over the means of informing those countries of the decisions of the Congress. They were called "interested States, having no part in the Congress" and included Greece, Montenegro, Persia, and principdoms recognised as independent<sup>97</sup>.

Since Greece was an independent country directly interested in the settling of the frontiers of the Balkan peninsular, she demanded through diplomatic channels admission to the Congress before it began. Her request was backed by her protector, Great Britain<sup>98</sup>. After long discussions on the theme of Greece's admission, the French plan was finally decided upon, which said:

Considérant que dans l'examen des nouveaux arrangements à prendre pour assurer la paix en Orient il est juste de fournir à la Cour d'Athènes l'occasion d'exprimer ses vœux et qu'il peut être utile aux Puissances de les connaître;

Le Congrès invite le Gouvernement de S. M. Hellénique à désigner un Représentant qui sera admis à exposer les observations de la Grèce lorsqu'il s'agira de fixer le sort des provinces limitrophes du Royaume et qui pourra être appelé dans le sein du Congrès toutes les fois que les Plénipotentiaires le jugeront opportun<sup>99</sup>.

Referring to the carrying of this decision by the Congress, the president, Bismarck, observed:

l'invitation ne doit être faite qu'à la demande d'un des membres du Congrès, formulée dans la séance précédente et adoptée par un vote de la haute assemblée<sup>100</sup>.

<sup>94</sup> In one of Bismarck's notes to the minister of foreign affairs, Bülow, regarding participation in the Congress of Berlin there is the following sentence: Ich glaube, ... dass Graf Andrassy die Einladung der Pforte besser jetzt nicht berührt... Zur Erleichterung der Verständigung unter den Europäern würde die Beteiligung der Türken kaum beitragen... *Grosse Politik* 2, 185.

<sup>95</sup> NRG 2 sér. III, 298.

<sup>96</sup> Ibid. 367.

<sup>97</sup> Ibid. 445.

<sup>98</sup> Ibid. 284.

<sup>99</sup> Ibid. 285, 294.

<sup>100</sup> Ibid. 294.

Characteristic of the attitude of the great Powers towards small States is the fear expressed by the representative of France at the insufficient limitation of the field of observation of the Greek envoy<sup>101</sup>.

In the 9th Protocol he described the introduction of Greek plenipotentiaries in this way:

Conformément à la décision prise par le Congrès, le Président a invité MM. les représentants du Gouvernement de S. M. le Roi de Grèce à vouloir bien faire à la haute Assemblée, dans la séance de ce jour, la communication dont ils seraient chargés<sup>102</sup>.

Further on:

MM. Delyannis, ministre des affaires étrangères de Grèce, et Rangabé, ministre de Grèce à Berlin, sont ensuite introduits.

Le Président dit que le Congrès a voulu entendre les vœux et les appréciations du gouvernement Hellénique avant de prendre une décision sur l'article XV qui forme, en ce moment, l'objet de ses délibérations. S. A. S. prie MM. les représentants de la Grèce de faire connaître leurs opinions et leurs désirs à la haute Assemblée<sup>103</sup>.

After listening to the representative of Greece, the president decided that his speech would be published and circulated, and after its study by the Congress, the conclusion of the debates would be given to the representatives of the Hellenes<sup>104</sup>.

Investigating the further fortunes of Greece's wishes, we find only one further mention of them, when the representative of Turkey referred to them to repel Greek pretensions. Anyhow the wish of Greece to annex the island of Crete did not come to reality. The final act was limited solely to leaving the arrangement of the question of frontiers to Turkish-Greek discussions<sup>105</sup>.

That the declaration of Greece thus had no practical meaning is also confirmed elsewhere in the words of the protocol on the discussion over admitting Rumania:

Le Prince Bismarck ne regarde pas que l'admission des Roumains présente, au point de vue de la réussite des travaux du Congrès, le même intérêt que l'admission des Grecs, dont les demandes, quel qu'en soit le résultat, ne sauraient exercer une influence très considérable dans l'issue des délibérations du Congrès<sup>106</sup>.

Very unwillingly the Congress agreed to listen, as in the case of Greece, to the representative of Rumania, in spite of the fact that it had to take essential decisions with regard to that country, such as recognizing its independence and depriving it of a part of Bessarabia for the benefit of Russia. The corresponding article in the final act read:

Article XLIII. Les Hautes Parties contractantes reconnaissent l'indépendance de la Roumanie en la rattachant aux conditions exposées dans les deux articles suivants.

<sup>101</sup> Ibid. 293—295.

<sup>102</sup> Ibid. 349.

<sup>103</sup> Ibid.

<sup>104</sup> Ibid. 352.

<sup>105</sup> Ibid. 457, art. XXIV.

<sup>106</sup> Ibid. 352.

Article XLIV. En Roumanie, la distinction des croyances religieuses et des confessions ne pourra être à personne comme un motif d'exclusion ou d'incapacité en ce qui concerne la jouissance des droits civils et politiques, ... Les nationaux de toutes les Puissances, commerçants ou autres, seront traités en Roumanie, sans distinction de religion, sur le pied d'une parfaite égalité...

Article XLV. La Principauté de Roumanie rétrocede à S. M. l'Empereur de Russie la portion du territoire de la Bessarabie détaché de la Russie en suite du Traité de Paris de 1856<sup>107</sup>.

Speaking in favour of the admission of Rumania, a small State, and this time referring to it with respect to equity, the representative of Great Britain claimed:

la haute Assemblée, après avoir écouté les délégués d'une nation qui réclame des provinces étrangères agirait équitablement en écoutant les représentants d'un pays qui demande à garder des contrées qui lui appartiennent<sup>108</sup>.

On the other hand the president, careful of the success of the debates of the Congress, doubted "whether it was a good idea to increase its difficulties by introducing the Rumanian envoys, whose claims, known in advance, would not make agreement easy"<sup>109</sup>. The representative of Russia, who was against the admission of Rumania, pointed out the differences between Greece, as an independent country, and Rumania, whose independence was not yet recognised by Europe<sup>110</sup>. Finally very typical was the opinion of the representative of France, who declared himself for the admission of Rumania, and expressed the hope that "this token of interest would facilitate Rumania's participation in every decision whatsoever"<sup>111</sup>.

The course followed by the Rumanian representative at the Congress was similar to that of the representative of Greece. The president invited the representatives of Rumania to explain the point of view and opinion of their government on the details of the Treaty of San Stefano which had regard to it<sup>112</sup>. In his speech, in which he tried to avoid a loss of territory by his country through calling upon treaties and a regard of justice, the representative of Rumania finished with these eloquent words:

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<sup>107</sup> Ibid. 462.      <sup>108</sup> Ibid. 352.

<sup>109</sup> "S. A. S. hésite à penser qu'il soit bon d'accroître les difficultés de la tâche pacifique dévolue à la haute Assemblée en introduisant les délégués Roumains, dont les réclamations, connus d'avance, ne semblent pas de nature à faciliter la bonne entente..." Ibid. 352—3.

<sup>110</sup> Ibid. 353. On the other hand the president himself reminded the Congress that in fact a number of Powers already recognized this independence, having concluded commercial treaties with Rumania. Ibid. 362.

<sup>111</sup> Ibid. 353. "... cette marque d'intérêt facilitera l'adhésion de la Roumanie à la décision du Congrès quelle qu'elle soit".

<sup>112</sup> Ibid. 358.

Tels sont, Messieurs les Plénipotentiaires... les vœux d'un petit Etat qui ne croit pas avoir démerité de l'Europe, et qui fait, par notre organe, appel à la justice et à la bienveillance des Grandes Puissances, dont vous êtes les éminents Représentants<sup>113</sup>.

It is difficult to confirm whether this course of action had any influence on the decisions of the Congress. Anyhow in the protocols there is no mention of it. That it had little influence may be seen from the above mentioned opinions expressed before the invitation of the Rumanian representatives, as also from the fact that they were heard at the second and last session sacrificed to the Rumanian question<sup>114</sup>.

When it came to Serbia, although the Congress settled her frontiers and recognised her independence, forcing upon her the same conditions as upon Rumania, the representatives of this country were not even permitted to speak at all<sup>115</sup>. When we look for the formal reasons in the different treatment of Serbia and Rumania, we can find them in the fact that Rumania had already announced herself an independent State earlier. Such a supposition was destroyed, however, by the declaration of the representative of Russia, who was against the hearing of Rumania and who said:

Il y aurait plus d'analogie entre la Grèce et Serbie que la déclaration du Congrès a affranchie des liens de vassalité, et cependant la haute Assemblée n'a pas admis les délégués Serbes<sup>116</sup>.

On the basis of a petition the Congress agreed to admit the representative of Persia to speak when they came to decide about the future of the town of Khotour, which in the final act they gave to Persia<sup>117</sup>. The voice of the Persian representative was limited as was proper to expressing agreement in the award of this town to Persia<sup>118</sup>.

In spite of the fact that Montenegro was also recognised by the Congress as an independent State, after establishing her frontiers and imposing on her many conditions<sup>119</sup>, and in spite of the fact that she had been previously recognised by Russia, her requests of whatever nature never reached the Congress.

The field covered by the decisions of the Congress and its treatment of small States make this meeting a further very important link in the practice of the Concert of the great Powers. This time the Concert in the name of Europe unilaterally settled the frontiers and recognised the independence of new countries, imposing on them its own conditions.

<sup>113</sup> Ibid. 361.      <sup>114</sup> Ibid. 358—361.

<sup>115</sup> Articles XXXIV and XXXV sound identical to those for Rumania; see Articles XLIII and XLIV. Ibid. 460—463.

<sup>116</sup> Ibid. 353.

<sup>117</sup> Art. LX page 464.

<sup>118</sup> Ibid. 406.

<sup>119</sup> "Article XXVI. L'indépendance du Monténégro est reconnue par la S. Porte et par toute celles des Hautes Parties contractantes qui ne l'avaient pas encore admise. ...

Article XXVIII Les nouvelles frontières du Monténégro sont fixées ainsi qu'il suit: ..." Ibid. 458.

## THE LONDON CONFERENCE ON THE QUESTION OF NAVIGATION ON THE DANUBE

Among the closed conferences of this period, at which the mutual relations of great and small States appeared in a spectacular manner, we may include first of all the London Conference on the question of navigation of the Danube in 1883. At this Conference the signatories to the Peace of Berlin, that is only the six great powers and Turkey, met on the invitation of Great Britain with the purpose of discussing an extension in the scope of the European Commission of the Danube as far as Braila<sup>120</sup>, confirming its regulations and prolonging its powers<sup>121</sup>.

At the second session a telegram from the Rumanian envoy was read in which he sought the right to participate in the London Conference<sup>122</sup>.

La participation de la Roumanie aux travaux de la Conférence sur le pied de la plus parfaite égalité avec les autres Puissances est indiquée par la nature même des choses. Ayant été admise au sein de la Commission Européenne, on ne peut l'exclure d'une Conférence convoquée spécialement pour l'existence et l'organisation de cette même institution.

Il est à considérer que le droit de participation de la Roumanie à la Conférence est fondé aussi bien sur les prescription anciennes et permanentes du droit international, et sur la situation récemment consacrée par l'Europe.

Further the plenipotentiaries of Rumania referred to the protocol of the Congress of Aix-la-Chapelle:

En effet, d'une part, le Protocole du Congrès d'Aix-la-Chapelle du 15 novembre, 1818, statue que "dans le cas où des réunions auraient pour objet des affaires spécialement liées aux intérêts des autres Etat de l'Europe, elle n'auraient lieu que sous la réserve expresse de leur droit d'y participer".

D'autre part, la Roumanie a signé avec les autres Puissances ... (there followed an enumeration of the treaties connected with navigation on the Danube)<sup>123</sup>.

The representative of Great Britain was for the admission of Rumania, whereas the German representative was opposed to it. Here is a characteristic speech of the latter summarised in the protocol:

Le Comte Münster croit devoir s'opposer à l'admission de la Roumanie sur le même pied que les Grandes Puissances. Le Plenipotentiaire d'Allemagne reconnaît volontiers le grand intérêt qu'a la Roumanie à la solution heureuse des questions pendantes à la Conférence. Cependant le Gouvernement Allemand serait d'avis de conserver à celle-ci son caractère Européen en s'abstenant de mettre la Roumanie au pair des Grandes-Puissances. Si, tout en maintenant le principe de l'unanimité dans la Conférence, on donnait une voix à la Roumanie, on lui créerait une position qui ne serait nullement désirable, celle de pouvoir à sa volonté imposer son veto. La Roumanie ne pourrait donc être admise qu'en qualité d'invitée et non comme maîtresse de maison<sup>124</sup>.

<sup>120</sup> Braila is situated in Rumania, from the Congress of Berlin an independent State.

<sup>121</sup> NRG 2 sér. IX 346. <sup>122</sup> Ibid. 349—350.

<sup>123</sup> NRG 2 sér. IX 355. It is an example of further reference to the European System after 70 years.

<sup>124</sup> Ibid. 350.

The representative of Austria-Hungary agreed with this view, but the French representative, while recognising the authority of this argument, hesitated and joined the voice of the majority. The same position was occupied by the representative of Italy. The representative of Turkey also declared himself in favour of the limited participation of Rumania without the right to sign. This right had to be reserved only for the great Powers<sup>125</sup>.

With reference to Serbia the representative of Great Britain expressed the wish that they would recognise for her the same privileges as had been given to Rumania. The representative of Serbia gave his view in a note, writing:

Les sentiments de justice et de bienveillance dont les Grandes Puissances représentées dans la Conférence sont animées à l'égard de la Serbie, me dispensent, M. le Président, de la nécessité de revenir ici sur les raisons de droit qui plaident en faveur de l'admission de la Serbie dans une Conférence où des questions touchant si directement aux intérêts de la Serbie, comme Etat Riverain, seront examinées et résolues<sup>126</sup>.

The Conference inclined to this conclusion<sup>127</sup>.

In turn it considered the participation of Bulgaria, which was still subject to Turkey. The British representative thought that the Conference ought to be fully informed about the wishes of Bulgaria, and that the representative of Turkey ought to give an assurance that all communications from Bulgaria would be passed on exactly to the Conference. The representative of Russia was even for her admission with an advisory voice, calling upon precedents where Bulgaria had been invited to the discussions of the Danube Commission<sup>128</sup>.

Afterwards the Conference decided to invite Rumania and Serbia to participate in the session, with the aim of consulting and listening to them. It also decided that the views of Bulgaria would be conveyed to the notice of the Conference in their exact form by means of the ambassador of Turkey<sup>129</sup>. To this decision the plenipotentiary of Rumania replied that his instructions only foresaw the admission of Rumania with a deliberative voice, so he asked that this decision be communicated to him in writing, and he would send it to his government; meanwhile he would temporarily abstain from participation in the Conference. The representative of Serbia took up a similar position<sup>130</sup>. After the exit of these plenipotentiaries the Conference began a discussion on the merits of the question.

At the next session the representative of Serbia who was already present declared that his government accepted the place offered to Serbia in the Conference, considering that by its decision the Conference did not have any

<sup>125</sup> Ibid.

<sup>126</sup> Ibid. 356.

<sup>127</sup> NRC 2 série IX, 351.

<sup>128</sup> Ibid.

<sup>129</sup> Ibid. 351—352.

<sup>130</sup> Ibid. 352.

intention of questioning Serbia's rights as a sovereign and riparian Danubian State<sup>131</sup>.

After this declaration a note was read, in which the representative of Rumania informed the president that his government would not allow him to participate in the Conference<sup>132</sup>. In this note he stated that his government would not accept participation in the Conference solely in an advisory capacity and in advance protested against all decisions which would be taken without the participation of the representatives of Rumania<sup>133</sup>. On the motion of the representative of Italy, the Conference sent Rumania an expression of regret at the nonparticipation of her representative at the Conference, explaining in an evasive manner of course, that the Conference "considered itself in a sense a sequel to the Congress of Berlin, in which Rumania did not participate as a signatory"<sup>134</sup>.

Bulgaria made further efforts to try and participate in the Conference, sending to the hands of the president a written note in which she put the reasons for her demands. According to these deductions the Peace of Berlin gave Bulgaria a higher position than the other subject principedoms. She called upon the precedent of her admission to the work of the European Commission of the Danube on equal terms with the representative of Turkey<sup>135</sup>. With the exception of the representative of Turkey, references to this request were favourable. It was decided that the protocol of the conference would be communicated to the representative of Bulgaria, adding that it would also be put at the disposal of the representative of Rumania<sup>136</sup>. Bulgaria, however, was not satisfied with this, and in her note she declared that she did not accept the position offered to her, and that she considered all the decisions of the Conference with regard to navigation on the Danube as non-obligatory<sup>137</sup>.

The question of participation in the Conference arose once again at the signing of the protocols of the sessions. The representative of Serbia questioned whether it was not correct for him to sign the protocols of the sessions when he had participated in them. As a precedent he quoted the fact that the protocols of the sessions of the European Commission of the Danube had been signed by Serbia in 1858 at Vienna. This did not convince the representative of Austria-Hungary who considered that "this precedent

<sup>131</sup> Ibid. 357—358.

<sup>132</sup> Ibid. 358.

<sup>133</sup> Ibid. 362.

<sup>134</sup> Ibid. 358. "... la Conférence a cru devoir se considérer en quelque sorte comme la prolongation et la suite du Congrès de Berlin, auquel la Roumanie n'a pas participé comme signataire".

<sup>135</sup> Ibid. 360, 362—364.

<sup>136</sup> Ibid. 360. As is concluded from the speech of the president the representative of Bulgaria was even present unofficially throughout the discussions; *ibid.* 366.

<sup>137</sup> Ibid. 373—374.

was invalid, because it is impossible to compare a River Commission with a conference of the great Powers"<sup>138</sup>.

The rest of the representatives presented similar doubts, particularly the representative of France, who expressed the following opinion:

la signature demandée ne pourrait qu'affaiblir celle de Plénipotentiaires des Puissances. Elle ne serait pas justifiées par les précédents, et elle porterait une réelle atteinte au caractère officiel du Protocole<sup>139</sup>.

Because of the unfavourable attitude of the participants, the representative of Serbia withdrew his motion, asking solely that it be mentioned in the protocol. At the conclusion the representative of Great Britain declared that in the decisions of the Powers there was nothing which affected the interests of Serbia, because they were undertaken with the agreed and accepted procedure and precedents<sup>140</sup>.

The mutual relations between the great and small Powers at this Conference found further expression in the discussion on the question of whether Serbia and Bulgaria should be co-opted to the European Commission of the Danube. Speaking on the demand of Serbia to be admitted to this Commission, the representative of Great Britain pointed out that this demand rested upon the equality of Serbia and Rumania, while in reality these countries were in different situations. According to him, since Galatz was the seat of the European Commission it would be uncurteous to exclude from it Rumania; but with regard to Serbia this consideration did not exist<sup>141</sup>. Further the representative of Great Britain pointed out that in this way they laid themselves open to these kinds of demands, which it would be difficult not to accept.

Other participants also did not favour the demand of Serbia. The British representative considered the problem straightforwardly:

C'est au Congrès de Berlin qu'on a donné exceptionnellement une place à la Roumanie dans la Commission Européenne, quoiqu'elle ne fût pas une grande Puissance... C'est précisément parce-que l'Europe a décidé de confier le parcours en aval de Galatz à une Commission non-Riveraine, quoiqu'en y ajoutant la Roumanie pour les raisons données plus haut, que la Conférence est obligée aujourd'hui de ne pas consentir à l'admission de la Serbie — dont cependant tous les droits restent réservés<sup>142</sup>.

In his reply the representative of Serbia declared amongst other things that his country seemed to have similar rights to other Powers, with the exception that her interests were smaller than those of other riparian States. However as an independent country and as a riparian State Serbia was entitled to similar rights of representations on the European Commission<sup>143</sup>.

<sup>138</sup> Ibid. 390. "... le précédent n'a pas de valeur puisqu'on ne saurait comparer une commission Riveraine à une Conférence des Grandes-Puissances".

<sup>139</sup> Ibid. 391.

<sup>140</sup> Ibid.

<sup>141</sup> Ibid. 367.

<sup>142</sup> Ibid. 369.

<sup>143</sup> Ibid.



At the conclusion of the discussion the Conference authorised the British representative to express to the riparian States the wishes of the European Powers in order that they accept the regulations and decisions of the Conference<sup>144</sup>.

The struggle which is here outlined of small countries for their emancipation at the London Conference is a new appearance and one symptomatic of the period. In this case it did not bring any serious concession for the benefit of these States, but it was, however, an expression of new currents and a new balance of power.

#### THE LONDON CONFERENCE ON THE QUESTION OF SUEZ

Similar, and even with distinct reference to the Danube Commission, was the treatment of countries not belonging to the great Powers in the debates on the creation of a supervisory commission for the Suez Canal.

In this conference, which debated in 1885 under the title of the International Commission for the Regulation of Free Transit through the Suez Canal, there participated, on the motion of France, the representatives of the six great Powers and Turkey, as the signatories to the London Declaration of the 17th March, 1885, regarding the finances of Egypt and the Suez Canal, together with Holland and Spain. The representative of Egypt also participated with an advisory voice<sup>145</sup>.

Discrimination of the participants in the debates, which, as the president expressed in his introduction, concerned "one of the most important problems of general politics", appeared immediately at the first session, when for working out a plan of the treaty, a sub-commission was created with the sole participation of the great Powers, Turkey and Egypt (with an advisory voice), without Holland or Spain<sup>146</sup>.

In this sub-commission, during the discussion on the question of whether an international supervisory commission should be created, on the motion of the representatives of Austria-Hungary and France, the European Commission of the Danube was put forward as a precedent. The representative of Austria-Hungary expressed the following opinion:

En effet, l'institution de la Commission européenne du Danube composée non-seulement de Délégués des Etats riverains du Danube, mais aussi de Délégués des autres Grandes Puissances, forme un précédent, pour l'établissement d'une institution internationale, à un endroit qui se trouve sous la souveraineté d'un seul Etat, mais où se rencontrent les grands intérêts commerciaux des autres Puissances<sup>147</sup>.

<sup>144</sup> Ibid. 387.

<sup>145</sup> Ibid. XI 307—308. Egypt was still formally dependent upon Turkey.

<sup>146</sup> Ibid. 311. In fact the delegate of Holland had a voice in a sub-commission, *ibid.* 355, 361.

<sup>147</sup> Ibid. 364.

Only the British representative spoke against seeing in it analogy between the two commissions, since he spoke also against the creation of the commission at all. This was explained why by the representative of Austria-Hungary, who showed that Great Britain had in her hands half the shares of the Canal and quite a large number of her officials in its administration, which, as a result, gave her such influence that another guarantee was already unnecessary. Further the representative of Austria-Hungary said:

Les intérêts des autres Etats, quoique moins considérables, n'en méritent pas moins d'être sauvegardés; ils ne diffèrent pas de ceux de la Grande-Bretagne, dont les Représentants ne voudront pas, pour une question de forme, se départir de la solidarité qui, en pareil cas, unit toujours les grandes Puissances<sup>148</sup>.

Clashing with the British plenipotentiary, that of Germany was of the opinion:

au contraire, (que) cette analogie existe et (qu'elle est assez frappante. Si la Commission du Danube se composait exclusivement de Représentants des Etats riverains, on pourrait en effet lui attribuer un caractère plutôt local. Mais la France, la Grande-Breagne, l'Italie, bien que puissances non riveraines, y sont également représentées. A quel titre le sont-elles, sinon à celui de grandes puissances signataires de traités européens et qui ont importants intérêts à défendre sur cette grande voie fluviale?

C'est à ce même titre que les puissances signataires de la Déclaration de Londres peuvent réclamer le droit de participer à une Commission de surveillance pour le canal de Suez, canal auquel se rattachent des intérêts bien autrement considérables<sup>149</sup>.

In the whole long discussion on the problem of creating an international Suez commission or not, the complete omission of Holland and Spain as original members is striking. The representative of Holland pointed this out when he protested against one of the published planned articles, which foresaw eventual common aid to Egypt:

Par conséquent, les Pays-Bas, Puissance coloniale ancienne et actuellement encore de quelque importance, la troisième dans la liste du nombre des navires transitant par le canal, seront exclus des délibérations qui seront prises pour sauvegarder en Egypte le libre usage du canal, mais seront appelés à se concerter pour les mesures à prendre dans le cas où les moyens de Sa Majesté Impériale le Sultan et de Son Altesse le Khédive ne seraient pas suffisants.

L'exclusion des Pays-Bas serait semblable à l'exclusion d'un Etat riverain dans la Commission du Danube; mais exclure un gouvernement et l'appeler à coopérer pour prendre des mesures dans le cas mentionné avec les autres Puissances, lui paraît ne pas être acceptable<sup>150</sup>.

As a result these published articles were changed, with the consequent exclusion of both Holland and Spain<sup>151</sup>.

The discussion proper concerning participation in the commission took place, after nearly two months' debate in sub-commissions, at the full Conference. The representative of Holland, Professor Asser, considered that in

<sup>148</sup> Ibid. 384.

<sup>149</sup> Ibid. 371.

<sup>150</sup> Ibid. 394.

<sup>151</sup> Ibid.

the constitution of the commission it was necessary to take into account the sphere of interest of the nations who used the Canal<sup>152</sup>.

(M. Asser) comprend que les Puissances signataires de la Déclaration de Londres aient, de droit, des représentants à la Commission; mais si, d'après les tableaux statistiques, d'autres Puissances ont les intérêts supérieurs à ceux des Puissances signataires de cette Déclaration, il ne comprend pas qu'elles ne soient pas admises à la surveillance au libre passage par le canal. En participant à l'oeuvre commune, ces Puissances ne pourront qu'ajouter à l'autorité morale de l'organe de surveillance. Il constate qu'en 1884, la Hollande a occupé le troisième rang sur la liste des navires ayant passé par le canal de Suez, et l'Espagne le septième rang, alors que la Russie n'occupe que le huitième. En conséquence, il propose d'appeler les Pays-Bas, et l'Espagne à participer à la surveillance commune<sup>153</sup>.

Further Professor Asser, clashing with the arguments of his predecessors, confirmed that there was no reason to fear that nine officials would cause more trouble than only seven<sup>154</sup>. This position was seconded by the representative of Spain, but the president, whose opinion was different, showed the consequences of thus admitting them:

admettre l'Espagne et les Pays-Bas à figurer dans la Commission qu'on se propose d'instituer en Egypte, c'est en ouvrir également l'accès à toutes les autres Puissances qui accéderont au Traité. Il n'est pas, en effet, de Puissance qui ne puisse invoquer de titres fondés sur les intérêts de ses colonies ou de son commerce, pour réclamer à cet égard un traitement égal.

La Commission doit-elle, peut-elle aller aussi loin, et poser le principe d'une réunion internationale composée des Représentants du monde entier, alors surtout que ces Représentants seront peut-être chargés de délibérer sur des questions de paix et de guerre, de provoquer une action armée dont certains Etats seront, par force même des choses, appelés exclusivement à faire les frais? En se prononçant affirmativement, la Commission entrerait sur le terrain de la politique générale qu'elle s'est interdit, et elle excéderait certainement les termes de son mandat<sup>155</sup>.

In spite of this the rest of the participants declared in favour of the arguments of the representatives of Holland and Spain, and the number of States delegated to the commission was left as a blank space<sup>156</sup>.

The Conference on the question of Suez is an interesting example of an effort by the great Powers to consolidate their exceptional leading role in Europe by recalling precedents from the recent past. The rest of the States on their side tried to protect their own rightful position, calling upon objective criteria which provided arguments for their participation in the decisions of the Conference.

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<sup>152</sup> Ibid. 426.

<sup>153</sup> Ibid. Typical was the solidarity of the injured States.

<sup>154</sup> Ibid.

<sup>155</sup> Ibid.

<sup>156</sup> Ibid. 427.

## THE BALKAN CONFERENCE

From the closed European conferences before the first world war we have still to mention the fruitless debates of the great Powers which took place in connection with the struggle in the Balkans, the protocols of which, according to SATOW, were not published<sup>157</sup>, and the first and probably the only many sided peace conference without the participation of the great powers, in Bucharest in 1913.

At the Bucharest Conference, the representatives of Bulgaria, Greece, Montenegro, Roumania and Serbia took part in the debates<sup>158</sup>. The absence of representatives of the great Powers was, however, only apparent. If the diplomatic documents of this period are read, it is clear that at this Conference the small Powers were, in fact, only pawns moved by their powerful protectors on the political chess board<sup>159</sup>.

The conclusion of peace at this Conference was brought about only thanks to the destruction of co-operation among the great Powers just before the first world war.

*C.—The Doctrine*

The dual practice, expressing itself on one side in the still present hegemony of the great Powers at closed conferences, and at the same time on the other there took place a large number of open conferences, at which the equality of States was scrupulously enforced, resulted in a certain disorientation among the representatives of the doctrine with regard to the development of international law and relations in the problems discussed in this work. In this period scholars may be divided into two camps. A huge majority are to be found in the camp which defended the principle of the equality of States, refusing to the hegemony of the great Powers any character of legality. The second group, in fact very small, but which, thanks to its original arguments, merits particular attention, represented an opinion that the law should recognise the leading role of the great Powers, and that the principle of the equality of States should be dispatched to oblivion.

## DEFENDERS OF THE EQUALITY OF STATES

As the first typical representative of this period we should mention the Russian scholar, Fiodor MARTENS, who in his system bows to practice, stressing that at the foundation of every law of nations lie real mutual

<sup>157</sup> SATOW II 177—178.

<sup>158</sup> NRG 3 série VIII 19—60.

<sup>159</sup> Cf. *Ibid* 31, 56; *Die grosse Politik*, vol. 35, 319—333.

relations, which nations at a certain period of time maintained between themselves, and every prescription of the law of nations has only as much rational foundation as it corresponds to those real relations<sup>160</sup>. This view did not entail, however, for MARTENS, the dropping of the principle of the equality of States, but on the contrary, it supported it in every way possible but as an equality before the law, and what is more, solely as a theoretical principle. As citizens of a State, he writes, are equal before internal law, so also are independent States equal before the law of nations. Equality of States arises from a conception of international society, and in this sense it is a "theoretical" principle. According to MARTENS, it would be unjust, however, to refuse it any practical or positive justification<sup>161</sup>.

To the prerogative of the great Powers MARTENS refers negatively, considering that more powerful countries, the so-called great Powers, profit from a greater means of realising their rights than do smaller or weaker ones; it does not arise from this, however, that the former are free to impose upon small nations their rights<sup>162</sup>.

The Pentarchy is defined by MARTENS "as a violation of the holiest rights and interests of nations". It is for him only a proof that not all countries enjoy the same position and influence in the family of nations. Pressure upon the independence of another nation violates the idea of the absolute equality of all States as members of international society, and for this reason it cannot be recognised as a fair and desirable form of organization for this society<sup>163</sup>. This position, however, did not prevent MARTENS, as an advisor

<sup>160</sup> MARTENS *Fr.*, I, 18—19. "Alles in Allem: dem jedesmaligen Völkerrecht liegen tatsächliche, reale und lebendige Wechselbeziehungen, welche die Nationen in einer gewissen Periode pflegen, zu Grunde und jeder Völkerrechtssatz hat, von diesem Gesichtspunkt aus betrachtet, gerade so viel vernünftige Gründe oder so viel Existenzberechtigung für sich, als er den wirklichen vernunftgemässen Lebensbeziehungen unter den Völkern adäquat ist".

<sup>161</sup> *Ibid.* 288. "Ganz so wie die Individuen, die Staatsbürger, vor dem Gesetze gleich sind, sind auch die unabhängigen Staaten vor dem Völkerrecht gleich... Die Gleichberechtigung der Staaten fliesst aus dem Begriffe der internationalen Gemeinschaft; in diesem Sinne ist sie ein 'theoretisches' Prinzip. Indessen wäre es unrichtig, ihr jede praktische Bedeutung und positive Begründung absprechen zu wollen".

<sup>162</sup> *Ibid.* 289. "So verfügen auch die mächtigen Staaten, die 'Gross-Mächte' über grössere Mittel zur Realisierung ihrer Rechte, als die kleinen und machtlosen — nur folgt daraus nicht, dass die Ersteren mit Recht den schwächeren Völkern Gesetze verschreiben dürfen".

<sup>163</sup> *Ibid.* 222—223. "Allein man braucht sich blos die Geschichte der Congresse von Troppau, Laibach und Verona in's Gedächtniss zu rufen, um zu erkennen, dass die Pentarchie eine Vergewaltigung der heiligsten Rechte und Interessen der Völker war. Im Grunde beweist sie nur das Eine, dass nicht allen Staaten die gleiche Stellung und Bedeutung in der Völkerfamilie zukommt. Indem sie die Selbständigkeit der andern Völker unterdrückt, zerstört sie die Idee der absoluten Gleichheit aller Staaten als Glieder der internationalen Gemeinschaft, und deshalb kann sie nicht für die gerechte und wünschenswerte Form einer Organisation derselben erachtet werden".

of the czar's government, from recognising the collective intervention of the great Powers by virtue of treaties to justify in this way, amongst other things, the partition of Poland<sup>164</sup>.

The small and little known manual of Peter RESCH of 1895 merits quotation because of its relatively clear grasp, which is rare, of the principle of the equality of laws. According to RESCH it meant solely this that every country has the right to carry out all laws which spring from its existence in international society, and every country, without regard to its size or power, has the right of equal treatment according to the general and fundamental principles of the law of nations<sup>165</sup>.

International congresses and conferences, RESCH, like MARTENS, considered the organs of international society. He demanded the participation of the States directly interested (according to the preliminary demands of the legal equality of States), and of all, when the subject were general matters. "In recent times—he confirmed—one of the favourite ways of sinning against the essential principles of justice, and particularly against the principle of legal equality, was the non-admission to participation in a certain congress (or conference) of just that country whose fate was to be discussed in that particular case" (Aix-la-Chapelle)<sup>166</sup>.

The author of a four volume system, HOLTZENDORF, considered the postulate of the legal equality of States as one of the greatest essential principles of the general law of nations<sup>167</sup>. However in the paragraph *Gleichheit und Ungleichheit der Staaten* he recognised the influence of actual inequality on the development of international law:

Lässt sich der Unterschied zwischen Grossmächten und Mittel- oder Kleinstaaten auch nicht juristisch formuliren, so lässt er sich doch auch nicht negiren, wenn die Einflüsse zu würdigen sind, deren Herrschaft die Entwicklung völkerrechtliche Neubildungen oder die Realisation der Völkerstreitigkeiten mitbestimmt, fördert oder erschwert<sup>168</sup>.

An interesting example of the recognition, even in 1889, of the continuity of the European system of the great Powers is the declaration of BULMERINCQ. Giving reasons for his opinion that all countries, without regard

<sup>164</sup> MARTENS Friedrich I 301: cf. Nussbaum 248—249.

<sup>165</sup> "... jeder Staat das gleiche Recht besitzt, alle in der staatlichen Existenz und in der internationalen Gemeinschaft begründeten Rechte auszuüben ... Jeder Staat hat ohne Rücksicht auf dessen eigentümliche Grösse und Macht das Recht auf gleichmässige Behandlung nach den allgemeinen Grundsätzen des Völkerrechtes". Resch 45.

<sup>166</sup> Ibidem 55. "Eine leider auch noch in jüngster Vergangenheit beliebte Versündigung gegen die Grundsätze der Gerechtigkeit und zwar insbesondere gegen das Prinzip der Rechtsgleichheit liegt dann vor, wenn zur Teilnahme an einem Congresse (oder einer Conferenz) gerade derjenige Staat nicht zugelassen wird, um dessen Schicksal es sich im gegebenen Falle handelt".

<sup>167</sup> HOLTZENDORF II, 11.

<sup>168</sup> Ibidem 13.

to their size or power, are equal before the law ("gleich vor dem Recht"), he called upon Paragraph 4 of the Protocol of Aix-la-Chapelle. He admitted that foreign policy distinguished between the great Powers, medium and small sovereign States; however the law of nations should consider all as equal, even more so because of the fact that "as the great Powers in Paragraph 4 of the Declaration of Aix-la-Chapelle wanted to recognize laws of nations as binding upon international relations, and as they constantly called upon this law equally with other States, so they are not able therefore to disregard this essential principle of equality"<sup>169</sup>.

Like BLUNTSCHLI, the naturalist FIORE wrote a system of the law of nations in the form of a code. And here also his limited understanding of the principle of lawful equality of States merits attention. It means for Fiore only this that "all States have the right to be considered in international society the equal of others in whatever concerns their juridical capacity, the faculty of exercising their rights, and the carrying out of their obligations"<sup>170</sup>.

In his system FIORE enumerates many limitations to which the principle of equality of States is subject in face of actual difficulties such as those which exist between States, for example, lack of access to the sea, or differences in cultural development. According to this author, this principle limited to a reasonable extent means only that States which live in a certain definite society do not recognise any other authority than the law<sup>171</sup>. The jurisdiction of great Powers over small States FIORE considered in contradiction to the principle of equality<sup>172</sup>. He acknowledged, however, that the privileged position of the great Powers, although unjustified, was recognised universally without opposition.

Aujourd'hui domine sans contradicteurs cette idée fausse que seules les grandes puissances jouissent de la prérogative de se réunir en congrès pour trancher les questions d'intérêt général comme si elles étaient les supérieures légitimes des petits Etats. Pareille prétention ren-

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<sup>169</sup> BULMERINCQ 204—205. "Das Wort 'Grossmacht' bezeichnet einen Staat mit ausgedehntem Territorium und grossen Machtmitteln. Die äussere Politik anerkennt den Unterschied einer Grossmacht von mittleren und kleineren souveränen Staaten, das Völkerrecht hat sie alle für gleich zu erachten und zwar um so mehr, als die Grossmächte in der angeführten Aachener Deklaration das Völkerrecht für die Staatenbeziehungen als verbindlich erachten wollen und sich immerfort für diese gleich den anderen Staaten auf dasselbe berufen, wesshalb sie ein Grundrecht desselben wie die Gleichheit nicht missachten dürfen".

<sup>170</sup> FIORE 113. "Tout Etat a le droit d'être considéré dans la société internationale comme l'égal des autres quant à sa capacité juridique, à l'exercice de ses droits et à l'accomplissement de ses obligations. cf. FIORE *Trattato* I 289.

<sup>171</sup> FIORE *Trattato* I 289—293 "Ristretto entro suoi giusti limiti il principio dell'uguaglianza vediamo come esso si applichi. L'uguaglianza giuridica tra gli Stati, che vivono in società di fatto, si manifesta principalmente col non riconoscere altra autorità che quella della legge e del diritto". Ibid. 293.

<sup>172</sup> FIORE 113; FIORE *Trattato* I 293.

ferme une violation évidente du principe de l'égalité juridique de tous les Etats qui forment une société de fait...<sup>173</sup>

FIGORE confirmed that there was no complete equality before international law, however this equality tended to become more and more realized. This optimistic opinion arose most probably from the influence of the practice of open conferences<sup>174</sup>.

Great meaning was attached by FIGORE to international congresses, which, according to him, are called primarily to formulate and confirm the universal law of all civilized countries<sup>175</sup>. The deciding role in these he recognised as belonging to the great Powers. He even considered that the great Powers alone should participate in these conferences, because in face of any particular difficulty between two or more States it is they who are mainly interested in the maintenance of order in international society, and these powers will certainly have a great moral authority over the disputing sides<sup>176</sup>.

As can be seen from these statements, FIGORE, in spite of his reservations, recognized the leading role of the great Powers and their deciding voice in international society.

PRADIER-FODÉRÉ deduces the right of States to equality from the right which a man has as a subject of the law. This equality means nothing other, according to him, than that "the rights of every State ought to be respected like those of every other" without regard to its rank or power<sup>177</sup>. He stressed by this, that "naturalistic or legal equality does not necessarily correspond to social or actual equality. Although every nation possesses from its very being all rights, they do not all have an equal power of realizing them"<sup>178</sup>.

DESPAGNET in his system of 1894 occupies a rather conservative position, limiting himself to opposing legal equality to actual inequality ("égalité de droit et inégalité de fait des Etats"). Legal equality, as defined by him is strictly limited. It means that "States are equal from the point of view of international law and from respect of their personality, as also from the duties which they have as a result of their relations with other States". He adds to this that this equality from the legal point of view cannot erase the deep inequalities amongst States<sup>179</sup>.

<sup>173</sup> FIGORE 37.

<sup>174</sup> Ibid.; FIGORE *Trattato* I 293 n. 2.

<sup>175</sup> FIGORE 61.

<sup>176</sup> Ibid. 62. "On peut admettre que les grandes puissances seules, prendraient part aux Conférences. . . . Faut-il ajouter qu'elles jouiront d'une grande autorité morale vis-à-vis des parties en cause?"

<sup>177</sup> PRADIER-FODÉRÉ II 8-9. "Par l'égalité des Etats il faut donc entendre: que les droits de chacun doivent être respectés autant que ceux de tout autre". Ibid. 11.

<sup>178</sup> Ibid. II, 11, "Bien que chaque peuple possède virtuellement tous les droits, il ne réalise pas tout également au même degré que les autres peuples".

<sup>179</sup> DESPAGNET 158. "... les Etats sont égaux au point de vue du Droit international et du respect de leur personnalité, comme des devoirs qui leurs incombent dans leur rapports avec les autres Etats".



A moderate compromise are the opinions of RIVIER of 1896. He accepts the principle of equality of States as a result of their being subjects of international law, of their sovereignty, and of their membership of the society of States. This author writes among other things:

Ainsi compris, et limité dans ses manifestations comme on le verra plus loin, ce principe est vrai, juste et salubre. Comprise autrement et sans restrictions aucunes, l'égalité serait aussi chimérique entre Etats qu'elle l'est entre individus<sup>180</sup>.

Consequently RIVIER admitted inequality, if it was sanctioned by a tacit or distinct agreement:

L'égalité, principe de droit, n'est point incompatible avec diverses inégalités effectives... L'accord exprès ou tacite des nations les admet et les sanctionne. L'égalité se presume, l'inégalité doit être démontrée<sup>181</sup>.

In a special subchapter entitled *The Great Powers*, RIVIER showed that some States qualifying as great Powers held a hegemony over Europe, and everywhere else with the exception of America. Strong States always, from the very nature of things, carry out a role of ascendancy. Further RIVIER writes:

Depuis 1815, les grandes puissances conduisent l'Europe. Cette hégémonie, acceptée, utile tant qu'elle reste dans les limites de la justice, est un fait politique... Ce n'est en aucune façon un principe juridique; les questions de droit n'en sont point affectées; il n'est point dérogé, par elle, au principe de l'égalité<sup>182</sup>.

The point of view of BONFILS in his work *Lehrbuch des Völkerrechts* of 1904, on the position of the great Powers in international society and on the principle of equality merits quotation with regard to its wide basis of evidence from practice and theory. BONFILS recognising the principle of full legal equality considers by this that no country can make pretensions to greater rights nor can it free itself from its obligations as a member of international society<sup>183</sup>.

He stressed great importance, however, upon the division of international society into great and small Powers. He paid much attention to the fact that diplomacy, public opinion, and statesmen have always recognised distinctions between great and small Powers. The number of great Powers is not limited. States rise to the rank of a great Power when they become so strong that their voice and co-operation may not be omitted without risk from the settlement of European affairs. On the other hand a State can lose this position when its diminishing power no longer permits it to exert a deciding influence on common affairs<sup>184</sup>. Bonfils gave examples from history, mentioning at the same time a list of great Powers according to the state of affairs

<sup>180</sup> RIVIER I 123—124.

<sup>181</sup> Ibid. 125.

<sup>182</sup> Ibid.

<sup>183</sup> BONFILS 142—143.

<sup>184</sup> Ibid. 143—144.

in 1900. Further he writes that these Powers frequently manifest a tendency to assume with regard to other Powers, as did the Pentarchy from 1815 to 1830, a superior right, a quasi-legislative authority, in taking their position as the directors of international society<sup>185</sup>.

A special chapter is also devoted by BONFILS to the congresses of the 19th century<sup>186</sup>. Discussing open and closed conferences together he had difficulty, however, in reaching any general conclusion<sup>187</sup>.

L. OPPENHEIM in his system *International Law* of 1905 introduced a distinction between legal and political equality<sup>188</sup>, acknowledging without any reservations a great and positive meaning to the hegemony of the great Powers.

Legal equality must not be confounded with political equality... Politically, States are in no manner equals, as there is a difference between the Great Powers and others. Eight States must at present be considered as Great Powers — namely, Great Britain, Austria-Hungary, France, Germany, Italy, and Russia in Europe, the United States in America, and Japan in Asia. All arrangements made by the body of the Great Powers naturally gain the consent of the minor States, and the body of the six Great Powers in Europe is therefore called the European Concert. The Great Powers are the leaders of the Family of Nations, and every progress of the Law of Nations during the past is the result of their hegemony, although the initiative towards the progress was frequently taken by a minor Power.

But, however important the position and the influence of the Great Powers may be, they are by no means derived from a legal basis or rule. It is nothing else than powerful example which makes the smaller States agree to arrangements of the Great Powers. Nor has a State the character of a Great Power by law. It is nothing than its actual size and strength which makes a State a Great Power. Changes, therefore, often take place<sup>189</sup>.

A new argument then appeared here in support of the hegemony of the great Powers, namely that of authority and exemplification. It should be mentioned further that legal equality, which Oppenheim distinguishes from political, is according to him only equality before the law:

The equality before international Law of all membres-States of the Family of Nations is an invariable quality derived from their International Personality...<sup>190</sup>

A distinct influence from the practice of open conferences can be seen particularly in those authors impressed by the Hague Conferences.

MERICNHAC, in his system published in the years 1905—1912, defended small Powers, confirming that “good leadership through a rational and decided policy counted for more and often still counts for more than certain great

<sup>185</sup> Ibid. 146. “Diese Mächte zeigen häufig das Bestreben, sich, wie seinerzeit die Pentarchie (von 1815 bis 1830), höhere Rechte, gewissermassen gesetzgeberische Befugnisse über die andern Staaten zuzuerkennen, indem sie bei der internationalen Gemeinschaft die führende Rolle übernehmen”.

<sup>186</sup> Ibid. 420—427.      <sup>187</sup> BONFILS 146.

<sup>188</sup> A similar division was accepted by DICKINSON as a basis for his opinions. See below.

<sup>189</sup> OPPENHEIM L. I 162—164.

<sup>190</sup> Ibid. I 161.

Powers”<sup>191</sup>. A token of this is the fact that previously, at the time of the Holy Alliance and Pentarchy, congresses and agreements were concluded exclusively by a group of the great Powers, whereas more recently small States have participated more often and without any differences, for instance, as at the Hague Conference<sup>192</sup>.

Similarly HERSHEY, under the influence of the Hague Conferences, came to the conclusion that the tendency contemporary to himself was in the direction of smaller and weaker States participating more and more universally at conferences.

The great Powers have, in times past, undertaken to speak for the whole of Europe or the world, more particularly in the solution of political questions; but the present tendency appears to be toward a more general inclusion of the smaller or weaker Powers, even of Asia and Latin America<sup>193</sup>.

From this group of scholars, particular attention is merited by Max HUBER, whose work is one of the most serious monographs on the theme of the equality of States. This author, a participant at the second Hague Conference in the role of a representative of a small State, Switzerland, could see the very real problems of the tendency which appeared at this Conference. This was the abandonment of the principle of the equality of States in universal conventions, and the growing opinion that this principle was non-obligatory. On the basis of these facts, HUBER came to the conclusion that the development of international law came in a revolutionary phase, which confronted the law with a fundamental decision:

Wenn... etwas in der durch die Friedenskonferenzen, speziell die zweite, markierten neuesten Phase der Völkerrechtsentwicklung als revolutionär zu bezeichnen ist, so sind es die Versuche, den Grundsatz der Gleichheit aller souveränen Staaten in den universellen Kollektivverträgen beiseite zu setzen, da wo seine Anwendung das politische Übergewicht der Grossmächte zu tangieren scheint. Hier steht das Völkerrecht von einer grundsätzlicher Entscheidung, von einer der weitest tragenden, vor die es je sich gestellt sah<sup>194</sup>.

According to him, a differentiation of States is only possible in formal, organizational rules, which establish concrete institutions embracing various States. But the differentiation of States in material, abstract norms, binding all countries equally never arose:

Eine differentielle Behandlung der Staaten ist an sich in allen Beziehungen denkbar, doch ist sie nie in Frage gekommen bei materiellen Rechtsnormen, weil die materielle Norm ein abstraktes Verhältnis zu regeln pflegt, welches ebenso wohl zwischen Grossstaaten wie zwischen Kleinstaaten, wie endlich zwischen Staaten von ungleicher politischer Bedeutung vorkommen kann. Anders verhält es sich mit formellen organisatorischen Rechtssätzen, durch welche ein konkretes gleichzeitig verschiedene Staaten umfassendes Rechtsverhältnis begründet wird.

<sup>191</sup> “Les petits Etats bien conduits, à politique prudente et ferme, ont compté et comptent plus que certains des grands...” MERIGNHAC, I 314.

<sup>192</sup> Ibidem.

<sup>193</sup> HERSHEY 309.

<sup>194</sup> HUBER 90.

Anders verhält es sich mit formellen organisatorischen Rechtssätzen, durch welche ein konkretes gleichzeitig verschiedene Staaten umfassendes Rechtsverhältnis begründet wird. Solange internationale Organisationen wie es bisher üblich war, den teilnehmenden Staaten anpasst werden, ist eine gleichmässige Berücksichtigung aller ohne weiteres möglich. Anders aber, wenn zunächst für die Organisation feste Grundsätze aufgestellt werden...<sup>195</sup>.

HUBER came to such a conclusion not only on the basis of the Hague Conferences, but on the whole practice and theory of the 19th century. He recognized the existence of the hegemony of the great Powers in the first half of the 19th century. In the second half of the century he confirmed the absence of any formal superiority of those countries and the gradual democratisation of the conferences. The superiority of the great Powers appeared, however, stronger in the regulating of concrete matters<sup>196</sup>. The European Concert of the great Powers was not, according to HUBER, the formal germ of a future world organization, as some authors wanted, but he recognized that this political fact might become legally important in the future<sup>197</sup>.

In spite of the fact that the work of HUBER was no more than a long article, it merits great appreciation as one of the first scientific attempts at a synthesis of the practice and theory of the 19th century, and for showing the necessity of distinguishing material international law from formal, namely procedural law.

#### DEFENDERS OF THE HEGEMONY OF THE GREAT POWERS

Among the first authors to decidedly question the principle of the equality of States in a system of international law we should mention FUNCK-BRENTANO and SOREL. In their work *Précis du Droit des Gens* in a special paragraph entitled *De l'inégalité des États* they confirmed that States are sovereign, but that not all profit from it in mutual relation to the same sovereign rights, and are therefore only equal in theory, independent of the conditions of exercising these sovereign rights. Especially these authors write:

Tous les Etats souverains sont égaux en tant qu'Etats souverains; en réalité, ces termes identiques, ces mots *Etat souverain*, qu'on leur applique indifféremment, désignent des Etats de constitution très-diverse, des souveraineté de nature très-différente, et par conséquent des Etats souverains parfaitement inégaux en droits et en forces<sup>198</sup>.

Further:

En dehors de l'application qui en est faite, l'égalité des Etats n'est qu'un mot sans portée<sup>199</sup>.

FUNCK-BRENTANO and SOREL showed that equality among citizens of a country is guaranteed by statute; in international relations there is no such

<sup>195</sup> Ibid.                   <sup>196</sup> Ibid. 95—98.                   <sup>197</sup> Ibid. 99—105.

<sup>198</sup> FUNCK-BRENTANO et SOREL 46—47.

<sup>199</sup> Ibid. 47.

guarantee. Real differences which exist between States destroy all real equality. If, in spite of these differences, there are principles which exist and bind all countries on an equal level, then—according to FUNCK-BRETANO and SOREL—these principles have positive value only in so far as they refer to real conditions<sup>200</sup>.

The greatest attack on the equality of States was made by the isolated Scots naturalist, LORIMER. In his *Principes de droit international* of 1835 he writes that “the fact of innate inequality is a fact of nature which law must accept”<sup>201</sup>.

LORIMER recognizes the rights of States only to the degree corresponding to their political development, however, he rejects the principle of State equality. The author shows that this false principle of equality (“le prétendu principe de l'égalité”) did not prevent the supremacy of the great Powers over small States, and brought about a desire for the creation of an international organization as the only means of introducing international law in life. According to LORIMER, custom always discards the equality and absolute independence of States<sup>202</sup>. Frequently enunciating certain doctrines does nothing to support their virtues, but, on the contrary, it speaks against them if this enunciation has no support in practice:

il n'est guère de principes qui aient été plus fréquemment affirmés que ceux de l'égalité et de l'indépendance absolue des Etats et ceux de l'équilibre et du status quo; or, tous ont été condamnés par la raison et par l'histoire<sup>203</sup>.

LORIMER attached great significance to the Concert of the Great Powers:

au point de vue pratique la plus importante des tentatives ... est celle que nous voyons se produire de nos jours, l'établissement d'une espèce de pouvoir exécutif international permanent, grace au concert des six grandes puissances européennes<sup>204</sup>.

The reasons for the contemporary faulty theories were considered by LORIMER to be the attitude of scholars who did not study sufficiently carefully the life of States, and he also thought that they saw too many analogies between countries and particular persons<sup>205</sup>.

The positivist, T. J. LAWRENCE, was the next sober realist. However, he was not so extreme in relation to the principle of equality, but more penetrative, and in consequence more convincing. The point of entry for this argument is the statement that countries treated individually have equal rights, but there is, however, a difference when we consider countries collectively:

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<sup>200</sup> Ibid.

<sup>201</sup> LORIMER XIII. “Le fait de l'inégalité native est un fait de la nature que le droit doit accepter”.

<sup>202</sup> Ibid. XIII—XV.

<sup>203</sup> Ibid. 23, 29.

<sup>204</sup> Ibid. 33.

<sup>205</sup> Ibid.

We do not for a moment claim for the great Powers of Europe or for the United States greater rights in ordinary matters than those possessed by other members of the family of nations... International Law gives the great Powers no more rights in their individual capacity than the smallest and weakest of their fellows. But collectively they act in questions over which they have gained control pretty much as the committee of a club would act in matters left to it by the rules of the club. That is to say, they possess a regulative authority and are deemed to speak for the whole body of European states. But in case of a club committee its powers are granted and defined by rules which the members of the club have formally adopted, whereas the Great Powers can show in support of their authority only the tacit consent of other states. Consequently its limits are vague and indefinite, and its procedure is ill-defined. But a review of the international history of the century will show that it is none the less real and effective<sup>206</sup>.

Writing on the equality of states, LAWRENCE confirmed that since the time of Grotius countries were considered equal before international law. Small States could call upon this principle in case of aggression by stronger neighbours which granted a token of illegality to such acts. In conclusion, it brought to mind, according to LAWRENCE, the fable of the wolf and the sheep, the result of the principle being the discovery by the aggressor of a creditable justification for his actions. Finally therefore "...respect for International Law was kept up in the midst of transactions which were in reality lawless"<sup>207</sup>.

Further declaring himself in favour of the primacy of the great Powers, Lawrence called upon recent history:

a careful examination of recent international history seems to reveal a series of important facts, which can have no other meaning than that the doctrine of Equality is becoming obsolete and must be superseded by the doctrine that a Primacy with regard to some important matters is vested in the foremost powers of the civilised world. Europe is working round again to the old notion of a common superior, not indeed a Pope or an Emperor, but a Committee, a body of representatives of her leading states. During the greater part of the present century Great Britain, France, Austria, Prussia and Russia have exercised by concentrated action a kind of superintendence over some departments of European affairs, and in 1867 Italy was invited to join them. These six states are called the Great Powers, and the agreements of the Great Powers is called the Concert of Europe, a phrase which seems to indicate that what is done by their concentrated action is done on behalf of the whole Europe and is binding upon other States, even though they have not been formally consulted with regard to it. On the American continent a similar primacy, though hardly of a pronounced character, seems to be vested in the United States<sup>208</sup>.

LAWRENCE avoided a too hasty conclusion, limiting himself to confirming a tendency, and, what is more important, he did this upon a basis of the correct examination of the practice of the past:

We do not assert that the hegemony of the Great Powers in the Old World and the United States in the New is an undoubted principle of public law. All we contend for is that events are tending in that direction and, unless the tendency is speedily reversed, the Grotian doctrine of Equality will soon be a thing of the past. A brief historical review will be sufficient to indicate the grounds on which this proposition is based<sup>209</sup>.

<sup>206</sup> LAWRENCE 66.

<sup>207</sup> Ibid. 241.

<sup>208</sup> Ibid. 242.

<sup>209</sup> Ibid.

LAWRENCE quotes here as examples the creation of the Greek, Belgian, and Egyptian States, and the activities of the Concert in the Balkan question and other similar examples. Mentioning the acceptance of Turkey into the Concert, the recognition of Rumania and Serbia at the Congress of Berlin, and the debates on the neutralization of the Suez Canal, Lawrence comes to the following conclusion:

These cases seem to show not merely, a superiority in influence but a superiority before the law. The Great Powers make new arrangements, and other states accept them and act upon them for the future. Over the group of problems which we call by the generic name of the Eastern Question the authority of the Powers is absolute and complete. There is scarcely a detail which they do not settle by agreement among themselves. ... The authority of the European Concert is limited, its jurisdiction rudimentary, and its procedure indefinite and uncertain. But it exists and is one of the great features in the international politics of the civilized world. ... In matters connected with property, jurisdiction and diplomacy, they are on the same footing as their smaller neighbours. ... It is only when they act collectively that they possess a superintending authority not granted to any temporary alliance. Europe allows them in some matters to speak on its behalf. ... They, therefore, imposed upon the rest of Europe fresh obligations; and the fact that they were allowed to do so, not only in this case but in many others, shows that their position of Primacy is recognised by tacit consent<sup>210</sup>.

As may be seen, therefore, he is not completely opposed to the principle of the equality of States, but only limits it and considers it as secondary:

The principle of Equality, with the limitation suggested in the previous sections, pervades and influences the whole of International Law. But the definite rules that can be traced to it are few in number and not of the first rate importance. They relate to matters of ceremony and etiquette, which are the outward signs of equality or the reverse<sup>211</sup>.

By indicating the specific needs of international society as a whole, and by a logical and consequential reasoning for the leading role of the great Powers, supported by analysis of its practice, LAWRENCE undoubtedly brought at this period a large contribution to the understanding of the new legal structure of the society of States.

The last "realist" of this period was WESTLAKE, also a Britisher, whose opinions are also not directed against the equality of States, but which contain a recognition of the superior role of the great Powers, which will sometime, according to him, lead to the creation of a world State.

Similarly to many of his predecessors, he points out that "the equality of sovereign States is merely their independence under a different name"<sup>212</sup>. Reflecting further than this, he wonders whether such an understanding can lead to agreement between different classes of great Powers, coming to the following conclusion:

There is no doubt that several times during the nineteenth century the great powers have by agreement among themselves made arrangements affecting the smaller Powers

<sup>210</sup> Ibid. 243—246.

<sup>211</sup> Ibid. 252

<sup>212</sup> WESTLAKE I 308.

without consulting them, and with the full intention that those arrangements should be carried into effect, although it has not been necessary to resort to force for that purpose because the hopelessness of resistance in those circumstances has led to an express or tacit, but peaceable, acceptance of the decrees by the states concerned<sup>213</sup>.

Continuing, WESTLAKE quoted the words of Lord Salisbury in the House of Lords in defence of the great Powers' position (among others over the question of Greece), where Salisbury defines it as a legislative authority<sup>214</sup>.

(The Great Powers) are representing a continuity of policy, and . . . they are maintaining the law of Europe as it has been laid down by the only authority competent to create law for Europe. . . . If it had not been for the concert of Europe the Hellenic Kingdom would never have been heard of. . . . But the federated action of Europe — if we can maintain it, if we can maintain this legislature — is our sole hope of escaping from the constant terror and calamity of war. — (Times of 20 March 1897)

Here is the commentary of WESTLAKE:

It would be impossible to put better the argument in favour of the position assumed by the great powers, and if their proceedings be considered separately, the ratification subsequently conceded to it by the states affected saves it from being a substantial breach of their equality and independence, leaving it open to the charge of a want of courtesy in manner. It stands as an example of political action, not to be condemned if just. But when such proceedings are habitual they present another character. They then carry the connotation of right which by virtue of human nature accretes to settled custom, and the acquiescence of the smaller powers in them loses the last semblance of independent ratification. We are in presence of the first stages of a process which in the course of ages may lead to organised government among states, as the indispensable condition of their peace. . . .<sup>215</sup>

WESTLAKE in general considers that too great a respect is given to the idea of independence and sovereignty. In support of his opinion he devotes a special two page note to a description of the situation of the great Powers at the congresses of the 19th century<sup>216</sup>.

From lesser known works on the subject of the equality of States, the opinions of the Russian scholar GRABAR merit attention. In his article of 1912 under the title *The Principle of Equality of States in contemporary International Law* he considers that the population of Russia or Great Britain could not share equal voting power with those of Luxemburg, Costa Rica, or Panama, because the populations of the two great powers have a greater right to solve general international legal problems. Maintaining that the voting power of Russia or Great Britain is not stronger than that of Liberia or Montenegro signifies a complete loss of contact with reality and the use only of abstract ideas and fictions<sup>217</sup>.

<sup>213</sup> Ibid.           <sup>214</sup> Ibid. 309.

<sup>215</sup> WESTLAKE 309—310.

<sup>216</sup> Ibid. 310—312.

<sup>217</sup> KOSHEWNIKOW 58—59, see below 128.



## ATTEMPTS AT A SYNTHESIS

The first monographs specially consecrated to the problem discussed here, written immediately prior to the creation of the League of Nations, are the works of DICKINSON and Charles DUPUIS.

DICKINSON's work *The Equality of States* of 1920 embraces the opinions on the theory and practice up till the first world war. DICKINSON came to the conclusion there that the principle of the equality of States "is the expression of two important legal principles: the principle of equal protection of the law or equality before the law and that of equality of rights and obligations or simply equality of rights". States are equal before the law "when they are equally protected in the enjoyment of their rights and equally compelled to fulfil their obligations". This principle "is not inconsistent with inequalities of representation, voting power, and contribution in international organizations". He is right in stressing that it is "absolutely essential to a stable society of nations". But the principle of the equality of rights is not necessary to legality and "it has never been anything more than an ideal". It is inherited from naturalistic theories, and according to the not very convincing opinion of DICKINSON, it was always understood as an "equal capacity for rights". This equality embraces amongst other things equal representation, voting power and contribution<sup>218</sup>.

DICKINSON himself considered that "the problem of international organization should not be confused and complicated by attempting to insist upon application of the principle of State equality. Insistence upon complete political equality in the constitution and functioning of an international union, tribunal or concert is simply another way of denying the possibility of effective international organization"<sup>219</sup>.

Charles DUPUIS was specially occupied with the mutual relations of the great Powers with other States before the League of Nations. In his monograph, after a presentation of political events and pacifist plans, he comes to the conclusion that only by limiting the sovereignty of States for their common good, and by a spirit of internationalism ("l'esprit international") could the foundations of a lasting peace and legality in international relations

<sup>218</sup> DICKINSON 334—335.

<sup>219</sup> Ibid. 336; "The Political Equality" of DICKINSON means equality in such matters as representation, voting, and contribution in international conferences, administrative unions, and tribunals. It is therefore a third kind of equality, besides "equality before the law" and "equality of rights and obligations", not very happily named, because it suggests erroneously that the question of representation and other similar matters have regard only to politics, and not to law. A more suitable name in this case would be "procedural equality" or "formal equality". The introduction of the idea of "political equality" as opposed to "legal equality" was probably considered by L. OPPENHEIM, *ibid.* 332; see above.

be created. The international spirit ought on one hand to restrain the great Powers from sway over small States, and the latter from abusing their rights by rejecting equitable plans, solely for the reason that in this way they can manifest their equality with the great Powers<sup>220</sup>.

#### SUMMARY

The practice and theory of this period, preceeding the first world war, are characterised by an essential duality.

In practice, on one side, the closed conferences headed by the Congress of Berlin are the scene of further hegemony of the great Powers, while on the other, the number of open conferences grows violently, and at these there reigned a comparatively idyllic equality and co-operation between great and small States.

A new element was the usurpation by the great Powers of the exclusive right to recognise the independence of new States and the imposition on them of conditions. It is characteristic that the Powers rested their leading role upon precedents from the recent past, namely on attempts at consolidating their hegemony in the form of common law.

The open conferences are themselves a novel and interesting appearance. At these conferences, whose number during an incomplete half of the 19th century exceeded the number of closed conferences many times over, great and small Powers successfully reached agreement in a wide range of fields, and even created organizations at which their governments reached agreement with reference to participation without any difficulty. Most interesting from the point of view of the problem under examination were the Hague Conferences which provided occasions for the recognition of contradictions in the interests of great and small States. In particular, the great Powers openly proposed for the first time to the complete society of States a formal secession from the principle of equality in the proposed permanent arbitral tribunal and prize court.

A development here of great general significance merits our attention. The sharp struggle, such as that led by small States at the second Hague Conference and in certain conferences, was not a struggle for absolute equality, but rather for relative equality. In this period they were already happy to agree, and even had definitely agreed upon objective measurable criteria for the classification of countries, such as for instance, according to the tonnage of the merchant navy in the prize court, or the amount of their contribution or population figure in the statutes of administrative organizations.

The duality in theory appears in the division of scholars into two groups:—the defenders of the principle of the equality of States, who considered the su-

<sup>220</sup> DUPUIS *Le Droit* 528—529.

periority of the great Powers only a political fact; and the supporters of the legality of the hegemony of the great Powers in international law, who criticised the postulate of equality as unsuitable and even injurious in fact.

In the group of those who defended the principle of equality, attention was paid to limiting this principle towards the equality before the law, namely equal legal protection and equal obligation of the law, and to a wider consideration of the practice. In the small group of those who supported the hegemony of the great Powers a characteristic is the convincing strength of their arguments, based primarily upon an analysis of practice and the consideration of specific needs of the society of States in organizing itself as a whole. A serious contribution towards agreement of these two points of view was made by DICKINSON, through distinguishing equality before the law as a commonly recognised and necessary condition of legality in international relations from the principle of equality of rights, which was not necessary, and which in its final form is even injurious because it hinders the development of international organizations.

## CHAPTER FOUR

### THE CREATION OF A NEW ORDER

#### THE CONFERENCE OF PARIS

The gigantic task of working out of a peace treaty after the first world war, considering all the deep changes this war had produced, and the creation, for the first time in history, of a universal organization of States for the maintenance of peace, required a large number of staff and the necessity of much time. It is not to be wondered at, therefore, with this aim the Conference of Paris was called, embracing upwards of a thousand delegates from countries of the whole world, not counting technical personnel and a great number of experts, who together formed as many again. Besides the plenary sessions there were also more than sixty groups which functioned to assist the Conference<sup>1</sup>, and the period from the beginning to the signing of the treaty lasted more than half a year, not counting the further several years occupied with numerous agenda of the Conference.

An exhaustive introduction to the position and mutual relations of the great and small Powers at this Conference would necessitate a huge and undoubtedly very absorbing monograph. The limits of this work force us, however, to give only the most striking facts, which in their way<sup>2</sup> are sufficient to orientate ourselves with regard to the position of the first and second categories of States at the Conference<sup>2</sup>.

All countries were admitted to the Conference who had declared war against Germany or who had broken off diplomatic relations with her. Neutral countries were only admitted on questions which directly concerned them.

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<sup>1</sup> TEMPERLEY I 243—244.

<sup>2</sup> In view of the lack in Poland of a complete collection of the protocols of the Conference of Paris edited by Hunter MILLER *My Diary at the Conference of Paris with Documents*, we have employed:—(1) the French edition of the documents of the Conference in 14 volumes *Traité de Versailles*, (2) TEMPERLEY'S *A History of the Peace Conference in Paris* in 6 volumes, (3) MARSTON'S *The Peace Conference of 1919, Organization and Procedure*, and as additional works, (4) HANKEY'S (secretary to the Supreme Council) *Diplomacy by Conference*, and (5) DILLON'S *The inside story of the Peace Conference*.

Enemy countries were at the beginning completely omitted, because formally speaking the Conference had to have the character of a preparatory conference for obtaining agreement between the allies<sup>3</sup>.

Altogether thirty three States participated in the Conference, and of these twenty three were non-European. Attention should be paid to the fact that at the Conference the representatives of dominions took part as representatives of separate States<sup>4</sup>.

The Conference began on the 12th January 1919 with an informal session of the heads of the governments of the four great Powers: France, Great Britain, Italy, and the United States, and their ministers of foreign affairs. The representatives of Japan in the persons of the Japanese ambassadors to London and Paris appeared the next day. In this way the Supreme Council was created, otherwise known as the "Council of Ten"<sup>5</sup>. In fact it was the Supreme War Council under a different name<sup>6</sup>. At its establishment it was supposed to have only unofficial talks, but in fact it made decisions on the most important questions which were subjects of the debates. First of all it decided on which matters it had to reserve for itself, and which to pass on to the larger groups, and also, who should participate in the Conference and what commissions should be created<sup>7</sup>.

In this way the peace treaty with Germany was in fact the work of the great Powers, and it was only left for the small countries to sign it<sup>8</sup>.

Besides preparing the future peace treaty, the Supreme Council had all the time to settle numerous current matters. TEMPERLEY writes:

It cannot be too strongly stressed that during all the time the Conference sat, it acted as the executive Government of a Europe and Asia...<sup>9</sup>

The Supreme Council with this composition formed the real Paris Conference until half way through March 1919. This group was secret, informal, and elastic. Its secretariat was in reality the secretariat of the whole conference<sup>10</sup>.

Because of technical difficulties, as writes TEMPERLEY, the great Powers proposed to the rest of the States that they should submit their claims in writing, especially with regard to territorial matters. Shortly afterwards these countries were called, according to the order in which their notes had been

<sup>3</sup> TEMPERLEY I 248.

<sup>4</sup> Besides the representatives of States officially admitted there were also many petitioners, who submitted requests as often as possible. Amongst others there were Armenians, Grusians, Ruthanians, Irish, Zionists, Schleswiggers, and Aland Islanders.

<sup>5</sup> TEMPERLEY I 247. The United States was counted among the great powers after the Civil War of 1865, Japan after the war with China of 1895. OPPENHEIM L. I 164.

<sup>6</sup> Under the former title the military resolutions of the Peace Treaty with Germany were confirmed. HANKEY 26.

<sup>7</sup> See below.

<sup>8</sup> TEMPERLEY I 249--250.

<sup>9</sup> TEMPERLEY I 256.

<sup>10</sup> *Ibid.* 249-250.

submitted, to a verbal sub-commission of requests before the Council of Ten. According to TEMPERLEY it was an unnecessary loss of time, because the Council only gave a superficial glance to these claims, transferring them directly to commissions. On the other hand, however, as TEMPERLEY puts it, "the dignity of the Small Powers was flattered, and a vent, as it were, provided for their energies"<sup>11</sup>. The representatives of some small States were admitted a second time (Dominions, Portugal, Belgium, and China) to make a declaration before the Council on the occasions of debates on the fate of ex-German colonies. This time a decision was taken to create mandates<sup>12</sup>.

The Council of Ten appeared in further practice a still too heavy instrument. Half way through March only a few questions had been settled, among them no territorial matters. Besides this it appeared impossible to maintain the secrecy of its discussions<sup>13</sup>. It was decided therefore to replace the Council of Ten by a council of only the heads of the governments of the great Powers. From then on, as TEMPERLEY says:

M. Clemenceau, Mr. Lloyd George, President Wilson, and Signor Orlando from the comparative comfort of the arm chairs at the Hôtel Bischoffen, Mr. Lloyd George's flat, or M. Clemenceau's office, discussed the big problems of the settlement<sup>14</sup>.

Present alone at these discussions was an interpreter, because the prime minister of Italy did not understand English. The whole secretariat was put in an antechamber. With time it appeared that this informality only made the work more difficult, so a single secretary, Hankey, was admitted to take minutes<sup>15</sup>.

The four member Supreme Council undertook the most important decisions with regard to the peace with Germany. When, as a sign of protest against the decision on the question of Fiume, the representative of Italy left the Supreme Council, it was reduced to a Council of Three. This fact did not make any change in the discussions. Only a decision was taken that for a resolution to be passed the presence of three was sufficient. In this way, as TEMPERLEY shows:—"by centralizing all discussions in one small private room, they ensured that they should themselves absolutely control the making of the Treaty"<sup>16</sup>. According to TEMPERLEY, such a system of discussion has a bad side, because it irritated public opinion, and because small countries were completely excluded in this way from any influence on the course of the debates, even on matters in which they were closely interested<sup>17</sup>.

<sup>11</sup> TEMPERLEY I 257.

<sup>12</sup> TEMPERLEY I 256—257.

<sup>13</sup> TEMPERLEY I 262.

<sup>14</sup> *Ibid.* I 264.

<sup>15</sup> Sessions without a secretary lasted for more than 3 weeks. HANKEY 28.

<sup>16</sup> TEMPERLEY I 265.

<sup>17</sup> *Ibid.* I 265—266. The representative of Italy returned to Paris at the beginning of the discussions with Germany. HANKEY says that the Council of Four in the period of 101 days, including Sundays, had 206 meetings and took 674 decisions. HANKEY 29.

After the signing of the treaty with Germany, President Wilson and Lloyd George departed. The functions of the Supreme Council were taken over by a Council of Five, with a new composition<sup>18</sup>.

In the plenary sessions, according to the decision of the Council of Ten, all the participants in the Conference were to play a part, namely great and small Powers, but by no means on an equal footing. To the main allies were assigned five plenipotentiaries each. France, Great Britain, Italy, Japan, and the United States were officially named as Main Allied and Associated Powers, and were counted in the class of "Powers with general interests", while the remainder were counted in the class of "States with particular interests". Serbia, Belgium, and to general surprise, Brazil, were assigned three each. Greece, the Hedjaz, Poland, Portugal, and Czechoslovakia, two plenipotentiaries. In this what was particularly striking was the assigning of a separate plenipotentiary to dominions, which as a result gave British Empire 14 places<sup>19</sup>.

The above decisions met with sharp protests from small countries. The course of these historic manifestations by small States is described by DILLON; TEMPERLEY only mentions them.

When the Canadian minister spoke about this assignment of places as a "proposition", he was violently corrected that it was not a "proposition", but "a definite and final decision". Next the delegate of Belgium made a long speech in which he asked the Conference to assign small combattant States more than two delegates. This request was curtly declined by the French prime minister, who informed those present that the Conference was the creation of the great Powers, whose purpose was to keep the direction of affairs in their hands. He added significantly that the representatives of smaller States would not have been invited at all if it had not been for the problem of the League of Nations, which needed discussion. "We should not forget, as Clemenceau said, that the five great Powers represented more than twelve million fighting men...". Finally, he said still further at the conclusion of the gathering, that it "would be better to get down to work and stop losing time in the making of speeches." As DILLON says:

These words produced a profound and lasting effect, which, however, was hardly the kind intended by the French statesman.

"Conferencial Tsarism" was the term applied to this magisterial method by one of the offended delegates<sup>20</sup>.

Before the signing of the treaty with Germany there were six plenary sessions, and they had no serious significance with one exception, namely

<sup>18</sup> See below.

<sup>19</sup> Ibid. I 497—499.

<sup>20</sup> DILLON 202; TEMPERLEY I 249—250, VI 346.

when the report of the commission on the League of Nations was discussed. Otherwise they limited themselves to the passing of the decisions of the great powers, which were without appeal<sup>21</sup>.

After the removal from the Supreme Council of the ministers of foreign affairs, the latter formed a separate council, and because of the participation of the representative of Japan, it was called the "Council of Five". It had as its aim the relief of the Council of Four, especially in urgent current matters; it was, however, completely subject to the Supreme Council. It occupied itself further before the signing of the treaty with Germany in elaborating the peace treaty with Austria. When the first Supreme Council was dissolved, the Council of Five took over its functions, fulfilling them till the moment of ratifying the peace treaty<sup>22</sup>.

The secretariat of the Conference had great influence on the course of the discussions, and for this reason essential was the fact that it contained only the representatives of the great Powers<sup>23</sup>.

In the numerous groups which assisted the Conference (in the commissions, committees, sub-commissions, and so on) the superiority of the great Powers was also striking. First of all the decisions themselves regarding the creation of such commissions, and regarding their constitution, were taken exclusively by the group of the great Powers, mainly by the Supreme Council, and they were given to the plenary session only for confirmation. By the plenary sessions five commissions were created, and by the Supreme Council eighteen<sup>24</sup>. The great Powers reserved to themselves at least 2 or 3 seats, giving to States "with particular interests" only a certain number (5 or 6 seats), which they had to fill at a separate session of small States<sup>25</sup>.

In a dozen or so commissions or sections there sat only the representatives of the great Powers, amongst others, in the drafting commissions and in the very important commissions on territorial matters, before which the representatives of interested States were called, however without any possibility of influencing its decisions<sup>26</sup>.

The territorial commissions were created *ad hoc* by the Supreme Council. There were eight of them (with this one mission), namely:—(1) a general one for territorial matters, (2) on the question of Czechoslovakia, (3) on the question of Cieszyn, (4) a permanent one for the question of Poland, in Paris, (5) on the question of Rumania and Yugoslavia, (6) on the question of Greece and Albania, (7) on the question of Belgium and Denmark, and (8) an inter-

<sup>21</sup> TEMPERLEY I 249—250, 256.

<sup>22</sup> *Ibid.* 267.

<sup>23</sup> TEMPERLEY I 251, 497, 499.

<sup>24</sup> PV I 272; see below PV I 298—301.

<sup>25</sup> TEMPERLEY I 252—253, 497—505.

<sup>26</sup> TEMPERLEY I 497—504, IV 133—134.



-allied mission sent to Poland. In all these commissions only the representatives of the great Powers participated<sup>27</sup>.

An eloquent illustration of the attitude of the great Powers towards other countries in the territorial commissions is the question of the representative of Italy at the session of the 20th February 1919 in the commission on the question of Poland:

Il serait intéressant de connaître les désirs des Polonais sur la constitution de leur frontière. Ceci sort-il des pouvoirs de la Commission ?

The president explained:

Nos attributions ne sont pas limitées. Nous pouvons nous occuper de toutes les questions qui intéressent la Pologne. Nous pouvons donc prier les Représentants du Gouvernement polonais présents à Paris de venir nous exposer leurs sentiments en ce qui concerne leurs prochaines frontières.

After a short discussion, the president asked:

Vous êtes bien d'avis que nous demandrions aux Représentants du Gouvernement polonais de nous faire connaître leur prétentions ?

The commission replied in the affirmative<sup>28</sup>.

The fact should be stressed that even the commission which had to work out the pact of the League of Nations had no greater representation of small States at first. It was composed of ten representatives of the great Powers (two from each Power) and one representative from five smaller States, who were chosen at a meeting of small States, namely from Belgium, Brazil, China, Portugal, and Serbia. Later on the additional representatives of Czechoslovakia, Greece, Poland, and Rumania were admitted<sup>29</sup>. Also characteristic was the fact that among over sixty assisting groups, only in one was the president, and in two the vice-presidents from the representatives of small States<sup>30</sup>.

Even the commissions created in this way had not great influence on the decisions, because their reports, with a small number of exceptions (amongst others the report of the commission on the League of Nations), were not submitted to the plenary sessions, but to the Council of Ten, and alter, in the most important matters, to the Council of Four, besides which the resolutions of the commissions were frequently freely changed without any previous agreement with them<sup>31</sup>. DILLON states this:

<sup>27</sup> PV I 298—301. / <sup>28</sup> PV I 233.

<sup>29</sup> TEMPERLEY II 27; MILLER II 256; see below, page 109.

<sup>30</sup> The representatives of Czechoslovakia and Belgium were presidents of sub-committees on financial questions, the representatives of Belgium the vice-presidents of the commission on reparations and of the subcommission on monetary matters. TEMPERLEY I 497—504.

<sup>31</sup> TEMPERLEY I 253 269, 277.

As a matter of fact, the number of commissions was of no real consequence, because on all momentous issues their findings, unless they harmonized with the decisions of the chief plenipotentiaries, were simply ignored<sup>32</sup>.

The position of the great and small Powers at the creation of the commissions is well characterised by a certain incident, which TEMPERLEY mentions and which DILLON describes at length.

When the great Powers conceded only five places in the economic and financial commission, out of a general number of fifteen, the small countries protested. The representative of Poland, at a meeting of small States, proposed that they should not agree at all to choosing the delegates of small countries, but the representative of Brazil, who stood in the forefront of those protesting, recognised that it was unworthy that the great Powers should choose the representatives of the small States, and he himself on his own account chose five from among the representatives of the countries of South America. This fact was recognised by the great Powers as an affront, and as DILLON describes, "this comedy was severely judged and its authors reprimanded by the heads of the Conference..." This election was annulled, after which the great Powers themselves appointed the delegates from the smaller States to this commission<sup>33</sup>.

The guarding of the secrecy of the debates was the greatest gall of the great Powers. This was the reason for diminishing the Council of Ten, and the nearly conspiratorial continuation of the discussions by four or even three great statesmen. They did not even profit from a secretary. The only live protocol, if we may say so, was for a time the interpreter. He served in case of necessity as a token of one.

It should be stressed that a strict censorship of the press was maintained in France. From the moment Germany appeared at the Conference, representatives of the press were removed even from the plenary sessions<sup>34</sup>. Besides a small number of sparse official communiques, the only source of news on the course of events, sometimes of very great importance for countries unrepresented in the debates, were indiscretions or just plain rumour<sup>35</sup>.

In these conditions, quite independently of how far this degree of secrecy in the debates was necessary, we may confirm that it made even deeper the rift between great and small States. As a result small countries did not only not participate in important decisions, but even till the last moment knew nothing of them. For example the plan of the peace treaty with Germany was announced to small countries at the plenary session on the day before its submission to Germany, and the important decision regarding the

<sup>32</sup> DILLON 212.

<sup>33</sup> TEMPERLEY I 256; DILLON 211.

<sup>34</sup> TEMPERLEY I 255; *ibid.* n. 2.

<sup>35</sup> *Ibid.* I 255—256, 277—278.

division of the mandates, on the same day as Germany arrived at the Conference<sup>36</sup>.

A striking example of the treatment of States which did not belong to the great Powers concerning the secrecy of the debates are the discussions on the question of the province of Shantung, a German concession in China, which to general indignation was granted to Japan, and not to China. China was informed of this decision unofficially on the same day as the communiqué of it was given to the press<sup>37</sup>. More particularly they refused her a copy of the notes from the speeches of the Japanese representatives before the Council of Three, which established the only proof of Japan's assurances. As TEMPERLEY writes:

The statements of policy made by Baron Makino, on behalf of the Japanese Delegation, in the conversations of the Council of the 22nd April and of the 30th April, had not been reduced to the formality of an official, published declaration. No official minutes had been kept of the proceedings and hearings of the Council of Three. Sir Maurice Hankey, accompanying Mr. Lloyd George as Secretary, made notes and memoranda, and there exists, in this form, a record of the conversations; but these were not formal Conference records. The official record, the Treaty itself, expressed no condition and laid down no limitations in reference to the provisions of Arts. 156, 157, and 158.

Under these circumstances, and in presence of informal and abbreviated oral statements by individuals rather than an official announcement by the Council, and with a refusal by the Council to give the Chinese Delegation a copy of the informal record of the hearing at which the Japanese Statement was made there was uncertainty as to the extent of the undertakings upon which the Treaty articles were said to be conditioned<sup>38</sup>.

The fact quoted here is not only an example of the different treatment of the great Powers and the remainder of the States, but it is also a glaring proof that discrimination caused positive losses in vital interests of States which did not belong to the great Powers.

From the accessible documents on the discussions of the Paris Conference we should quote a typical extract, regarding the position of smaller countries, from the procedure in elaborating the Minorities Treaty with Poland. Here is an extract from the letter of the secretary of the great Three, Hankey, of the 1st May, 1919, to the President of the Committee on New States and Minorities, which was about to be created:

My dear Colleague,

At a meeting this morning between M. Clemenceau, President Wilson and Mr. Lloyd George it was agreed to set up a Special Committee composed as follows: (U. S. A., Great Britain, and France)<sup>39</sup>... to meet at once and consider the question of international obli-

<sup>36</sup> Ibid. I 269.

<sup>37</sup> The delegate of China was also heard on this question, but only once, and that at the preliminary stage. TEMPERLEY VI 380.

<sup>38</sup> TEMPERLEY VI 386. A copy of the protocol of the debates was later submitted to China in secret. Ibid. n. 1.

<sup>39</sup> Later they were joined by the representatives of Italy and Japan.

gations to be accepted by Poland and other new States to be created by the Treaties of Peace including the protection of racial and religious minorities and other matters raised in the following documents, which I attach... M. P. A. Hankey<sup>40</sup>.

The committee thus created immediately started work. As we know from the laconic protocols of the plenary sessions of this committee, the main discussions took place at unofficial sessions; at the plenary sessions decisions were announced and reports for the Supreme Council were agreed upon<sup>41</sup>.

In the second report to the Council of Four, accepted at the eighth session of the committee, we read amongst other things:

Finally, the Committee have thought it best, especially in view of the short time at their disposal, not to give a formal hearing to either Jews or Poles, though, individually and informally, they have taken the opportunity of ascertaining the views of persons interested on either side. They were, in particular, unwilling to communicate to the Poles the proposed Articles until these Articles had received the approval of the Council of Four. They venture to suggest that if the Council of Four approve these Articles they should communicate them forthwith to the Polish Delegation, with an intimation that they are approved in principle, but that the Committee are authorised to receive any observations which the Polish Delegation may desire to place before them on question of detail<sup>42</sup>.

Next the letter of Hankey of the 17th May to the President of the Committee says:

My dear Colleague,

At a meeting of the Council of the Principal Allied and Associated Powers this morning, it was agreed:

- 1) To approve in principle Report No 2 of the Committee on New States:
- 2) That the Committee should communicate the Report officially to the Polish Delegation in Paris and confer with them on the subject:
- 3) That the Secretary-General of the Peace Conference should telegraph the gist of the Report to the Polish Government and invite its views.

I am directed to request that your Excellency will be good enough to communicate this decision to the Committee on New States...<sup>43</sup>

In reply to this letter the Committee announced:

Unless it receives a clearer decision in this matter, the Commission thinks it must interpret No 2 of the decision of May 17 in the sense that it is necessary to communicate to the Polish Delegation the text of the draft of the Treaty with Poland, but not the report itself, which contains remarks and observations whose communication might have certain disadvantages<sup>44</sup>.

<sup>40</sup> PV X 11—12.

<sup>41</sup> Ibid.

<sup>42</sup> PV X 45. The Minorities Treaty is constructed as follows: the introduction contains confirmation of the recognition of the Polish State by the five great Powers as a sovereign and independent member of the family of nations, then 12 articles enumerating the obligations of Poland with regard to her minorities. TEMPERLEY V 437—445.

<sup>43</sup> PV V 51.

<sup>44</sup> Ibid. 52.

At the eleventh session it was resolved to send a telegram to M. Pichon, the French minister in Warsaw, in the following words:

Paris, May 22, 1919. The present telegram is a common telegram for you and your colleagues of the United States, Great Britain and Italy, sent by order of the Council of the Chiefs of State and Heads of Governments, and I request you to communicate it at once to your Colleagues.

The diplomatic representatives at Warsaw of the United States of America, of France, and Italy will inform the Polish Government by an identical communication, that the principal Allied and Associated Powers, taking into account the situation of Europe after a prolonged war, have considered it necessary to insert in the Treaties drawn with the new States, and especially with Poland, clauses concerning the protection of minorities of race, language or religion, in conformity with Article 93 of the draft of the Treaty with Germany, the text of which is found at the end of the present telegram.

The provisions summed up below, which you will communicate to the Polish Government, have been decided upon by the said Powers, who desire to know the sentiments of the Polish Government concerning these provisions and request the latter to submit its observations as soon as possible<sup>45</sup>.

The reply of Poland to this telegram was the memorandum of Paderewski, which confirmed amongst other things:

(Memorandum by M. Paderewski)... But precisely from the point of view of the sovereign rights of Poland, the Delegations consider it to be a duty to present its objections to the introduction in the Treaty with Germany of Article 93, according to which Poland should admit the intervention of the Chief Powers in her internal affairs. Poland has already experienced the nefarious consequences which may result from the protection exercised by foreign Powers over ethnical and religious minorities. The Polish nation has not forgotten that the dismemberment of Poland was the consequence of the intervention of foreign Powers in affairs concerning her religious minorities, and this painful memory makes Poland fear external interference in internal matters of State more than anything ..

The representatives of Poland must however firmly stipulate against any clauses of the Treaty which would cause prejudice to the sovereignty of the Polish State, by imposing one-sided obligations concerning the essence and form of the Polish Constitution and which would submit for approval to the Council of the League of Nations the eventual modifications of the said Constitution. ...

Whilst handing in the present answer to the scheme of the Treaty, the Polish Delegation points out that in this matter, wherein the internal legislation of Poland is concerned, the Diet and the Government of Poland are in the first place entitled to express their opinion ...<sup>46</sup>

In connection with this memorandum Clemenceau addressed to Paderewski a long letter, which established itself as an important document in the history of the development of international law. As reasons for the procedure of the great Powers at the Conference, Clemenceau in this letter is clearly carrying on the tradition of the European Concert. Here are the most important extracts from the point of view of this work:

Sir, On behalf of the Supreme Council of the Principal Allied and Associated Powers, I have the honour to communicate to you herewith in its final form the text of the

<sup>45</sup> Ibid. 59.

<sup>46</sup> Ibid. 129—134.

Treaty which, in accordance with Article 93 of the Treaty of Peace with Germany, Poland will be asked to sign on the occasion of the confirmation of her recognition as an independent State and of the transference to her of the territories included in the former German Empire which are assigned to her by the said Treaty. ... The Council have since had the advantage of the suggestions which you were good enough to convey to them in your memorandum of June 16, and as the result of a study of these suggestious modifications have been introduced in the text of the Treaty. ...

In formally communicating to you the final decision of the Principal Allied and Associated Powers in this matter I should desire to take this opportunity of explaining in a more formal manner than has hitherto been done the considerations by which the Principal Allied and Associated Powers have been guided in dealing with the question.

1) In the first place, I would point out that this Treaty does not constitute any fresh departure. It has for long been the established procedure of the public law of Europe that when a State is created, or even when large accessions of territory are made to an established State, the joint and formal recognition by the Great Powers should be accompanied by the requirement that such State should, in the form of a binding international convention, undertake to comply with certain principles of government. This principle, for which there are numerous other precedents, received the most explicit sanction when, at the last great assembly of European Powers—the Congress of Berlin—the sovereignty and independence of Serbia, Montenegro, and Roumania were recognised. It is desirable to recall the words used on this occasion by the British, French, Italian, and German Plenipotentiaries, as recorded in the Protocol of June 28, 1878:

“Lord Salisbury recognises the independence of Serbia, but is of the opinion that it would be desirable to stipulate in the Principality the great principle of religious liberty”<sup>47</sup>.

Here Clemenceau quotes a whole extract from the protocols of the Congress of Berlin of 1878. Further on he writes:

2) *The Principal Allied and Associated Powers are of the opinion that they would be false to the responsibility which rests upon them if on this occasion they departed from what has become an established tradition.* In this connection I must also recall to your consideration the fact that it is to the endeavours and sacrifices of the Powers in whose name I am addressing you that the Polish nation owes the recovery of its independence. It is by their decision that Polish sovereignty is being re-established over the territories in question and that the inhabitants of these territories are being incorporated in the Polish nation. It is on the support which the resources of these Powers will afford to the League of Nations that for the future Poland will to a large extent depend for the secure possession of these territories. There rests, therefore, upon these Powers an obligation, which they cannot evade, to secure in the most permanent and solemn form guarantees for certain essential rights which will afford to the inhabitants the necessary protection whatever changes may take place in the internal constitution of the Polish State. ...

3) It is indeed true that the new Treaty differs in form from earlier conventions dealing with similar matters ... Under the older system the guarantee for the execution of similar provisions was vested in the Great Powers. Experience has shown that this was in practice ineffective, and it was also open to the criticism that it might give to the Great Powers, either individually or in combination, a right to interfere in the internal constitution of the States affected which could be used for political purposes. Under the new system the guarantee is entrusted to the League of Nations. The clauses dealing with this guarantee have been

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<sup>47</sup> TEMPERLEY V 432—433.

carefully drafted so as to make it clear that Poland will not be in any way under the tutelage of those Powers who are signatories to the Treaty<sup>48</sup>.

In further points Clemenceau again connects this to similar guarantees given at other times to Greece, Holland, and other countries. Further on we find some warm sentences on the theme of his happiness at the regaining of independence by the Polish State, and finally he concludes his letter with the following words:

The Treaty by which Poland solemnly declares before the world her determination to maintain the principles of justice, liberty, and toleration, which were the guiding spirit of the ancient Kingdom of Poland, and also receives in its most explicit and binding form the confirmation of her restoration to the family of independent nations, it will be signed by Poland and by the Principal Allied and Associated Powers at the occasion of, and at the same time as, the signature of the Treaty of Peace with Germany<sup>49</sup>.

As a result Poland was forced to sign a treaty, whose enactments, as we know, were severe. This can be seen from the tone of the first article.

Article I. Poland undertakes that the stipulations contained in Articles 2 to 8 of this Chapter shall be recognised as fundamental laws, and that no law, regulation or official action shall conflict or interfere with these stipulations, nor shall any law, regulation or official action prevail over them<sup>50</sup>.

In attempting a general characterization of the Paris Conference of 1919 we are forced to make a comparison with the Congress of Vienna<sup>51</sup>. Without doubt the main actors at the Paris Conference themselves were under the influence of such a comparison<sup>52</sup>. It should be recognised that analogies between these two conferences are already surprising at a first glance, in spite of the fact that these two events are divided by a century of the most revolutionary changes in all spheres.

Limiting ourselves to a comparison of these conferences from the point of view of the position of great and small States, more exactly great and small allies, it should be stated that this position was in the final balance nearly identical. In both the preparation of the conference and its entire direction remained in the hands of a few very great Powers, allies from the period of war. In both cases they gave as justification for their position the amount they had contributed towards victory. And in both cases the rest of the countries were at most heard in a number of commissions, or exceptionally by a directing group of the great Powers. In both cases the

<sup>48</sup> TEMPERLEY V 434—435; the author's stress.

<sup>49</sup> TEMPERLEY V 436—437.

<sup>50</sup> TEMPERLEY V 439.

<sup>51</sup> For instance SATOW in his first sentence on the Conference writes: "the Five great Powers took over the exclusive direction of the debates just as at Vienna in 1815", SATOW II 188; TEMPERLEY also saw an analogy between the two meetings. TEMPERLEY I 248.

<sup>52</sup> See below.

great Powers reserved for themselves actual participation with a deciding voice in all commissions. Not really essential in this light is that at Paris small countries were parties to the treaty, while at Vienna they were only adherents to it, because in both cases they had nearly no influence on the substance of the treaty.

In looking for the essential differences in the position of great and small countries at both these meetings, we can find only one, namely the placard under which the debates took place. The slogans were different and the principles were different, which were the bases of the proceedings of the Powers and the bases of the new order. The Vienna debates took place under the placard of legitimism and the balance of power, and under the slogan of nipping in the bud national freedom movements, democratic and progressive ideas. The placard of the creators of the Peace of Versailles, whose spokesman was the representative of the Democrats, Wilson, was first of all the casting away of the methods and ideals of the Congress of Vienna... Wilson in his programme speeches condemned the principle of the balance of power, secret diplomacy, and secret treaties, putting in first place the slogan of self-determination and progress of small nations<sup>53</sup>. TEMPERLEY, on the basis of the famous fourteen points of Wilson and numerous other speeches of his, confirmed that they expressed sixteen principles which taken together, had to be the foundation of a future peace. This included amongst other things: the safeguarding of international law, independent definition of political development and national policy, the sovereignty, autonomy and equality of Nations<sup>54</sup>.

Summarising, it should be confirmed that at two great conferences, at the Congress of Vienna and the Peace Conference of Paris, the role of the great States comes down to the self-selected representation by a small group of great Powers of the interests of Europe in 1815, and the interests of the world in 1919.

The Paris Conference, in spite of the casting away of the past by its ideological leaders, continued the practice of the European Concert. Some of the quoted documents lively remind us of the contents and tenor of the protocols of the great congresses, especially the Congress of Berlin. This conclusion is confirmed in the declaration, already quoted, of Clemenceau, where we can find even a formal connection with the Concert<sup>55</sup>. As justi-

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<sup>53</sup> In his speech of the 11th February 1918 Wilson said among other things: "The method of German Chancellor. is the method of the Congress of Vienna. We cannot and will not return to that..." TEMPERLEY I 392. In his speech of the 27th September Wilson declared: "The impartial justice meted out... must be a justice that plays no favourites and knows no standards but the equal rights of the several peoples concerned". Ibid. I 400.

<sup>54</sup> TEMPERLEY I 192—197.

<sup>55</sup> See above.



fication for the undemocratic methods of the Paris Conference, we can only give the argument that international society had not at its disposition, and still has not any better way of arranging such an immense number of very contentious matters.

THE DEBATES OF THE COMMISSION OF THE LEAGUE OF NATIONS  
AND THE PACT OF THE LEAGUE  
(A SYNTHESIS OF THE PRACTICE)

Even though the League of Nations was a creation of the Paris Conference, and even a prolongation of it<sup>56</sup>, the debates on the creation of the League and the final resolving of its structure merit separate discussion, because they bring to a close a complete and important period in the development of international society, and concern the position of great and small countries embodying the synthesis of the practice of conferences and organs of the 19th century.

The debates of the Commission of the League of Nations were preceded by a number of drafts prepared by governments of great Powers and small States, and by statesmen. These drafts, with regard to their acknowledgement of the place in the organization for great and small States, were very varied.

For instance, the common plan of the Scandinavian countries (Denmark, Sweden, and Norway) foresaw the League as a continuation of the Hague Conferences, whose aim would be the peaceful settlement of international disputes<sup>57</sup>. The Swiss plan demanded the maintenance of the equality of States, foreseeing, however, a possibility of dividing the mandates in the League similarly as in the Helvetian Confederation, that is according to the numbers of people<sup>58</sup>.

The first plan of Wilson also did not foresee any distinction with regard to the great Powers. Whereas, the majority of British plans clearly hinted at unity with the European Concert, giving the great Powers a monopoly of the executive power in the League. Of the private drafts, the one of General Smuts merits particular attention. It had the title *The League of*

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<sup>56</sup> At the plenary session at which the Commission of the League of Nations was created Wilson said: "Il nous faut donc créer quelque organisme chargé de parfaire l'oeuvre de la Conférence." PV II 8. The delegate of Australia, declaring himself in favour of a division of mandates before the creation of the League of Nation, put a rhetorical question to the Council of Ten where he was as a member of the British delegation: "Was not the *de facto* League of Nations already in existence in that room?" "No League of Nations could be superior to the members of that Conference." Miller II 202.

<sup>57</sup> PV II 240—245.

<sup>58</sup> PV II 255.

*Nations—A Practical Suggestion.* This contained a realistic analysis of the problem, and had a great influence on Wilson<sup>59</sup>. Here is an extract of Smuts' arguments, which presents us with the heart of the difficulty of the problem, namely, the participation of the great Powers in the League from the point of view of a representative of the great Powers:

We are, in the first place, called upon to decide what we mean by equality in the new system. Will the United States of America count for as much and the same as Guatemala? The question is crucial.

The league will include a few great Powers, a large number of medium or intermediate States, and a very large number of small States. If in the councils of the league they are all to count and vote as of equal value, the few Powers may be at the mercy of the great majority of small States. It is quite certain that no Great Power will willingly run such a risk by entering a league where all have equal voting power. Will great Britain be prepared to put her fleet at the mercy of a majority vote of all the other States who are members of the league? The question need only be put to see what the answer must necessarily be. The league is therefore in this dilemma, that if its votes have to be unanimous, the league will be unworkable; and if they are decided by a majority, the Great Powers will not enter it; and yet if they keep out of it they wreck the whole scheme. Clearly neither unanimity nor mere majority will do. Neither will it do to assess and assign different values to the States who are members of the league. If Guatemala counts as one, what value shall be given to the United States of America? Will it be 5, or 10, or 100, or 1000? Will the valuation proceed on the basis of wealth or population or territory? And if either of the two bases is adopted, what about the Powers who have millions of barbarian subjects, or millions of square miles of desert territory? On the basis of population China may be the most influential member of the league; on the basis of wealth the United States of America will have the first place; whilst on the basis of territory the British Empire will easily rank first. But clearly there is no good reason to be assigned in favor of any basis of valuation, and the principle of values will not help us at all. We therefore proceed to look for some other solution of our difficulty<sup>60</sup>.

The draft of Smuts itself foresaw the League of Nations as a permanent Conference composed of two organs: the Assembly and the Council. The function of the Assembly, in which all members of the League were to participate, would be more concerned with the giving of advice than with resolutions. The proper work of the League would rest with the Council. The members of the Council were to be the great Powers and two representatives from medium and small States. In this system the great Powers were the permanent members, and the rest were changed on a rotary system<sup>61</sup>.

The creation of the Commission for discussion of matters connected with the forming of the League of Nations was of fifteen members, that is two from each of the great Powers, and one from each of five countries with special interests. This was resolved upon at a plenary session of the introductory Peace Conference on the 25th January 1919. The choice of the five

<sup>59</sup> MILLER I 34.

<sup>60</sup> MILLER II 39.

<sup>61</sup> *Ibid.* II 40—41, 45.

small countries to this Commission was taken at a meeting of these countries. As a result, besides the great Powers, Brazil, China, Portugal, Serbia, and Belgium were also represented on this Commission<sup>62</sup>. These places were contested amongst the small countries themselves. As Miller says:

The Small Powers were in a state of almost open revolt against the limited representation which was being accorded to them on various Commissions<sup>63</sup>.

At the second session of the Commission three further members from among smaller countries, namely Poland, Czechoslovakia, and Rumania were successfully co-opted on to the Commission. This was due mainly to the representative of Belgium, who was helped by the representatives of Serbia and China, and from the camp of the great Powers, by Léon Bourgeois, a worthy veteran of the Hague Conferences, who endeavoured to transplant the spirit of those conferences to the future League of Nations<sup>64</sup>.

The basis of discussion in the Commission was the Anglo-American plan, the so-called "Hurst-Miller Draft", which was imposed by the great Powers. Besides this, French and Italian plans were admitted *pro forma*, but these never found their way to the table of debate<sup>65</sup>.

The Hurst-Miller Draft in Article 3 foresaw the creation of a body of delegates of all members, and of a Council, to which would belong only the great Powers, but to which States directly interested would be invited *ad hoc*. This Article says:

Article 3.—The representatives of the States, members of the League directly affected by matters within the sphere of action of the League, will meet as an Executive Council from time to time as occasion may require.

The United States of America, Great Britain, France, Italy, and Japan shall be deemed to be directly affected by all matters within the sphere of action of the League. Invitations will be sent to any Power whose interests are directly affected, and no decision taken at any meeting will be binding on a State which was not invited to be represented on the meeting.

Such meeting will be held at whatever place may be decided on, or, failing any such decision, at the capital of the League, and any matter affecting the interests of the League, or relating to matters within its sphere of action or likely to affect the peace of the world, may be dealt with<sup>66</sup>.

Around just this article raged the struggle between great and small countries. The representatives of the great Powers, in particular the original author of this article, Lord Cecil, defended the plan, on the other hand the representatives of small States carried on the struggle for their participation in the Council of the League.

<sup>62</sup> MILLER II 229—230.

<sup>63</sup> MILLER I 84.

<sup>64</sup> MILLER I 143—144.

<sup>65</sup> MILLER I 130, 132; ZIMMERN 253.

<sup>66</sup> MILLER II 232. This Article clearly reminds us of Article 4 of the Protocol of Aix-la-Chapelle, see above.

The lack of any reserved places for small countries in the Council met with violent criticism by the representatives of those States on the Commission. The arguments of Wilson and Cecil that effectiveness spoke for a Council of small numbers were met with rebuff. The Belgian, Hymans, expressed his opinion that small countries would not accept the plan, and it was more important that the Council should be trusted rather than attention be paid to its effectiveness. A danger existed that a small country would be in a worse position than a great Power in any dispute. It was unknown who should decide in the case of an invitation being sent to a party particularly interested<sup>67</sup>. In another place the representative of Belgium directly reproached the author of the article with: "What you propose is nothing else than the Holy Alliance"<sup>68</sup>.

In answer Lord Cecil replied that this charge was incorrect and he said:

The real security for the small nations must be the sense of justice of the large ones. And as far for the possibility of a split between great and small, practically such a thing will not occur. The question we have to solve is this, what kind of an Executive Council will produce the most favorable impression and will facilitate the acceptance of the project and facilitate its adoption by the greatest number of countries. Is the chance of injuring the chances of the League greater if we have four for the smaller nations or two?<sup>69</sup>

In a more conciliatory tone was the speech of the Chinese representative. He was not opposed to the permanent representation of the great Powers in the Council, but, according to him, small countries should not be made to feel that there was a crevasse between them and the great Powers. It was impossible to heed world opinion without listening to small countries<sup>70</sup>.

Next the representative of Brazil, Pessoa, characterised the draft of Article 3 in the following way:

the five Great Powers would have permanent representatives on the Executive Council, whereas the other Powers would be represented on it only when their interests were directly affected. But seeing that, in this case, the small Powers interested would not be able to take part in the deliberations — as being parties to the dispute — it followed that all decisions would be taken by the Great Powers. The Council would be, therefore, not an organ of the "League of Nations" but an organ of "Five Nations", a kind of tribunal to which everyone would be subject. .<sup>71</sup>

Other representatives of small States in the Commission also put forward demands for suitable representation. They were supported in these demands by the representatives of France and Italy. The representative of Great Britain doubted, however, whether it was appropriate, and only under pressure from the Commission did he agree to an adjournment of the discussions<sup>72</sup>.

The draft of Article 3 was changed, and foresaw this time the participation of the representatives of secondary States in the Council. The efforts of small

<sup>67</sup> MILLER I 147.

<sup>68</sup> MILLER I 162.

<sup>69</sup> Ibid.

<sup>70</sup> Ibid. 151—152.

<sup>71</sup> MILLER II 257.

<sup>72</sup> Ibid. 257—258.

countries were now directed to obtaining the highest number of their representatives possible in the Council. At the second meeting the representative of Belgium proposed that there should be five delegates of small States in the Council, on the other hand the representative of Serbia, supported by the representative of France, Bourgeois, limited this demand to four<sup>73</sup>.

Here are some of the most characteristic opinions which illustrate the typical arguments of great and small States.

The representative of France, Larnaud, criticised the division into great and small States as "only a convenient form of expression for dealing with a certain difference of fact"<sup>74</sup>. He recognised the necessity of naming all the five great allies to the League, because it was a necessary conclusion of the war. "The matter", as he himself expressed it, "is not to be discussed in the abstract or on the basis of sentiment; but a thing of cold fact; and the fact is that the war was won by Great Britain, France, Japan, Italy and the United States" He considered that "it is essential that the League be formed around these effective Powers so that at its birth it shall carry with it the influence and prestige of the nations that conquered Germany"<sup>75</sup>.

The argument for factual inequality was put forward by Léon Bourgeois, president of the Commission, who, as it was mentioned above, tended to be rather an advocate of small countries in the camp of the great. He confirmed that the world was watching what the great Powers were doing, and that is why they should be given a decisive majority in the Council. Although "it is not to be disputed that the influence of all the small nations when taken together, is great and imposing, yet as a matter of fact, their total population and their total power falls short of that of the five great Powers"<sup>76</sup>.

More pointed in a definition of his position was Lord Cecil, a supporter of the monopoly of the great Powers. He said straight to the point:

I should advise going slow on the proposal to give the small powers four representatives. Our chief object is to make the League a success. The chief need in making the League a success is the support of the Great Powers"<sup>77</sup>.

In this haggle by the representatives of small States for suitable representation in the Council it is possible to notice new elements: a readiness to compromise, and calling upon public opinion. We can see it especially in the speech of the main advocate of small states, that of the Belgian representative:

The chief point is to impress the world by the fairness of the Covenant. The world of right would be impressed by this suggested equality. In such a question, the dignity of nations ... is at stake. If the present ratio (5 to 2) were adopted the world would say—five to the great nations and two to the small nations as a "beau geste" ... the equality... would be preferable; but he would be satisfied if small nations got four. What would the

<sup>73</sup> MILLER II 259.

<sup>74</sup> MILLER I 159.

<sup>75</sup> MILLER I 159—160.

<sup>76</sup> MILLER I 160—161.

<sup>77</sup> MILLER I 161.

world say if five nations received a total of five delegates and twenty remaining nations received a total of two<sup>78</sup>.

At the end of the discussions a similar tone of realism and readiness to compromise may be seen in the speech of the Brazilian delegate, Pesoa, who said:

it was clear that the question could not be settled entirely by the rigorous principles of law. The injunction of political reasons must also be considered. But it was neither equitable nor just that nations which were not considered Great Powers should have a representation which did not amount even to one Delegate per continent<sup>79</sup>.

Finally it was agreed that there were to be four representatives of small States on the Council<sup>80</sup>.

The draft decided on was submitted next to two special sessions for discussion by neutral States. In these sessions there participated a sub-commission composed of three representatives of great Powers, three of small States, and thirteen from neutral countries. Nearly all the participants in this sub-commission criticised as too low the participation of small States in the Council<sup>81</sup>. Interesting as a resumé of the discussions are the views given to neutral States by Lord Robert Cecil and Venizelos (Greece). Lord Robert Cecil gave the following explanation:

the original proposal did not allow for any representation of the smaller Powers on the Executive Council. The nine representatives of the smaller Powers on the League of Nations Commission protested, and the Commission agreed to add four smaller Powers to the Executive Council. They had to think not only of ideal justice, but of creating an assembly by which to carry out efficiently the great task assigned to the Executive Council<sup>82</sup>.

Venizelos on his side added that "... the small Powers on the Commission had had a hard fight about this article, and had concluded that four to five was a fair proportion from the point of view of justice and efficiency..."<sup>83</sup>

The hard fight mentioned in this speech eventually gave small countries the minimum representation among the great Powers that they had demanded. At a preliminary glance, in comparison with the practice of the European Concert, this appears to be a reinforcement of the position of small Powers. However, when we take into account the cost which they had to pay for it, it was a defeat. The price was a formal renunciation of full equality, which established an important precedent for the future<sup>84</sup>.

The principle of the equality of States was also completely passed over in silence in the Pact of the League. Of all the plans for the Pact submitted to the Commission only the Italian one foresaw any distinct confirmation of

<sup>78</sup> Ibid. 160.

<sup>79</sup> Ibid. II 301.

<sup>80</sup> MILLER II 302.

<sup>81</sup> Ibid. II 620—645.

<sup>82</sup> MILLER II 624.

<sup>83</sup> MILLER II 624.

<sup>84</sup> See below.

this principle in its first article<sup>85</sup>. It was not, however, considered. This principle, under the name of "sovereign equality" was not guaranteed until a quarter-century had passed—in the Charter of the United Nations<sup>86</sup>.

In the Commission of the League of Nations a motion for the insertion of a similar principle, which also included equality of nationals, was made by the representative of Japan on the occasion of discussion on the postulate of equality of religion and freedom of confession. He proposed an additional clause, which ran:

The equality of nations being a basic principle of the League of Nations, the High Contracting Parties agree to accord as soon as possible, to all alien nationals of States members of the League, equal and just treatment in every respect, making no distinctions, either in law or fact, on account of their race or nationality<sup>87</sup>.

A majority of the Commission, including even the representatives of small States, for instance Greece, received the motion unwillingly, proposing the adjournment of the discussions<sup>88</sup>.

The representative of Japan moved this question once again at the last session of the Commission in a different, essential form. After a long speech, in which he referred to the noble aims to which the League of Nations must subscribe for all peoples he proposed an additional clause in the preamble of the Pact of the League, in which it is stated that the Powers signing it will accept the present constitution of the League, with the aim of laying a foundation for international co-operation for securing international peace and security. This clause said:—"by endorsement of the principle of the equality of Nations and the just treatment of their nationals"<sup>89</sup>.

And this time Lord Cecil replied that he could not vote for this motion, although personally he completely agreed with its intentions. In reply to this, the second Japanese representative explained that all the proposed words meant were that: "all the members of the League of Nations should be treated with equality and justice". He considered that the resolution was as important as the already inserted decisions with regard to the inspection of the conditions of work, public health, or renunciation of weapons. He drew the Commission's attention to the fact that Japanese opinion held much by these changes; it might be for Japan an indication that the equality of the members of the League was not recognized if these changes were rejected, and as a result the new organisation would be very unpopular, which could even cause Japan's not joining it<sup>90</sup>.

<sup>85</sup> "Every State is equal before the law. Inequalities of power cannot be invoked in justification of any act of commission or omission, or of any claim or pretension incompatible with the respect due to the rights of others and with the fulfilment of international duties". MILLER II 246.

<sup>86</sup> See below.

<sup>87</sup> MILLER II 324.

<sup>88</sup> MILLER II 325.

<sup>89</sup> *Ibid.* 389.

<sup>90</sup> MILLER II 387—390.

The new Japanese plan was this time supported by all small States represented on this Commission, and by France and Italy. The representative of Italy, amongst others, expressed himself as follows: "The equality of nations was a question which perhaps ought not to have been raised; but once having been raised there was no other solution except that of adopting the amendment"<sup>91</sup>.

Curious was the remark of one of the French delegates, who consoled himself that the Japanese proposal referred to the preamble, "... and preamble ordinarily laid down broad declarations of principle which did not impose obligations so strict as those subsequent articles"<sup>92</sup>.

On the contrary, Wilson; he saw that the insertion of such a resolution into the preamble of the Pact would be a source of trouble, above all in his own country. He confirmed the principle of the equality of States, speaking as follows:

The equality of nations was a fundamental principle of the League of Nations. It was the spirit of the Covenant to make a faithful attempt to place all nations upon a footing of equality, in the hope that the greater nations might aid the lesser in advantageous ways. Not only did the Covenant recognise the equality of States, but it laid down provisions for defending this equality in case it should be threatened.

He was, however, opposed to the definite insertion of this principle into the Pact<sup>93</sup>.

In the voting on the Japanese motion only eleven out of seventeen voted for it, as a result the motion was not passed. The representative of Serbia declared that he voted for the motion, because the amendment "laid down a principle of international law, that of the equality of nations"<sup>94</sup>. Lord Cecil, on the contrary, was rather of the opinion "that the Covenant should be silent on these questions of right", because "silence would avoid much discussion"<sup>95</sup>, and Wilson added that "no one could dream of interpreting the vote which had just been taken as condemnation of the principle proposed by the Japanese Delegation"<sup>96</sup>.

In the end the Japanese proposal failed. In spite of the fact that it was connected not only with what was considered the universally recognised principle of the equality of States, but also with the delicate matter of Japanese immigration, this discussion well characterizes the difficulties which are met with when a principle is to be confirmed.

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<sup>91</sup> Ibid. 390.

<sup>92</sup> Ibid. 390.

<sup>93</sup> Ibid. 391. This principle is found in the introduction to the Charter of the United Nations: "We the Peoples of the United Nations determined... to reaffirm faith... in the equal rights of men and women and of nations large and small..." Comp. KELSEN *Law* 50—52.

<sup>94</sup> MILLER II 392.

<sup>95</sup> Ibid.

<sup>96</sup> Ibid.



Analysing the organization of the League of Nations resolved upon, it should be stated that it was a conscious compromise in which the great Powers established their leading role over international society, at the same time giving a certain voice to the rest of the States without regard to their size.

In fact a properly and permanently organized conference, the League of Nations constituted a combination of the closed conference (The Council of the League) and the open conference (Assembly), putting it short, a combination of the Congress of Berlin with the Second Hague Conference. That there existed a conscious compromise in the structure of the League was shown clearly in the words of the main commentator on the Commission of the League of Nations, Léon Bourgeois, before the plenum of the Paris Conference:

This organisation... is quite clear and quite simple. The International Council of Delegates represents precisely the principle of the equality of States: all States alike are represented, I mean all the Associated States, and each of them has but one vote. The idea of equality before the Law of Right thus expressed here is, therefore, realized in the clearest possible manner in the organization of the international Council.

The Executive Committee has another task. In it is necessary to give a larger and even a preponderant place to those who have the custody of great general interests; but considerable room is likewise given to the small States. In deciding that the Great Powers should have five votes and the small Powers four votes, our Commission showed its desire to respect the interests of small States<sup>97</sup>.

In the mutual relations of great and small States there appeared at last a new element, which was of prime importance in meaning for international society. This element was compromise by means of mutual concessions. The unequal struggle which we have observed since the Congress of Vienna found its epilogue in the discussions of the Commission of the League of Nations. Its conclusion was a partial resignation on the part of the great Powers from their monopoly of administering international affairs by the admission among them of the representatives of small States, on the other hand, as we have already mentioned, there was a resignation by small States of their equality of rights, through recognizing by treaty the great Powers as leaders of international society. The great Powers yielded before the solidary pressure of small countries and also that of world opinion, the small as always before material force and weighty arguments, which this force had at its disposal. There is no doubt, however, that the true victors were the great Powers.

This conclusion made the debates of the Pact of the League of Nations, as also of the Pact itself, a resumption of the previous period, a formal-legal synthesis of the practice of conferences at the beginning of the 20th century<sup>98</sup>.

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<sup>97</sup> MILLER II 570. An additional privilege of a great Power in the Assembly was the assigning of individual votes to the British dominions.

<sup>98</sup> The text of the appropriate articles of the Covenant of the League of Nations in the Versailles Treaty:—“*Article 3*.—1. The Assembly shall consist of Representatives of the Members of the League...—2. At meetings of the Assembly each Member of the League shall have one

THE DEBATES OF THE COMMITTEE OF JURISTS AND THE STATUTE  
OF THE PERMANENT COURT

(A SYNTHESIS OF PRACTICE AND DOCTRINE)

As the debates of the Pact of the League of Nations together with the Pact itself established a resumption of international practice with reference to the problem of the role of great and small States in international law, so in turn the debates of the Committee of Jurists for working out a draft for the Statute of the Permanent Court of International Justice, because of the persons participating, established in 1920 a very general synthesis of the practice and doctrine on the examined problem.

According to Article 14 of the Pact of the League of Nations, the Council of the League appointed a Committee composed of ten very eminent jurists, scholars and lawyers, who were occupied with working out this statute. This Committee was not a conference of States' representatives, but a group of independent experts. In practice, however, judging by the speeches, at least some of the participants appeared clearly to be the advocates of their own countries<sup>99</sup>. In the Committee's debates the fact that half its members were subjects of great Powers undoubtedly also had a certain influence<sup>100</sup>.

Similarly as in the Commission of the League of Nations at the discussion on the composition of the Council of the League, so also in the Committee the problem of privileging the great Powers appeared most sharply in the discussions on the composition of the future Court.

The president of the Committee had first voice on this question. He was the eminent Belgian jurist, Baron Descamps, who was known for his parti-

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vote, and may have not more than three representatives.—*Article 4.*—1. The Council shall consist of Representatives of the Principal Allied and Associated Powers, together with Representatives of four other Members of the League. These four Members of the League shall be selected by the Assembly from time to time in its discretion. Until the appointment of the Representatives of the four Members of the League first selected by the Assembly, Representatives of Belgium, Brazil, Spain, and Greece shall be members of the Council.—2. With the approval of the majority of the Assembly, the Council may name additional Members of the League whose Representatives shall always be members of the Council, the Council with like approval may increase the number of Members of the League to be selected by the Assembly for representation on the Council. . .—5. Any Member of the League not represented on the Council shall be invited to send a Representative to sit as a member at any meeting of the Council during the consideration of matters specially affecting the interests of that Member of the League.—6. At meetings of the Council, each Member of the League represented on the Council shall have one vote, and may have not more than one Representative". See MILLER II 723—724.

<sup>99</sup> E. G. Lord Phillimore clearly referred to himself as the delegate of Great Britain, a remark which when pointed out he later had to correct. *Committee* 125.

<sup>100</sup> O. J. 1920/4, 123.

icipation in the first Hague Conference. In his speech which opened the discussion on the theme of participation of States in the future Court, he came to the conclusion that owing to a divergence of opinion it was difficult to establish for this purpose a universal system<sup>101</sup>.

He considered it as necessary that all countries should participate to some extent in the choice of judges "but an attempt must be made to reconcile the principle of juridical equality of States with certain guarantees which should be given to the great Powers"<sup>102</sup>. In another place Baron Descamps plainly confirmed:

the principle of equality of States, adopted as a basis, must be reconciled with the necessity of giving the Great Powers representation on the Court<sup>103</sup>.

As a convenient way out he proposed "to assure the representation of the great legal systems on the court" which according to him "involved nothing contrary to the legal equality of States, but secured the end which the great nations wish to attain"<sup>104</sup>.

After the opening of the discussion under the heading of the necessity of compromise, speeches were made by the rest of the participants of the Committee<sup>105</sup>.

The strongest supporter of bestowing privileges on the great Powers was Minochio Adatci, the Japanese envoy at Brussels. To begin with he considered that general opinion was in favour of the adoption of the principle of equality amongst States. According to him, however, this principle has long been recognised, but is often more apparent (fictif) than real. The viability of the Court must be primarily considered. In the opinion of M. Adatci, "this vital question must be treated from the standpoint of sociological rather than formalistic jurisprudence". According to strict law, the rights of Monaco are equal to those of the United States. But "would such a solution of the problem satisfy the public sense of justice?"—questioned M. Adatci. According to him the real basis of world peace was the co-existence of the Principal Powers and the other States. From all points of view: population, territory, wealth, trade and commerce, finance, history, race, systems of civilisation and jurisprudence, vital interests, regional interests etc., in brief with regard to every human activity, it was imperative that the named powers be represented on the Court in process of formation. Adatci was decidedly of the opinion that the possible exclusion from the Court of one or more persons representing

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<sup>101</sup> *Committee* 45.      <sup>102</sup> *Ibid.* 28.      <sup>103</sup> *Ibid.* 131.

<sup>104</sup> *Ibid.* 111. This final solution was found in Article 9 of the Statute of the Permanent Court of International Justice, see below. This proposition further came from the second Hague Conference.

<sup>105</sup> For the sake of clarity the opinions of individual members of the Committee, which were scattered, have been put together.

the named Powers would render the Court impracticable. "Why not admit it frankly, without ambiguity?"—asked Adatci. "Here all must possess the juridical courage and a sense of realities, lacking of which it will be impossible to create a living judicial organisation". In the opinion of M. Adatci, although the nationality of judges in the discharge of their duties may be disregarded "it is necessary to consider the intuitive sensibilities of peoples, a delicate quality, violent and irresistible"<sup>106</sup>. In another place in the discussion Adatci directly expressed the opinion that "an institution based on the juridical equality of States is not practicable"<sup>107</sup>.

No less realistic also were the English speaking members of the Committee. Lord Phillimore, the well known English expert in international law, confirmed that above all "the Court must have behind it a material force to ensure the execution of its decisions" and therefore "the Court must be so constructed that it includes representatives of the Great Powers". If the Court did not include representatives of these among its members, it would, in the opinion of Lord Phillimore, lack "backbone"<sup>108</sup>. Further Lord Phillimore asks in rather a demagogic way:

Is it possible to conceive the peoples of the Great Powers consenting to have their country submit to the judgement of a Court on which they are not represented?<sup>109</sup>

Personally he feared that "the ordinary Englishman would not be at all satisfied with a Court on which his country was not represented"<sup>110</sup>.

Pointing out the relativity of the term "Great Power" Phillimore not without reason drew attention to the fact that "if the United States did not form one single Government, they would have more than 40 votes, whereas now they have only a single one; and on the other hand, the Austro-Hungarian Monarchy, which formerly had only one vote, now has three after the division into three separate States"<sup>111</sup>.

Phillimore also drew upon precedents of the recognition of the inequality of States in international law, amongst others the League of Nations where Great Britain had six votes for the individual members of her Union, and the Postal Convention, which foresaw an unequal number of votes for individual members of the Union<sup>112</sup>.

His opinion against the pretensions of small States for equality in the Court Lord Phillimore summarised in the following way:

the Court must have behind it material force. It will have this force only if it includes representatives of the Great Powers; otherwise the new Court will have no more authority

<sup>106</sup> *Committee* 28—29.

<sup>107</sup> *Ibid.* 120.

<sup>108</sup> *Ibid.* 105.

<sup>109</sup> *Ibid.*

<sup>110</sup> *Ibid.*

<sup>111</sup> *Ibid.* 106.

<sup>112</sup> *Ibid.* The votes of postal administrations, colonies and dominions, are referred to.

than the Permanent Court of Arbitration. It is true that the latter on several occasions has avoided small wars, but it was unable to prevent the Great War.

It was possible to give to the small Powers all kinds of formal satisfaction and to make all kinds of concessions to them which do not touch the heart of the problem, but the principle on which the claims of the small Powers are based could not be admitted<sup>113</sup>.

Elihu Root, the former Secretary of State of the United States, famous for his declaration in favour of the principle of the equality of States at the Pan-American Conferences<sup>114</sup>, saw the difficulty of the problem in "the conflict between the principle of the equality of States and the Great Powers' fear of finding themselves having to submit to the judgement of the Court in which the majority of the members were representatives of small States"<sup>115</sup>. He agreed in fact that "the equality of States is the foundation of justice between nations", he considered, however, that the great groupings of population have more active interests dependent on the decisions of the Court than the smaller ones. Judicial equality of States "does not coincide with the inequality of practical interests which depend upon the whole national life of the peoples"<sup>116</sup>.

According to Root the problem which the Committee had to solve was to conciliate the two points of view. He pointed out that this kind of conflict also had a place within individual countries, for instance between the small and large States within the United States. There the problem was solved by creating two chambers, the composition of one based on the principle of the equality of States and the other on the population, without regard to the sovereign States in which the citizens resided. In the case of the Court, Root supposed that it would be possible to find a solution by articulating the new organization with the political organization of the League. In concrete terms Root proposed "to vest the power of election of judges both in the Assembly and in the Council"<sup>117</sup>.

In another place questioning whether the principle of the equality of States comes into play with regard to the election of judges, Root gave his interpretation of this principle:

the principle (of equality) only meant that States are equal in so far as they have the sovereign right to control their actions without having to account for them to others. This right applied especially, to the faculty of accepting or refusing the proposals to be made by the Committee ... To appoint judges who are to have the right to make decisions limiting sovereign rights of States must have another source — the mutual consent of States ... Whether such consent can be given ... we must not consider only the equality of States<sup>118</sup>.

Confirming that the division into great and small States always existed Root came to the conclusion that in fact in the Court the great Powers would be injured, because the Court was to dominate the great Powers and protect

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<sup>113</sup> Ibid.

<sup>114</sup> See above. 62.

<sup>115</sup> Ibid. 108.

<sup>116</sup> Ibid.

<sup>117</sup> Ibid. 109.

<sup>118</sup> Ibid. 133.

the small ones. Hence, the formation of the Court based on absolute equality of States "would put the great Powers at the mercy of those States which give little and receive much"<sup>119</sup>.

Finally the last argument of Root against the maintenance of the equality of States in the Court seems rather demagogic, and even paradoxical, because he opposes the equality of States to the postulate of the equality of citizens in democracies. He considered that these citizens would always hold the view that each of their votes carries as much weight as the vote of any citizen of another country. It would be impossible, therefore, "to put forward a plan in which, for instance, the hundred million inhabitants of the United States would have to consent to have their sovereign rights limited by a Court on which the vote of half million inhabitants of Honduras might decide a case against the United States"<sup>120</sup>.

The members of the Committee in defense of the principle of the equality of States were on the whole from small countries. Among the exceptions seemed to belong Ricci-Busatti, legal adviser to the Italian ministry of foreign affairs. According to him:

the equality between states did not exist in fact, but on the other hand it was impossible to deny that they were all equal in law, and it was necessary to maintain this principle. Existing inequality would have automatically the influence to which it was entitled; the influence of the different countries on the creation and activities of the Court would be proportional, quite naturally, to the relative importance of each one, exactly the same as in each country social inequality played its role quite independently of the equality of all before the law<sup>121</sup>.

Ricci-Busatti pointed out the differences which existed between legal, political, and administrative organizations. "All organizations of this nature should take into consideration the weight of the different interests at stake, and adapt themselves to the situation as much as possible". He brought to mind that Holland claimed with all reason that it be considered as a great Power in regard to the questions of Communication and transit, and Belgium—in the case of the questions of labour. Ricci-Busatti was, however, of the opinion that "in the administration of justice in eventual cases, great or small Powers did not exist: the interest of all is the same"<sup>122</sup>. Later on, however, under the influence of the discussion he changed his opinion and came to the conclusion that the use of the equality of States as a basis was "slightly utopian"<sup>123</sup>.

The only one true exception was a subject of the great Powers, Lapradelle, professor of law at the University of Paris, hence a representative of the doctrine. He stood decidedly in defence of the principle of the equality of

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<sup>119</sup> Ibid. 134.

<sup>120</sup> Ibid.

<sup>121</sup> Ibid. 107.

<sup>122</sup> Ibid. 107—108.

<sup>123</sup> Ibid. 360.

States. Pointing out the essential difference between legal and political points of view he thought that "in the domain of law the States are equal, and the equality of States with regard to the nomination of judges is nothing but the necessary consequence of this principle"<sup>124</sup>.

Arguing against the thesis of Adatci that the Court should be based on strength, Lapradelle was content to take conscience and moral force as his criterion. "If this was adopted, the principle of equality would be saved. Two States coming before the Court would always feel that they were on exactly the same footing before Justice"<sup>125</sup>.

In reply to the arguments of Root, Lapradelle considered that we should not utilize an abstract idea of sovereignty. In his point of view "one must consider public opinion on this subject". According to it the principle of equality was at stake in the constitution of the Court; this was seen in 1907. Lapradelle agreed that the principle of inequality had been, to a certain extent, recognized in the composition of the Council. The Council was, however, the executive body of the League, and the execution of decisions fell to the great States; they must, therefore, in Lapradelle's opinion, have the right to take part permanently in the decisions which might require a certain coercion. The Court was a deliberative body, therefore, Lapradelle thought, that there was no reason to deviate from the ordinary conception of equality<sup>126</sup>.

Altamira, professor of the Faculty of Law of the University of Madrid, hence also a representative of the doctrine, expressed the view that "no political questions are outside the scope of justice" and that "from the juridical point of view the method of nomination of judges is directly connected with the principle of equality of States". Altamira also called upon the resolution of the Conference of the League of Nations Associations held in December 1919:

In the organisation of the International Court of Justice, it should be stipulated that the Court should not include more than one judge of any one nationality. In the election of judges, the principle of equality of States shall be respected<sup>127</sup>.

A decided defender of equal rights was also Hagerup, Minister plenipotentiary of Norway at Stockholm. The principle of the equality of States is, in his opinion, "the Magna Charta of the smaller States". Hagerup is convinced that the smaller States would not agree to the introduction of an element of inequality into the scheme for the Court, as in 1907<sup>128</sup>.

Also Loder, Member of the Supreme Court of the Netherlands, agreed with the opinion of Lapradelle, and expressed satisfaction that many of the members of the Committee declared themselves in favour of the principle of the equality of States<sup>129</sup>.

<sup>124</sup> *Ibid.* 104.

<sup>125</sup> *Ibid.* 122.

<sup>126</sup> *Ibid.* 147—148.

<sup>127</sup> *Ibid.* 102, 116.

<sup>128</sup> *Ibid.* 103.

<sup>129</sup> *Ibid.* 124.

Last of the subjects of States not belonging to the great Powers to add his voice was the former Brazilian delegate to the Paris Conference, Fernandes. He argued against the propositions of Adatci, that the Court without the representation of the great Powers "would necessarily be impracticable". He recognized that it is desirable that the plan for the organization of the Court should give to the Great Powers a guarantee of the impartiality, the independence, and the ability of the judges, but "not because they are the Great Powers, according to the regrettable terminology introduced in diplomatic language, but because in a given case their responsibility and their interests are more deeply affected". Fernandes, however, thought that by sacrificing without consideration the principle of legal equality of States the Court would be even less practicable because the majority of Members of the League of Nations are immutably opposed to any rule involving disregard for this principle. The only single way, however, is the "frank application of the principle of the equality of all sovereign States"<sup>130</sup>.

Fernandes declared himself in favour of the Root-Phillimore plan, which foresaw the choice of judges being made at the same time by the Council and the Assembly of the League. According to him, however, it is certain that the great Powers would have their subjects among the 15 judges elected, because "the other States which are unjustly underrated have enough political sense". The trouble with this plan is that it gives a double vote to States represented both in the Council and in the Assembly, through which, according to Fernandes "a flagrant wrong is done to the principle of equality"<sup>131</sup>. In order to avoid this, Fernandes, not without irony, proposed certain evasive measures:

If the intervention of the Council had no other object than to ensure to the Great Powers an effective control over the organisation of the Court, the same result might be reached by vesting the election in the Assembly alone, and by insisting on a sufficiently large majority..."<sup>132</sup>

With this the discussions on the subject of the composition and the means of electing judges concluded. Their course finally set off the difficulty of finding a way out of a still present dilemma: equality in the theory of international law, on which small States put their hopes, and inequality in practice which justified exceptional privileges for the great Powers.

This time a compromise was reached relatively easily, because both sides, i. e. the defenders of equality and the adherents of privileges for the great Powers, having fresh in their mind the fiasco of 1907 and the precedent of the Pact of the League of Nations, knew that without mutual give and take the Court would never be created. These mutual concessions, as with the

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<sup>130</sup> Ibid. 365—366.

<sup>131</sup> Ibid. 368. Brazil was represented in the Council of the League.

<sup>132</sup> Ibid.



Pact of the League, were not, however, equal. The essence of the compromise was the effective introduction of privileges for the great Powers in the Court with the maintenance of certain minimum appearances in the Statute. The maintenance of these appearances was in fact the only success gained by the defenders of the equality of States in connection with the Court.

In the statute of the Court a permanent place for the great Powers was thus guaranteed even doubly against all events by the introduction of a regulation whereby a candidate had to receive a majority in the Assembly and Council of the League and by the reservation included in Article 9:

At every election, the electors shall bear in mind that not only should all the persons appointed as members of the Court possess the qualifications required, but the whole body also should represent the main forms of civilisation and the principal legal systems of the world<sup>133</sup>.

The first method was introduced relatively openly, because it was confirmed in the report of the Committee that the aim of the double vote was to guarantee a permanent place in the Court to the great Powers. It was also mentioned that because of strong opposition to the recognition of a permanent place for the great Powers, it had become necessary to find a system of assuring this place by agreement with other States. This method provided a suitable method of selection. The report said:

It therefore became necessary to find a system which would almost certainly ensure that the great Powers would be represented by judges, with the free consent of the other Powers, as their great civilising influence and juridical progress entitle them to be, even though no weight were attached to the fact that it would be greatly to the interest of the Court to include them on the Bench, to increase respect for its sentences, which could not be put into execution without the all-important support of their military, economic and financial powers. The system of election of the judges was the only practical one<sup>134</sup>.

Further it was stated that just as the structure of the League of Nations gave a guarantee to the great Powers against a coalition of small States, so also the election in the Council and in the Assembly gave them a guarantee that only those judges would be chosen who had the confidence of great and small States<sup>135</sup>.

The second guarantee was in Article 9, just quoted, whose history, as we have mentioned, goes back to the second Hague Conference, and which was in fact an introduction to the statute of the evasion suggested by the president, Baron Descamps, at the beginning of the discussion. Descamps said at that point:

it would be necessary to assure the representation of the great legal systems on the Court. That involved nothing contrary to the legal equality of States but secured the ends which the great nations wished to attain<sup>136</sup>.

<sup>133</sup> Ibid. 710—711.

<sup>134</sup> Ibid. 700.

<sup>135</sup> Ibid. 700—701.

<sup>136</sup> Ibid. 111; see above.

From this speech, as also from the whole course of the discussion, it appears that the only true aim of this article was the guaranteeing to the great Powers permanent seats. For instance, Lord Phillimore, as he himself expressed it, "did not attach much importance" to this article, he was interested, however, in whether it guaranteed a permanent place to the great Powers<sup>137</sup>. The president, Descamps, the day before the voting on Article 9 replied to Lord Phillimore that the clause which he had proposed with reference to the representation of civilizations and legal systems "would ensure in so far as was humanly possible the desired result; that is to say the representation of the great Powers"<sup>138</sup>. In the arguments over this article in the reports there is no mention, however, of the true intentions of the sponsor, or that in a literal sense it was even unintelligible to some members of the Committee<sup>139</sup>.

This was the solution to the dilemma "equality, or inequality" by a Committee of the most prominent jurists, scholars and lawyers, on the question of an organ of international justice. The essential element of this solution, we should clearly state, was the conscious introduction of a divergence into the actual and formal contents of the statute, with the aim of secretly introducing inequality.

More important from the point of view of this work is the confirmation that the arguments, and in general the whole discussion, on the creation of this institution, which was clearly a legal one, did not differ in any essentials concerning the position of the great Powers from the discussion at the Paris Conference on the creation of the League.

The interpretation of the principle of the equality of States as was given by the Committee in its report is also interesting. Root's opinion was quoted in it, according to whom the postulate of the equality of States limited itself from a legal point of view to the principle of non-intervention or equal sovereignty. Allegedly only psychological considerations, namely public opinion-saw in the demands for a permanent judge for the great Powers a violation of the principle of the equality of States. The Committee's report stated:

Does not equality of States simply mean that no State may interfere in the internal affairs of another, thereby infringing its sovereign rights? Granted that all States are sovereign States, are they not made equal by this very fact, no matter what their extent of their influence may actually be, from a political point of view, upon the common interests of mankind? It may well be that this standpoint, which was taken up by one member of the committee, is legally strictly correct, however, from a psychological point of view, in the public opinion of various countries, the fact that a certain number of States claimed a permanent judge, on the ground of their position as great Powers, would be opposed to the principle of equality<sup>140</sup>.

<sup>137</sup> Ibid. 371.

<sup>138</sup> Ibid. 371; cf. 111, 129, 132, 356, 366, 391.

<sup>139</sup> Ibid. 709—710, 363, 365; cf. *Annuaire de l'Institut de Droit International*, 1952/II et 1954/I.

<sup>140</sup> Ibid. 700; cf. 133; see above.

This opinion covered exactly the prevailing doctrine at the end of the 19th century, whose distinct tendency, as has been shown, was the scaling down of the principle of equality into equal sovereignty or equal legal protection, namely equality before the law, and not equality of rights. In particular, this principle, in such an interpretation, did not embrace a right to equal participation in common organs.

At the debates of the Committee, there came about in this way an encounter between doctrine and practice. It was not, however, a half way meeting. As always, so on this occasion, the doctrine had to adjust itself to life.

#### SUMMARY

The Paris Conference of 1919, confirming and consolidating the leading position of the great Powers, which stretched back to the first years of the previous century, marked the close of an important stage in the development of relations and international law.

In particular the debates over the creation of the League of Nations and the Pact itself presented a synthesis of the practice of the conferences in the previous century. The essence of this synthesis was the combination of the open conference (the Assembly of the League) with the closed one (the Council). However, as in the past, the main responsibility for most important matters was in the hands of the Council, corresponding to the closed conference, where the great Powers had a decisive voice. The organization and course of the Paris Conference, in spite of essential differences, irrefutably associates it with the Congress of Vienna, and the organization of the Council of the League was a lively reminder of the organization of the Pentarchy as foreseen in the Protocol of Aix-la-Chapelle in 1818.

In their turn the debates of the Committee of Jurists on the creation of a Permanent Court of International Justice, and the statute itself, provide a ready synthesis of the opinions of practice and doctrine. And similarly as with the League of Nations, arguments from strength triumphed—because the compromise that was arrived at was a simple evasion which guaranteed the great Powers a privileged position in the Court, keeping up only a pretence of equality. The representatives of the doctrine also had to yield from their irreconcilable position and to agree to the limitation of the contents of the principle of the equality of States to that of equal protection.

It should be stressed that the struggle which took place between great and small States for participation in a political organization, as was the League of Nations, and in institutions that were clearly legal, as was the organ of international justice, had in fact a similar course. It is one further argument against the possibility of a clear cut demarcation in practice between politics and law.

## CONCLUSION

The extract here presented of the main points of the practice of conferences and the doctrine of international law has shown, that from beginning of the anti-Napoleonic coalition a group of great Powers, which was continually changing in its composition, exercised an actual hegemony over the remainder of European States, and following this, over the world.

For their superior position, the great Powers put forward various arguments. Most frequently they called upon their contribution to victory over the common enemy, upon treaties unilaterally imposed by themselves, or simply upon their power, with which, according to them, were connected the duties and responsibility for the maintenance of peace with regard to the remainder of States. At least from the Congress of Paris of 1856 the great Powers looked upon their leading function as established in common law, to which they gave expression not only in the declarations of their representatives, but also in formal acts of international law.

Small States, from necessity, silently acquiesced in this state of affairs, or limited themselves to a protest in the name of the principle of the equality of States. Their position grew stronger from the second half of the 19th century onwards, because of the spread of revolutionary movements and the violent growth of the interdependence of States as a result of technical and scientific developments. From this time many spheres of international life became regulated from common necessity, and on the principle of equality for great and small States at open conferences. These were not concerned, however, with the most vital matters. In spite of the fact that the struggle of small States for full equal rights became sharper, the deciding voice in these matters rested with the great Powers. An important fact was some examples of small States resigning their rights to absolute equality, where the objective measurable criteria of the division of States spoke in favour of it.

The period examined with regard to the practice ends with the creation of the League of Nations, which established a formal legal synthesis of this practice for the year 1920. The essence of this synthesis was compromise, in which, however, the great Powers maintained a decided superiority, because they obtained formal acceptance of their leading role in international society

for the relatively insignificant price of the admission also to the discussion of the representatives of smaller States. The latter, however, in return for this privilege of doubtful value had to renounce full equal rights, for which they had fought so obstinately up to this time.

The doctrine of international law stood at first on the basis of the classic principle of the equality of States, which drew its sources from the naturalism of the 17th and 18th centuries. It denied the actual hegemony of the great Powers any legality. However, the more this superiority became consolidated, the more it was forced to a gradual revision of its irreconcilable position, which, apart from a few radical opinions, did not appear in the recognition of the hegemony of the great Powers directly, but only in the limitation of the principle of equality of States under the slogan of bringing the law nearer to life. They are no longer speaking of the absolute equality of States, but rather of equality before the law, by which scholars understand first of all legal protection, equal independence or just the obligatory force of the law for all. It should be noted that establishing the contents of the idea of the principle of the equality of States in all periods is unusually difficult, because a majority of scholars have never been precise what they understand by it, or have defined it only in various indistinct ways. From the end of this period onwards, under the influence of the difficulty of the creation of international organizations, appeared the attempts to scientifically establish the outlines of the principle of the equality of States, with consideration of the necessities of international practice. Here we should mention the opinions of LAWRENCE, HUBER, and above all DICKINSON.

The most general synthesis of the practice and opinions of the doctrine of the year 1920 was given in the debates on the statute and in the Statute itself of the Permanent Court of International Justice. And here, in the organ of justice, i. e., in a clearly legal institution as was the Court, it was necessary to recognize the privileges of the great Powers by an assurance to them of permanent judges, keeping up solely certain pretences. The representatives of the doctrine sitting in the Committee on their side resigned from the defence of equal rights of States, agreeing to the insertion into the Report of the Committee of such an interpretation of the principle of equality as reduced it to meaning equal protection against intervention in internal matters, in other words, equal sovereignty.

The principle thus understood found its confirmation by treaty twenty-five years later in the Charter of the United Nations. All States were assured by it as members of the Organization of the rights of equality, however not complete but limited equality, under the name of "sovereign equality", which according to its indistinct interpretation adopted by the first Committee of the first Commission of the Conference at San Francisco meant that States are "juridically equal", that each of them enjoys the right inherent in full so-

vereignty, that their personality, territorial integrity and political independence are respected and that the states should comply faithfully with their international duties and obligations<sup>1</sup>.

GOODRICH and HAMBRO in their commentary on the Charter of the United Nations distinctly confirm: "It is ... quite clear that the sovereign equality of the Member States does not mean that they are absolutely sovereign or absolutely equal"<sup>2</sup>. Against understanding sovereign equality as absolute equality of rights there arose decidedly also Soviet practice and doctrine, which argued that such equality would be contradictory to real equality<sup>3</sup>. We should note the fact that in support of this view KOSHEWNIKOW in his article of 1954, devoted to sovereign equality, called upon not only the declarations of Soviet statesmen, but also on the opinion of GBABAR of 1912<sup>4</sup>.

The privileging of the great Powers in the Charter of the United Nations is also only an extension of the competence and privileges accorded to them in the Covenant of the League of Nations as a result of the experience of the stormy practice of the League, the cataclysm of the second world war and the role that the great Powers played during this period. At the San Francisco Conference small States not only did not have a tendency towards abolishing the formal privileges of the great Powers granted to them at the League, but on the contrary, they agreed to the reinforcement of the position of those Powers in the Organization, and thus they deepened even further the formal inequality among States<sup>5</sup>.

The process of crystallization therefore of today's legal structure of the society of States, whose essential characteristic is the acknowledgement of the leading role of the great Powers and for the remainder of the States only a limited sovereign equality, was already formed first of all in the period examined in this work, which concludes with the creation of the League of Nations and the Permanent Court of International Justice.

The lasting contribution of this period to the solution in practice of this hard problem of the co-existence of great and small States was the manifest

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<sup>1</sup> The Committee voted to use the terminology "sovereign equality" on the assumption that it includes the following elements:—(1) that States are juridically equal, (2) that each State enjoys the right inherent in full sovereignty, (3) that the personality of the State is respected, as well as its territorial integrity and political independence, (4) that the State should, under international order, comply faithfully with its international duties and obligations. UNCIO VI 397—398.

<sup>2</sup> GOODRICH and HAMBRO 65, cf. also KELSEN 50—52.

<sup>3</sup> KOSHEWNIKOW *passim*; cf. Krylov 453—4.

<sup>4</sup> KOSHEWNIKOW 58—59; see above p. 90.

<sup>5</sup> UNCIO, particularly XI 106—112, 117—133. The statute of the International Court of Justice, which was only very slightly changed from the statute of the Permanent Court, was added to the Charter of the United Nations.

and formal recognition of inequality in the Covenant of the League and the successful attempts at a classification of States with the help of objective criteria in some of the administrative organizations.

The lasting gain in the doctrine of this period were the attempts at recognizing and adjusting to the needs of practice the contents of the principle of the equality of States, especially the demarcation in it of two different postulates: one essential for international legislation, as also for all systems of law, the postulate of equality before the law, consisting above all in its equal binding force for all States and equal sovereignty, and second, an unnecessary and even injurious, especially for the development of international organizations, postulate of equality of rights and obligations without regard to the evident and essential differences which exist between States.

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## ABBREVIATIONS

- AWC — KLÜBER, *Actes des Wiener Congresses...*  
CMH — *Cambridge Modern History...*  
Committee — *Permanent Court of International Justice, Advisory Committee of Jurists.*  
CP — *Commission internationale des postes 1863.*  
DCP — *Documents du Congrès Postal 1874.*  
I H — *Conférence internationale de la Paix, 1899.*  
II H — *Deuxième conférence internationale de la Paix, 1907.*  
*Histoire* — *Histoire de la diplomatie*, publié sous la direction de M. POTIEMKINE, Paris 1949.  
NRT — MARTENS, *Nouveau recueil des traités.*  
NRG — MARTENS, *Nouveau recueil général.*  
NSRT — MARTENS, *Nouveau suppléments...*  
O. J. — *League of Nations, Official Journal.*  
PV — *La paix de Versailles...*  
RCADI — *Académie de droit international, Recueil des cours.*  
RT — MARTENS, *Recueil des principaux traités.*  
SRT — MARTENS, *Supplément au Recueil des Principaux Traités.*  
UNCIO — *Documents of the United Nations Conference.*

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