

A SUGGESTION AS TO A POSSIBLE POLICY IN RELATION TO THE TREATIES OF PEACE AND THE LEAGUE OF NATIONS

BY ROBERT LANSING

IT is necessary, in the consideration of a possible policy for the United States in relation to the Treaties of Peace of 1919 and the League of Nations created by those Treaties, to recognize certain facts which affect the problem and which must be taken into account in attempting to present suggestions which are of practical value in formulating a policy.

These facts are as follows:

1. The Treaties of Peace are now in force and the League of Nations has been organized and is, to an extent at least, functioning under the provisions of the Covenant.

2. The American people showed by the election of 1920 that they were opposed to the United States becoming a member of the League of Nations as formed and empowered by the Covenant, and that they were also opposed to the acceptance of certain of the terms of peace.

3. The enforcement of the terms of peace on the Central Powers is an obligation which is an unavoidable consequence of the war, and it cannot from the point of view of wisdom or honor be avoided by those nations which took part in the conflict and possess the united strength to compel obedience.

4. The public opinion of the world is strongly in favor of some form of international association for the purpose of removing as far as possible causes of war and preserving peace between nations.

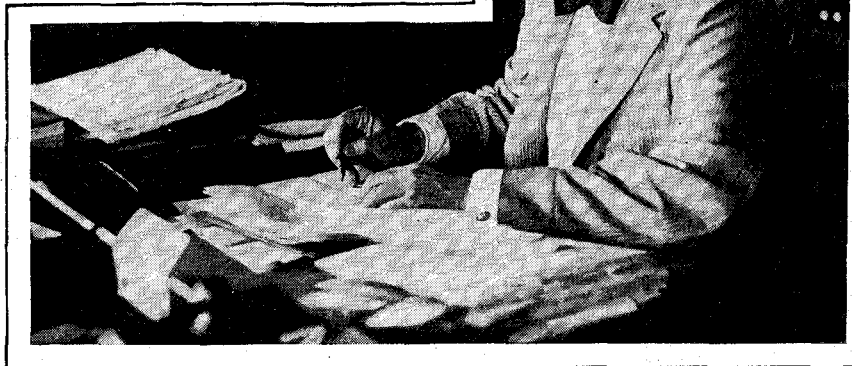
IT is certain that unless the Covenant is amended the United States will not become a member of the League of Nations as now constituted.

It is equally certain that the nations now members of the League are strongly desirous that the United States should become a member; and it is fair to presume that, while they will not be willing to abandon, they will be willing to modify, the form and functions of the League by amending the Covenant in certain particulars.

It is evident, therefore, that a practical policy might be based on a formula which will provide for the acceptance of the terms of peace and their enforcement, and for the continuance of the League of Nations under a Covenant so modified as to overcome the principal objections of the United States.

Can a formula be found which will include these factors?

A practical method of approach in answering this query is to determine what the United States would do if it did not have to reckon with the fact



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that the Treaties are in force and the League of Nations is in being, and with the unavoidable conclusion that the members of the League will be unwilling to destroy its present form or organization and entirely abandon its functions. Having determined this, it will be possible to see how far it is feasible for the United States to go in responding to the wishes of the nations which are parties to the Covenant without surrendering the principles on which it must insist in order to comply with the known will of the American people and with America's traditional policies.

In order to determine the effect of the provisions of the Treaties of Peace on the principles as well as on those ideas which seem to be wise and possible of acceptance by the Government of the United States, it is well to consider the subject in a general way rather than in detail. This consideration should make clear the problem to be solved and furnish a basis for the formulation of a possible policy of adjustment of the differences between this country and the nations which are now participants in the activities of the League. In accordance with this purpose the following comments are made:

THERE are two forms of international agency which the victorious nations as a result of the Great War can hardly avoid creating: *First*, an agency to enforce the terms of peace; and, *second*, a general organization of nations for the removal as far as possible of causes of war and for the preservation of international peace. The first is an obvious necessity; the second is demanded by the public opinion of the world, including American public opinion.

The Treaties of Peace of 1919 confided to one agency, the League of Nations, powers for carrying out these two ob-

jects, although they are essentially different in nature. The enforcement of the terms of peace manifestly requires an agency possessing the physical might to compel obedience. Its powers should cease with full compliance with the terms. The removal of the causes of war and the preservation of peace, in my judgment, ought to be by pacific means if the results are to be permanent, since coercion almost invariably arouses discontent, resentment, and a spirit of retaliation.

The confiding of the enforcement of a part of the terms of peace to the League of Nations, though many of the terms were under the Treaties to be enforced by the Principal Allied and Associated Powers, compelled the recognition of the possession of superior physical might by certain nations, and this recognition is shown by the creation of the Council of the League, which is to be controlled in fact by the Five Principal Powers. The consequence was that the principle of the equality of nations, elemental to a permanent organization devoted to the pacific removal of causes of war, was subordinated to the principle that the possessors of superior force had the right to determine international action, a principle essential to treaty enforcement, but not essential to peaceful settlements.

The qualities of universality and permanency, which the League of Nations ought to have, were thus seriously impaired by clothing it or its Council with authority to enforce certain provisions of the treaties, especially as no provision is made in the Covenant for extinguishing the right to employ force after the terms of peace have been fully complied with and the need of coercion no longer exists.

Under present international conditions there should be, in my opinion, two distinct agencies, each functioning

within its own independent sphere. One of these agencies should be for the enforcement of all of the terms of peace and based on the possession of physical might by the nations composing the agency. The other should be for the removal by peaceful and not coercive methods of the causes of war and based on the equality of nations. I will later develop these views more fully. It is my only purpose at the outset to state certain propositions in order that the reader may more readily follow the line of thought presented.

The logical and practical agency for all treaty enforcement, and not merely for the enforcement of certain of the terms of peace as it now is, is under the Treaties the existing Supreme Council, consisting of the Five Principal Powers, namely, the United States, Great Britain, France, Italy, and Japan.

The agency for the prevention of future wars may be the League of Nations, or rather the Assembly of the League, for the Council of the League without the conventional right to direct the use of force has no logical reason for existence in its present form, though expediency may require its continuance if the present structure of the League is preserved.

A PRACTICAL course of action to bring about this readjustment under present conditions would be the following:

1. The separation of the Covenant of the League of Nations from the terms of peace and its treatment as an agreement independent and distinct from the Treaties of Peace.
2. The elimination from the terms of peace by amendment or reservation of all objectionable articles, such as those relating to Shantung, to labor, etc.
3. The amendment of the terms of peace by inserting, in place of "the League of Nations," "the Principal Allied and Associated Powers" or "the Supreme Council" or, in some cases, "an International Commission."
4. The ratification of the Treaties of Peace in amended form or with reservations.

In regard to the Covenant, it might be amended by eliminating all provisions

conferring on it, directly or by implication, any executive, legislative, or judicial powers, such as are included in the articles dealing with guaranties, with mandates, with sanctions, and with other subjects which impose on the members moral as well as legal obligations. A further amendment, in accordance with this idea, would be to abolish the present Council of the League and confide all the functions and activities of the Council to the Assembly as now constituted in so far as such functions do not require the exercise of coercive power of any sort.

By adopting this suggested method of readjustment the chief defect of the Treaties caused by delegating to one agency two classes of functions which logically belong to two independent agencies would be cured.

THE advisability of preserving generally the actual terms of peace imposed on the Central Powers, with certain modifications, has never been seriously questioned. In fact, every plan proposed looking toward the restoration of a state of peace is based on the preservation of those terms in so far as American interests are affected. A necessary consequence of accepting the terms is that there shall be an international agency for their enforcement. That agency is logically the Principal Allied and Associated Powers, represented by the Supreme Council, as I have already pointed out, since they possess the physical might to compel compliance with the terms.

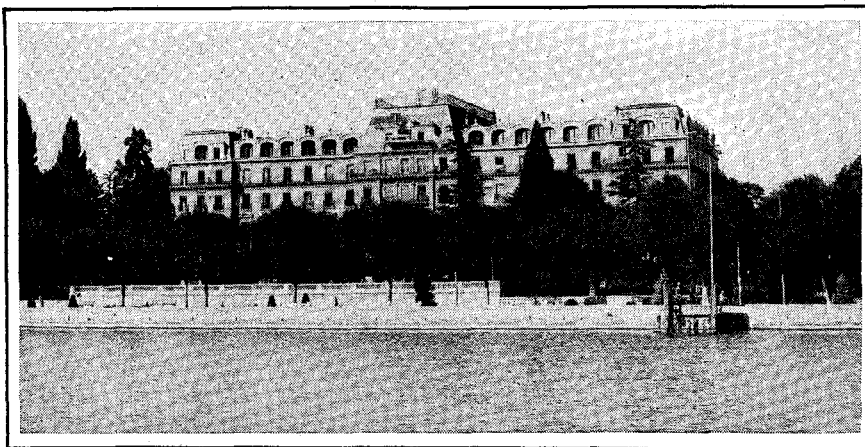
Turning now to the organization of a general agency for the prevention of wars, the following discussion seems necessary to a right understanding of the subject.

It is essential, in the first place, to recognize the fundamental principle, that all nations, regardless of their relative size, resources, and physical power, are in times of peace, when law rather than force is dominant, equal in that each possesses sovereignty and independence, qualities which cannot be limited and exist in fact. This statement is at the same time a legal maxim and a legal fiction; but it must be recognized as an accepted principle appli-

cable to international relations, since the relative measure of physical might and the inequality between nations only find actual expression in war when force supersedes law in regulating such relations. To recognize the inequality of power in the pacific relations between nations is to substitute physical force for legal right. It amounts to the suppression of the rule of law and the adoption of the rule of might. It is, in fact, the substitution of the ways of barbarism for the ways of civilization.

Evidently the use of force must be predicated on the inequality of nations, since only powerful nations can exercise actual coercion. An organization with authority to use force thus unavoidably destroys the legal equality of nations and imposes in times of peace an international relationship which is normal solely in times of war, or in that period between the negotiation of a peace and full compliance with the terms imposed by the victors. The result of such a provision would be to establish, in place of a universal association of equal nations, a military alliance of a few powerful nations, which together possess the power to compel obedience. In the event of such an alliance being created, the nations composing it will certainly assume the right to determine when they will use force and when they will not use it. This means nothing less than a primacy of great military Powers possessing to the extent of their combined might an absolute dictatorship over world affairs. In time of war such a primacy may be, and doubtless is, justifiable and necessary; in time of peace, never, for it ignores and, in truth, destroys the sovereignty and independence of all nations other than those composing the group of primates.

It cannot be stated too emphatically that an organization of the world based on the theory that nations in times of peace are unequal and that the strong nations, because of their strength, are entitled to dictate to others possesses none of the elements which make for permanent unity or for permanent peace. Law is the very corner-stone of peaceful intercourse between nations, and equality is fundamental to the universal and persistent application of law and principles of justice. Our present social and political institutions depend on the recognized equality of individuals before the law. It has taken centuries of struggle to develop this precept and make it a vital force in modern civilization. To deny it in the case of the society of nations is to reject the lessons of history and to check the advance of human progress. Its denial would mean a reversion to that primitive state of human society in which the individual took whatever he was able to take and held in possession whatever he was able to hold. A union of nations to prevent international wars is manifestly intended to operate in times of peace. Hence it follows, if the foregoing views are admitted, and I do not see how they can be logically rejected, that the accepted principle of the



Keystone

THE BUILDING IN GENEVA, SWITZERLAND, IN WHICH THE ASSEMBLY OF THE LEAGUE OF NATIONS MEETS

equality of nations should become the basis of any practical plan for international union or co-operation.

The first result of the adoption of the principle of the equality of nations would be to make impossible an undertaking to employ force or coercion by the international organization devoted to prevention of appeals to force.

A second result would be the disappearance of all the active executive powers of the League as now constituted and the conversion of the legislative powers, if they can be called legislative, into authority to collect information and declare international opinion as to conditions which affect the common interests of the nations.

A third result would be to make needless an oligarchy of the Principal Powers or a body dominated by them, since the only justification for their superior rights in the League is their joint possession of force sufficient to enforce those terms of peace with which the League is charged in the Treaties. With moral obligation to keep faith the only compulsive element recognized, for there is none other in the relations between nations except physical might or the threat to exercise it, the reason for considering the possession of physical might as a qualification for a superior voice in international affairs disappears.

ASSUMING, then, that the Covenant could be amended in conformity with these views so that the League of Nations would possess only a single representative body which has no executive, legislative, or judicial functions, the scope and purpose of the League, so reconstituted, would be, stated briefly, as follows:

1. Exchange of information and opinions on subjects of international interest and concern, particularly on all controversies and differences which may develop into war or which threaten a rupture of good relations; and also provision for giving publicity to such information and opinions.

2. Free discussion and counsel as to ways and means of removing causes of war and of preventing international differences from becoming acute.

3. Recommendations as to bases of conciliation and of adjustment of differences; as to improvements in the constitution and procedure of international tribunals, to which nations may resort for the judicial settlement of disputes; and also as to means for the codification and declaration of the principles and rules of international law.

Confined to the foregoing purposes, which cover an enormous and most useful field, the functions of the organization would require the following agencies:

An *Assembly of Delegates* representing the nations which are members of the organization. The Assembly should meet periodically to discuss openly and freely the matters coming within its scope and purposes and after common counsel to express formally the opinions and recommendations of the Delegates.

An *Advisory Committee*, designated by the Assembly of Delegates, as the guiding agent of the Assembly in the carrying out of its purposes, subject always to the will of the Delegates.

A *Bureau or Office of Information and Publicity* to receive and disseminate information concerning all international matters of general interest, including therein the reception and publication of treaties, international agreements, and other data which in the interest of peace and good understanding should be subjected to the public opinion of the world. This Bureau or Office should be established, maintained, and directed by the Assembly of Delegates.

In addition to this union of nations, but entirely independent of it, a tribunal or tribunals of international justice would of course be maintained as one of the chief agencies for the removal of causes of war.

It is evident that an international organization, constituted in the manner stated and having the scope and purposes set forth, would furnish a permanent world forum for the general exchange of views concerning international affairs and of subjects of mutual interest to the nations, a channel of publicity in regard to political, economic, and social matters through which opportunity would be given for the expression of an intelligent public opinion in all countries, and an agency for the encouragement of the peaceful settlement of international controversies, which would operate in conjunction with diplomacy and judicial procedure.

Though such an organization would be without any physical power to impose its will upon the nations, it would seem to offer the most practical and effective means under present conditions to prevent or hinder international wars and to preserve good relations between nations by free discussion of differences and by furnishing the public opinion of the world with opportunity to exert its influence in behalf of peace.

HAVING considered the subject from the standpoint of what is desirable rather than from the standpoint of what is possible, it is necessary, as a practical matter, to introduce into the problem the factors of the present status of the Treaties and also of the status of the League of Nations.

I think that it may be assumed that, so far as the actual terms of peace are concerned, the other signatories of the Treaties will not place insurmountable obstacles in the way of amending the terms in accordance with American ideas. If they should take such an attitude, the same result may be obtained through the medium of reservations in the ratifying resolution. The one change in the Treaties which is essential to the suggested policy, and which could only be made by mutual agreement, relates to the agency for the enforcement of the terms.

The proposition is to transfer to the Principal Powers represented on the

Supreme Council, or, in certain cases, to international commissions named by them, such duties and powers of enforcement of the terms of peace as are now confided to the League of Nations. As the enforcement of many of the terms is already delegated to the group of Principal Powers, such a transfer ought not to cause serious objection. The League of Nations would thus cease to be an agency for treaty enforcement, and would possess no coercive authority.

In regard to the changes in the Covenant of the League of Nations which would necessarily result from eliminating all power of coercion, the structure of the organization might be preserved by retaining, for the present at least, the Council, as now constituted, to act as the suggested "Advisory Committee," and confiding to the Secretariat of the League the duties of the "Bureau of Information and Publicity."

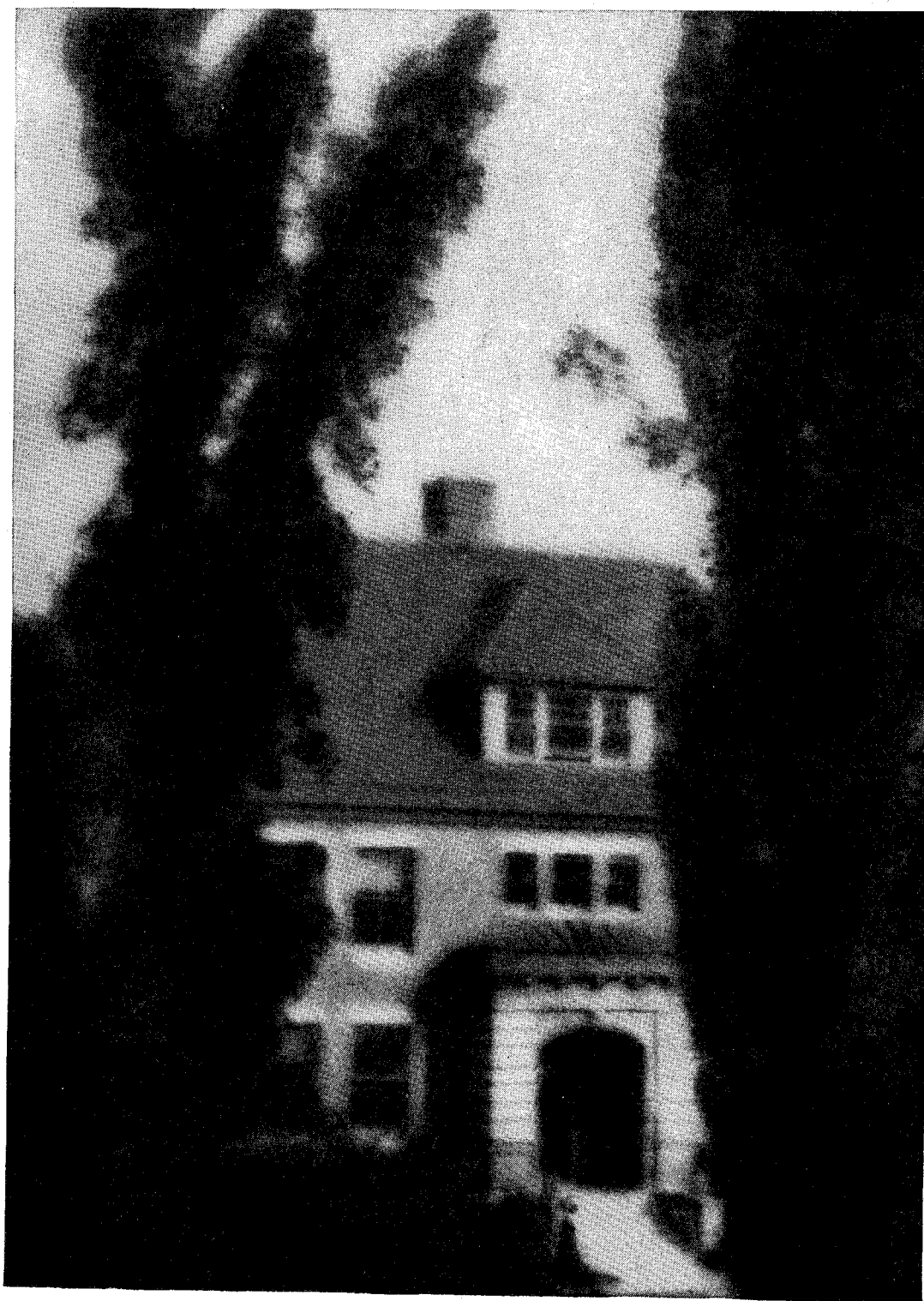
While retention of the Council with its recognized primacy of the Principal Powers would evidently be contrary to the principle of the equality of nations, the fact that it would be subordinate to the "Assembly of Delegates" and without power to act even in a directory capacity unless authorized by the Assembly would remove a valid objection to its retention. While in theory it would be contrary to the basic principle of equality, in practice it would not affect the principle.

The adoption of this compromise between the desirable form and the existing form of organization would seem to offer a possible basis for agreement. If later it seemed wise to bring the Covenant theoretically as well as practically into complete accord with the fundamental principles that have been stated and to remove the apparent contradiction of those principles by retention of the present form, the Covenant could be amended.

THESE suggestions and comments as to a possible policy are made with a full realization that they will not meet the approval of those Americans who are radically opposed to this country's becoming a member of any general international association. But to decline to enter such an association would be, in my opinion, to act in defiance of the will of the people of the United States and in opposition to the common desire of mankind which is demanding some union of the nations which will be devoted to the preservation of peace in the world. A possible, as well as a proper, international organization is what should be sought. No policy is worth while that is not founded on practicability. There is no use in suggesting one which does not take into consideration existing conditions, because it will be unworkable and will be as futile as the proposal of one who, in the enthusiasm for an ideal or a theory, ignores facts and circumstances. The formula, stated in general terms, is this: The preferable modified by the possible will give the practicable.

AS THE CLAY IN THE POTTER'S HAND

PICTURES BY HENRY HOYT MOORE



THE HOME OF THE SCHOOL OF CERAMICS

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