

LASSA OPPENHEIM

THE LEAGUE OF
NATIONS AND ITS
PROBLEMS: THREE
LECTURES

Lassa Oppenheim
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Its Problems: Three Lectures**

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L. Oppenheim

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PREFACE

The three lectures collected in this volume were prepared without any intention of publication. They were delivered for the purpose of drawing attention to the links which connect the proposal for a League of Nations with the past, to the difficulties which stand in the way of the realisation of the proposal, and to some schemes by which these difficulties might be overcome. When it was suggested that the lectures should be brought before the public at large by being issued in book form I hesitated, because I was doubtful whether the academic method natural to a University lecture would be suitable to a wider public. After consideration, however, I came to the conclusion that their publication might be useful, because the lectures attempt to show how the development initiated by the two Hague Peace Conferences could be continued by turning the movement for a League of Nations into the road of progress that these Conferences opened.

Professional International lawyers do not share the belief that

the outbreak of the World War and its, in many ways, lawless and atrocious conduct have proved the futility of the work of the Hague Conferences. Throughout these anxious years we have upheld the opinion that the progress initiated at the Hague has by no means been swept away by the attitude of lawlessness deliberately—'because necessity knows no law'—taken up by Germany, provided only that she should be utterly defeated, and should be compelled to atone and make ample reparation for the many cruel wrongs which cry to Heaven. While I am writing these lines, there is happily no longer any doubt that this condition will be fulfilled. We therefore believe that, after the map of Europe has been redrawn by the coming Peace Congress, the third Conference ought to assemble at the Hague for the purpose of establishing the demanded League of Nations and supplying it with the rudiments of an organisation.

How this could be accomplished in a very simple way the following three lectures attempt to show. They likewise offer some very slight outlines of a scheme for setting up International Councils of Conciliation as well as an International Court of Justice comprising a number of Benches. I would ask the reader kindly to take these very lightly outlined schemes for what they are worth. Whatever may be their defects they indicate a way out of some of the great difficulties which beset the realisation of the universal demand for International Councils of Conciliation and an International Court of Justice.

It is well known that several of the allied Governments have

appointed Committees to study the problem of a League of Nations and to prepare a scheme which could be put before the coming Peace Congress. But unless all, or at any rate all the more important, neutral States are represented, it will be impossible for an all-embracing League of Nations to be created by that Congress; although a scheme could well be adopted which would keep the door open for all civilised States. However, until all these States have actually been received within the charmed circle, the League will not be complete nor its aims fully realised. Whatever the coming Peace Congress may be able to achieve with regard to a scheme for the establishment of the League of Nations, another—the third—Hague Peace Conference will be needed to set it going.

L. OPPENHEIM.

P.S.—While this Preface and volume were going through the Press, Austria-Hungary and Germany surrendered, and unprecedented revolutions broke out which swept the Hapsburg, the Hohenzollern, and all the other German dynasties away. No one can foresee what will be the ultimate fate and condition of those two once mighty empires. It is obvious that, had the first and second lectures been delivered after these stirring events took place, some of the views to be found therein expressed would have been modified or differently expressed. I may ask the reader kindly to keep this in mind while reading the following pages. However, the general bearing of the arguments, and the proposals for the organisation of the League of Nations

and the establishment of an International Court of Justice and International Councils of Conciliation, are in no way influenced by these later events.

First Lecture

THE AIMS OF THE LEAGUE OF NATIONS

SYNOPSIS

I. The purpose of the three Lectures is to draw attention to the links which connect the proposed League of Nations with the past, to the difficulties involved in the proposal, and to the way in which they can be overcome.

II. The conception of a League of Nations is not new, but is as old as International Law, because any kind of International Law and some kind of a League of Nations are interdependent and correlative.

III. During antiquity no International Law in the modern sense of the term was possible, because the common interests which could force a number of independent States into a community of States were lacking.

IV. But during the second part of the Middle Ages matters began to change. During the fifteenth, sixteenth, and seventeenth centuries an International Law, and with it a kind of League of Nations, became a necessity and therefore grew by custom. At the same time arose the first schemes for a League of Nations

guaranteeing permanent peace, namely those of Pierre Dubois (1305), Antoine Marini (1461), Sully (1603), and Emeric Crucée (1623). Hugo Grotius' immortal work on 'The Law of War and Peace' (1625).

V. The League of Nations thus evolved by custom could not undertake to prevent wars; the conditions prevailing up to the outbreak of the French Revolution made it impossible; it was only during the nineteenth century that the principle of nationality made growth.

VI. The outbreak of the present World War is epoch-making because it is at bottom a fight between the principle of democratic and constitutional government and the principle of militarism and autocratic government. The three new points in the present demand for a League of Nations.

VII. How and why the peremptory demand for a new League of Nations arose, and its connection with so-called Internationalism.

VIII. The League of Nations now aimed at is not really a League of Nations but of States. The ideal of the National State.

IX. The two reasons why the establishment of a new League of Nations is conditioned by the utter defeat of the Central Powers.

X. Why—in a sense—the new League of Nations may be said to have already started its career.

XI. The impossibility of the demand that the new League of Nations should create a Federal World State.

XII. The demand for an International Army and Navy.

XIII. The new League of Nations cannot give itself a constitution of a state-like character, but only one *sui generis* on very simple lines.

XIV. The three aims of the new League of Nations, and the four problems to be faced and solved in order to make possible the realisation of these aims.

THE LECTURE

I. Dr. Whewell, the founder of the Chair of International Law which I have the honour to occupy in this University, laid the injunction upon every holder of the Chair that he should 'make it his aim,' in all parts of his treatment of the subject, 'to lay down such rules and suggest such measures as may tend to diminish the evils of war and finally to extinguish war between nations.' It is to comply with the spirit, if not with the letter, of this injunction that I have announced the series of three lectures on a League of Nations. The present is the first, and in it I propose to treat of the Aims of the League. But, before I enter into a discussion of these aims, I should like to point out that I have no intention of dealing with the question whether or no a League of Nations should be founded at all. To my mind, and probably to the minds of most of you here, this question has been satisfactorily answered by the leading politicians of all parties and all countries since ex-President Taft put it soon after the outbreak of the World War; it suffices to mention Earl Grey in Great Britain and President Wilson in America. In giving these lectures I propose to draw your attention, on the one hand, to the links which connect the proposal for a League of Nations with the past, and, on the other hand, to the difficulties with which the realisation of the proposal must necessarily be attended; and also to the ways in which, in my opinion, these difficulties can be overcome.

There is an old adage which says *Natura non facit saltus*, Nature takes no leaps. Everything in Nature develops gradually, step by step, and organically. It is, at any rate as a rule, the same with History. History in most cases takes no leaps, but if exceptionally History does take a leap, there is great danger of a bad slip backwards following. We must be on our guard lest the proposed League of Nations should take a leap in the dark, and the realisation of proposals be attempted which are so daring and so entirely out of keeping with the historical development of International Law and the growth of the Society of Nations, that there would be great danger of the whole scheme collapsing and the whole movement coming to naught.

The movement for a League of Nations is sound, for its purpose is to secure a more lasting peace amongst the nations of the world than has hitherto prevailed. But a number of schemes to realise this purpose have been published which in my opinion go much too far because they comprise proposals which are not realisable in our days. You know that not only an International Court of Justice and an International Council of Conciliation have been proposed, but also some kind of International Government, some kind of International Parliament, an International Executive, and even an International Army and Navy—a so-called International Police—by the help of which the International Government could guarantee the condition of permanent peace in the world.

II. You believe no doubt, because nearly everyone believes it,

that the conception of a League of Nations is something quite new. Yet this is not the case, although there is something new in the present conception, something which did not exist previously. The conception of a League of Nations is very old, is indeed as old as modern International Law, namely about four hundred years. International Law could not have come into existence without at the same time calling into existence a League of Nations. *Any kind of an International Law and some kind or other of a League of Nations are interdependent and correlative.* This assertion possibly surprises you, and I must therefore say a few words concerning the origin of modern International Law in order to make matters clear.

III. In ancient times no International Law in the modern sense of the term existed. It is true there existed rules of religion and of law concerning international relations, and ambassadors and heralds were everywhere considered sacrosanct. But these rules were not rules of an *International Law*, they were either religious rules or rules which were part of the Municipal Law of the several States. For instance: the Romans had very detailed rules concerning their relations with other States in time of peace and war; but these were rules of Roman law, not rules of the law of other countries, and certainly not *international* rules.

Now what was the reason that antiquity did not know of any International Law?

The reason was that between the several independent States of antiquity no such intimate intercourse arose and no such

common views existed as to necessitate a law between them. Only between the several city States of ancient Greece arose some kind of what we should now call 'International Law,' because these city States formed a Community fostered by the same language, the same civilisation, the same religion, the same general ideas, and by constant commercial and other intercourse. On the other hand, the Roman Empire was a world empire, it gradually absorbed all the independent nations in the West. And when the Roman Empire fell to pieces in consequence of the migration of the peoples, the old civilisation came to an end, international commerce and intercourse ceased almost entirely, and it was not till towards the end of the Middle Ages that matters began to change.

IV. During the second part of the Middle Ages more and more independent States arose on the European continent, and during the fifteenth and sixteenth centuries the necessity for a Law of Nations made itself felt. A multitude of Sovereign States had now established themselves which, although they were absolutely independent of one another, were knitted together by constant commercial and other intercourse, by a common religion, and by the same moral principles. Gradually and almost unconsciously the conviction had grown upon these independent States that, in spite of everything which separated them, they formed a Community the intercourse of which was ruled by certain legal principles. International Law grew out of custom because it was a necessity according to the well-known rule

ubi societas ibi jus, where there is a community of interests there must be law. The several independent States had thus gradually and unconsciously formed themselves into a Society, the afterwards so-called Family of Nations, or, in other words, a League of Nations.

And no sooner had this League of Nations come into existence—and even some time before that date—than a number of schemes for the establishment of eternal peace made their appearance.

The first of these schemes was that of the French lawyer *Pierre Dubois*, who, as early as 1305, in his work 'De recuperatione terre sancte,' proposed an alliance between all Christian Powers for the purpose of the maintenance of peace and the establishment of a permanent Court of Arbitration for the settlement of differences between members of the alliance.

Another was that of *Antoine Marini*, the Chancellor of Podiebrad, King of Bohemia, who adopted the scheme in 1461. This scheme proposed the foundation of a Federal State to comprise all the existing Christian States and the establishment of a permanent Congress to be seated at Basle in Switzerland, this Congress to be the highest organ of the Federation.

A third scheme was that of *Sully*, adopted by Henri IV of France, which, in 1603, proposed the division of Europe into fifteen States and the linking together of these into a Federation with a General Council as its highest organ.

And a fourth scheme was that of *Emeric Crucée*, who, in 1623,

proposed the establishment of a Union consisting not only of the Christian States but of all States of the world, with a General Council seated at Venice.

And since that time many other schemes of similar kind have made their appearance, the enumeration and discussion of which is outside our present purpose. So much is certain that all these schemes were Utopian. Nevertheless, a League of Nations having once come into existence, International Law grew more and more, and when in 1625 Hugo Grotius published his immortal work on 'The Law of War and Peace,' the system of International Law offered in his work conquered the world and became the basis of all following development.

V. However, although a League of Nations must be said to have been in existence for about 400 years, because no International Law would have been possible without it, this League of Nations could not, and was not intended to, prevent war between its members. I say: it could not prevent war. Why not? It could not prevent war on account of the conditions which prevailed within the international society from the Middle Ages till, say, the outbreak of the present war. These conditions are intimately connected with the growth of the several States of Europe.

Whereas the family, the tribe, and the race are natural products, the nation as well as the State are products of historical development. All nations are blends of more or less different races, and all States were originally founded on force: strong

rulers subjected neighbouring tribes and peoples to their sway and thus formed coherent nations. Most of the States in Europe are the product of the activity of strong dynasties which through war and conquest, and through marriage and purchase, united under one sovereign the lands which form the States and the peoples which form the nations. Up to the time of the French Revolution, throughout the sixteenth, seventeenth, and eighteenth centuries, all wars were either wars of religion, or dynastic wars fought for the increase of the territory under the sway of the dynasties concerned, or so-called colonial wars fought for the acquisition of transoceanic colonies. It was not till the nineteenth century that wars for the purpose of national unity broke out, and dynastic wars began gradually to disappear. During the nineteenth century the nations, so to say, found themselves; some kind of constitutional government was everywhere introduced; and democracy became the ideal, although it was by no means everywhere realised.

VI. It is for this reason that the outbreak of the present war is epoch-making, because it has become apparent that, whatever may be the war aims of the belligerents, at bottom this World War is a fight between the ideal of democracy and constitutional government on the one hand, and autocratic government and militarism on the other. Everywhere the conviction has become prevalent that things cannot remain as they were before the outbreak of the present war, and therefore the demand for a League of Nations, or—I had better say—for a new League of

Nations to take the place of that which has been in existence for about 400 years, has arisen.

Now what is new in the desired new League of Nations?

Firstly, this new League would be founded upon a solemn treaty, whereas the League of Nations hitherto was only based upon custom.

Secondly, for the purpose of making war rarer or of abolishing it altogether, this new League of Nations would enact the rule that no State is allowed to resort to arms without previously having submitted the dispute to an International Court or a Council of Conciliation.

Thirdly, this new League of Nations would be compelled to create some kind of organisation for itself, because otherwise it could not realise its purpose to make war rarer or abolish it altogether.

VII. The demand for a new League of Nations is universal, for it is made, not only everywhere in the allied countries, but in the countries of the Central Powers, and it will surely be realised when the war is over, at any rate to a certain extent. It is for this reason that the present World War has not only not destroyed so-called Internationalism, but has done more for it than many years of peace could have done.

What is Internationalism?

Internationalism is the conviction that all the civilised States form one Community throughout the world in spite of the various factors which separate the nations from one another;

the conviction that the interests of all the nations and States are indissolubly interknitted, and that, therefore, the Family of Nations must establish international institutions for the purpose of guaranteeing a more general and a more lasting peace than existed in former times. Internationalism had made great strides during the second part of the nineteenth century on account of the enormous development of international commerce and international communication favoured by railways, the steamship, the telegraph, and a great many scientific discoveries and technical inventions. But what a disturbing and destroying factor war really is, had not become fully apparent till the present war, because this is a *world* war which interferes almost as much with the welfare of neutrals as with the welfare of belligerents. It has become apparent during the present war that the discoveries and developments of science and technology, which had done so much during the second half of the nineteenth century for the material welfare of the human race during peace, were likewise at the disposal of belligerents for an enormous, and hitherto unthought-of, destruction of life and wealth. It is for this reason that in the camp of friend and foe, among neutrals as well as among belligerents, the conviction has become universal that the conditions of international life prevailing before the outbreak of the World War must be altered; that international institutions must be established which will make the outbreak of war, if not impossible, at any rate only an exceptional possibility. The demand for a new League of Nations has thus arisen and

peremptorily requires fulfilment.

VIII. However, in considering the demand for a new League of Nations, it is necessary to avoid confusing nations with States. It should always be remembered that, when we speak of a League of Nations, we do not really mean a League of Nations but a League of States. It is true that there are many States in existence which in the main are made up of one nation, although fractions of other nations may be comprised in them. But it is equally true that there are some States in existence which include members of several nations. Take as an example Switzerland which, although only a very small State, nevertheless comprises three national elements, namely German, French, and Italian. Another example is the British Empire, which is a world empire and comprises a number of different nations.

That leads me to the question: What is a nation?

A nation must not be confounded with a race. A nation is a product of historical development, whereas a race is a product of natural growth. One speaks of a nation when a complex body of human beings is united by living in the same land, by the same language, the same literature, the same historical traditions, and the same general views of life. All nations are a mixture of several diverse racial elements which in the course of historical development have to a certain extent been united by force of circumstances. The Swiss as a people are politically a nation, although the component parts of the population of Switzerland are of different national characters and even speak different

languages. Historical development in general, and in many cases force in particular, have played a great part in the blending of diverse racial elements into nations; just as they have played a great part in the building up of States. The demand that every nation should have a separate State of its own—the ideal of the so-called national State—appears very late in history; it is a product of the last two centuries, and it was not till the second half of the nineteenth century that the so-called principle of nationality made its appearance and gained great influence. It may well be doubted whether each nation, be it ever so small, will succeed in establishing a separate State of its own, although where national consciousness becomes overwhelmingly strong, it will probably in every case succeed in time either in establishing a State of its own, or at any rate in gaining autonomy. Be that as it may, it is a question for the future; so much is certain, what is intended now to be realised, is not a League of Nations, but a League of States, although it is called a League of Nations.

IX. However, no League of Nations is possible unless the Central Powers, and Germany in especial, are utterly defeated during the World War, and that for two reasons.

One reason is that a great alteration of the map of Europe is an absolutely necessary condition for the satisfactory working of a League of Nations. Unless an independent Poland be established; unless the problem of Alsace-Lorraine be solved; unless the Trentino be handed over to Italy; unless the Yugo-Slavs be united with Servia; unless the Czecho-Slovaks be freed from the

Austrian yoke; and unless the problem of Turkey and the Turkish Straits be solved, no lasting peace can be expected in Europe, even if a League of Nations be established.

The other reason is that, unless Germany be utterly defeated, the spirit of militarism, which is not compatible with a League of Nations, will remain a menace to the world.

What is militarism? It is that conception of the State which bases the power of the State, its influence, its progress, and its development exclusively on military force. The consequence is that war becomes part of the settled policy of a militarist State; the acquisition of further territory and population by conquest is continually before the eyes of such a Government; and the condition of peace is only a shorter or longer interval between periods of war. A military State submits to International Law only so long as it serves its interests, but violates International Law, and particularly International Law concerning war, wherever and whenever this law stands in the way of its military aims. The whole history of Prussia exemplifies this. Now in a League of Nations peace must be the normal condition. If war occurs at all within such a League, it can only be an exceptional phase and must be only for the purpose of re-establishing peace. It is true a League of Nations will not be able entirely to dispense with military force, yet such force appears only in the background as an *ultima ratio* to be applied against such Power as refuses to submit its disagreements with other members of the League either to an International Court of Justice

or an International Council of Conciliation.

X. Be that as it may, in a sense the League of Nations has already started its career, because twenty-five States are united on the one side and are fighting this war in vindication of International Law. These States are—I enumerate them chronologically as they entered into the war:—Russia (the Bolsheviks have made peace, but in fact one may still enumerate Russia as a belligerent), France, Belgium, Great Britain, Servia, Montenegro, Japan, San Marino, Portugal, Italy, Roumania, the United States, Cuba, Panama, Greece, Siam, Liberia, China, Brazil, Ecuador, Guatemala, Nicaragua, Costa Rica, Haiti, Honduras. Besides these twenty-five States which are at war with the Central Powers, the following four States, without having declared war, have broken off diplomatic relations with Germany, namely: Bolivia, San Domingo, Peru, Uruguay.

Now there may be said to be about fifty civilised States in existence. Of these, as I have just pointed out, twenty-five are fighting against the Central Powers, four have broken off relations with Germany, the Central Powers themselves are four in number, with the consequence that thirty-three of the fifty States are implicated in the war. Only the seventeen remaining States are neutral, namely: Sweden, Norway, Denmark, Holland, Luxemburg, Switzerland, Spain, Lichtenstein, and Monaco in Europe; Mexico, Salvador, Colombia, Venezuela, Chile, Argentina, and Paraguay in America; and Persia in Asia.

It may be taken for granted that all the neutral States, and all

the States fighting on the side of the Allies, and also the four States which, although they are not fighting on the side of the Allies, have broken off relations with Germany, are prepared to enter into a League of Nations.

But what about the Central Powers, and Germany in especial? I shall discuss in my next lecture the question whether the Central Powers are to become members of the League. To-day it must suffice to say that, when once utterly defeated, they will be only too glad to be received as members. On the other hand, if they were excluded, the world would again be divided into two rival camps, just as before the war the Triple Alliance was faced by the Entente. No disarmament would be possible, and with regard to every other matter progress would be equally impossible. Therefore the Central Powers must become members of a League of Nations for such a League to be of any great use, which postulates as a *sine qua non* that Germany must be utterly defeated in the present war. If she were victorious, or if peace were concluded with an undefeated Germany, the world would not be ripe for a League of Nations because militarism would not have been exterminated.

XI. I have hitherto discussed the League of Nations only in a general way, without mentioning that there is no unanimity concerning its aims or concerning the details of its organisation. Many people think that it would be possible to do away with war for ever, and they therefore demand a World State, a Federal State comprising all the single States of the world on

the pattern of the United States of America. And for this reason the demand is raised not only for an International Court and for an International Council of Conciliation, but also for an International Government, an International Parliament, and an International Army and Navy,—a so-called International Police.

I believe that these demands go much too far and are impossible of realisation. A Federal State comprising all the single States of the whole civilised world is a Utopia, and an International Army and Navy would be a danger to the peace of the world.

Why is a World State not possible, at any rate not in our time?

No one has ever thought that a World State in the form of one single State with one single Government would be possible. Those who plead for a World State plead for it in the form of a Federal State comprising all the single States of the world on the pattern of the United States of America. But even this modified ideal is not, in my opinion, realisable at present. Why not? To realise this ideal there would be required a Federal Government, and a Federal Parliament; and the Federal Government would have to possess strong powers to enforce its demands. A powerless Federal Government would be worse than no government at all. But how is it possible to establish at present a powerful Federal Government over the whole world? How is it possible to establish a Federal World Parliament?

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