

INTERNATIONAL COMMUNICATIONS

The American Attitude

Dhananjayrao Gadgil Library



GIPE-PUNE-014042

BY

KEITH CLARK

No. 340 in the "Studies in History, Economics
Public Law" of Columbia University.

SUBMITTED IN PARTIAL FULFILMENT OF THE REQUIREMENTS
FOR THE DEGREE OF DOCTOR OF PHILOSOPHY
IN THE
FACULTY OF POLITICAL SCIENCE
COLUMBIA UNIVERSITY

NEW YORK

1931

X3.10R73.M3

GI

14042

COPYRIGHT, 1931

BY

COLUMBIA UNIVERSITY PRESS

PRINTED IN THE UNITED STATES OF AMERICA

TABLE OF CONTENTS

| | PAGE |
|--|------|
| INTRODUCTION | II |
| CHAPTER I | |
| UNIVERSAL POSTAL UNION | |
| History | 15 |
| Conference of 1863 | 18 |
| Congress of 1874 | 20 |
| Convention of Berne | 26 |
| Succeeding Congresses | 26 |
| Convention of Stockholm | 28 |
| Accounts and Transit | 29 |
| Monetary Unit | 32 |
| Membership | 33 |
| The Congress | 33 |
| The Bureau | 42 |
| The Research Committee | 43 |
| Arbitration | 44 |
| War and Peace | 50 |
| List of Congresses and Conferences | 53 |
| THE AMERICAN ATTITUDE | |
| History | 54 |
| Pan American Postal Union | 68 |
| Expenses | 72 |
| Arbitration | 74 |
| Subventions | 77 |
| The Convention and the Constitution | 83 |
| List of American Delegates to Congresses and Conferences | 88 |
| CHAPTER II | |
| INTERNATIONAL TELEGRAPH UNION | |
| History | 90 |
| Regional Arrangements | 91 |
| Conference of 1865 | 93 |
| Conference of 1875 | 95 |

| | PAGE |
|---|------|
| Convention and Regulations. | 96 |
| Language Problem | 98 |
| Membership | 102 |
| The Conference. | 105 |
| The Bureau. | 106 |
| The Consultative Committee | 107 |
| Settlement of Disputes | 108 |
| War and Peace | 108 |
| List of Conferences | 110 |
| THE AMERICAN ATTITUDE | |
| History. | 110 |
| Private Companies | 118 |
| List of American Delegates to Conferences. | 122 |
| CHAPTER III | |
| SUBMARINE CABLES | |
| History. | 123 |
| Conferences. | 129 |
| Convention of 1884 | 131 |
| Jurisdiction. | 132 |
| An International Bureau | 138 |
| War and Peace | 138 |
| List of Conferences | 139 |
| THE AMERICAN ATTITUDE | |
| History. | 139 |
| Private Companies | 148 |
| Cable Landing Licenses. | 154 |
| Neutralization | 157 |
| List of American Delegates to Conferences | 168 |
| CHAPTER IV | |
| INTERNATIONAL RADIO UNION | |
| History. | 169 |
| Conference of 1903 | 171 |
| Conference of 1906 | 17 |
| Convention of Berlin | 17 |
| Conference of 1912 | 17 |
| Convention of London | 1 |
| Conference of 1913 | 1 |
| Conference of 1927 | 1 |
| Convention of Washington | 1 |

CONTENTS

7

| | PAGE |
|--|------|
| Allocations | 182 |
| Interference | 185 |
| Amateurs | 187 |
| Membership | 190 |
| Private Companies | 194 |
| Universal Electrical Communications Union. | 197 |
| The International Bureau | 198 |
| The Consultative Committee. | 200 |
| Settlement of Disputes | 205 |
| Conference on Safety of Life at Sea | 208 |
| Regional Arrangements. | 211 |
| European Radio Conference. | 212 |
| Juridical Congresses | 215 |
| International Telephony. | 215 |
| List of Conferences | 216 |

THE AMERICAN ATTITUDE

| | |
|---|-----|
| History. | 217 |
| American Regional Arrangements. | 230 |
| Private Companies and Public Ownership | 238 |
| List of American Delegates to Conferences | 250 |
| INDEX | 253 |

| | PAGE |
|--------------------------------------|------|
| Convention and Regulations. | 96 |
| Language Problem | 98 |
| Membership | 102 |
| The Conference. | 105 |
| The Bureau. | 106 |
| The Consultative Committee | 107 |
| Settlement of Disputes | 108 |
| War and Peace | 108 |
| List of Conferences | 110 |

THE AMERICAN ATTITUDE

| | |
|--|-----|
| History. | 110 |
| Private Companies | 118 |
| List of American Delegates to Conferences. | 122 |

CHAPTER III

SUBMARINE CABLES

| | |
|-----------------------------------|-----|
| History. | 123 |
| Conferences. | 129 |
| Convention of 1884 | 131 |
| Jurisdiction. | 132 |
| An International Bureau | 138 |
| War and Peace | 138 |
| List of Conferences | 139 |

THE AMERICAN ATTITUDE

| | |
|---|-----|
| History. | 139 |
| Private Companies | 148 |
| Cable Landing Licenses. | 154 |
| Neutralization | 157 |
| List of American Delegates to Conferences | 168 |

CHAPTER IV

INTERNATIONAL RADIO UNION

| | |
|------------------------------------|-----|
| History. | 169 |
| Conference of 1903 | 170 |
| Conference of 1906 | 171 |
| Convention of Berlin | 172 |
| Conference of 1912 | 174 |
| Convention of London | 175 |
| Conference of 1913 | 176 |
| Conference of 1927 | 177 |
| Convention of Washington | 180 |

EXPLANATION OF PRINCIPAL ABBREVIATIONS

- A. J. I. L.*—(*American Journal of International Law*)
Arch. Dip.—(*Archives Diplomatiques*, three series)
B. F. S. P.—(*British Foreign and State Papers*)
B. Y. I. L.—(*British Year-book of International Law*)
de Clercq—(*Recueil des traités de la France*, ed. de Clercq)
Hearings, C. on C.—(*Hearings before the Senate Committee on Commerce, on a Commission on Communications*)
Hearings, C. L. L.—(*Hearings before the Senate Committee on Foreign Relations, on an act to establish cable landing licenses*)
For. Rel.—(*Foreign Relations of the U. S.*)
L. N. T. S.—(*League of Nations Treaty Series*)
Malloy—(*Malloy's Treaties*, including vol. iii).
M. N. R. G.—(*Martens Nouveau Recueil général des traités*, three series)
Neumann—(*Recueil des traités et conventions conclus par l'Autriche*)
Opps. Atts. Gen.—(*Opinions of Attorneys General of the U. S.*)
R. D. I.—(*Revue de droit international*)
R. D. I. L. C.—(*Revue de droit international et législation comparative*)
U. S. T. I. Bulletin—(*United States Treaty Information Bulletin*)
U. S. T. S.—(*United States Treaty Series, Department of State*)

INTRODUCTION

THERE are but two ways of communicating intelligence: by means visible and means invisible; messages recorded, and then sent by messengers of increasing variety and number; messages sent by wigwag or wire or wireless, ultimately to be recorded or immediately intercommunicating. From the notched stick and the fiery cross, through helicopters and letters, to cables that drag the deep seas, to pulsations that mount the high airs, the urgencies of intercourse have been and are subduing the universe to their necessities. Communication is the measure of civilization.

It is a long story, it comprehends all history, it interpenetrates all activity. But the principal mechanisms are few: the post, the telegraph, the cable, the radio. To set forth these definite means which serve the vast ends of living is the object of this essay; particularly as the United States communicates with the world, by connecting its services with the services of other countries, by conforming its national procedure to the international codes.

Nations, with jealous guard for national integrity, have yet recognized the needs of their nationals, and have entered into multilateral and bilateral treaties in order that their peoples might be free to correspond with the peoples of other nations. Such international laws of communication have been slowly developed. The first multilateral convention governing the communication of intelligence through the post and accepted by the United States, was entered into in 1874 (the Convention of Berne), and has been rewritten at intervals. A preceding convention, written in 1865, cov-

ering telegraphic communication and not accepted by the United States, was rewritten in 1875 (the Convention of St. Petersburg), and remains the fundamental law governing transmission of wire correspondence. Each of these has been accompanied by subsidiary documents, "Regulations," of more plastic legal form, alterable and altered in every conference of the signatories. International legislation for cables, slowly developed in the 1880's by repeated conference, has not been modified in fifty years; except that as land wires pick up and relay the messages of sea wires, such cablegrams have had to conform more and more to the code governing telegrams, and international conferences on telegraph have made "Declarations," if unable to make laws controlling deep-sea communication. International law governing wireless communication, discussed through a quarter of a century in repeated conferences, the formula of 1927 the most highly technical and the longest of communication treaties, has evidently not yet crystallized into final legal form.

The United States communicates with the world through these four services, the post, the telegraph, the cable, the radio, and assists in the making of laws for these services. The United States, because of its national origins and the isolation of its geography, its federal form and its definitive constitutionalism, has been peculiarly concerned in international correspondence. America is Europe transplanted, with at once all the needs of a highly developed civilization. Being transplanted it has been desirous of keeping in touch with the civilization whence it came. The failure of the Continental Congress to unify correspondence was one of those several beneficent failures whereby the states profited when they came to develop more exact fundamental laws. The constitutional form of the United States is that of states within a state, of nationalism working through a kind of

internationalism. The adjustment of forty-eight states to common federal purposes has given the United States a wider experience than would have been possible under a unitary government. The Constitution recognized the post, that is communication, as a federal area. Correspondence became a national, and ultimately an international concern.

Under the simple clauses which grant to national jurisdiction "post-office and post roads," and "commerce with foreign states," it has been possible to accept a multitude of expanding conventions governing communications with the world. The administration of national government which is charged with supervision of correspondence has been permitted to enter into closely defined relations with administrations of other countries, without delaying the operation of agreements governing such relations through any review by the treaty-making power. The utilization of new methods of communication like radio, of new means of carriage, like airships, has been extended under the enabling clauses of a century-old fundamental law. It has been possible to adjust private ownership of important means of communication in consonance with the public welfare, and to govern the merging of such services with publicly owned and controlled services of other nations.

There is something epical about international communication; it does chant the story of mankind. The chapter which the United States has written in this universal history is of importance in any understanding of the development of the country, through the plasticities of its fundamental law, and in the intricacies of modern life.

This study has been developed of necessity from an international point of view. There is no preliminary study of international correspondence, there are few monographs on the separate means of communication. Therefore it has been necessary, in order to get the complete picture, to make

first a study of each of the four mediums, from an international point of view, covering the history, the diplomacy, the international legislation, on the subject; and to follow each of these with a study of the attitude of the United States toward the use of that medium, from the historical, the diplomatic, the international, and the national legislative angle.

This study grew out of the answer to a note of inquiry concerning American participation in international organizations, addressed to Professor Hudson of Harvard University—"No, there is nothing; there's a job for you." The idea was developed through conversations with the late Professor Allin of the University of Minnesota, whose stimulating criticisms while destructive even to the foundations, always left a better framework and a greater hope. The study has been developed under the direction of Professor Chamberlain of Columbia University—no acknowledgment here could measure the debt. To the general counsel and criticism of Professors Hyde, Jessup, Moon, Rogers and McBain of Columbia, the writer owes much. For practical assistance, thanks are due to Mrs. Frost and Miss Gay of the library of Carleton College, Miss Firkins of the library of the University of Minnesota, to the staff of the library of international law, Kent Hall, Columbia University, and to my friend, Alice Loomis.

KEITH CLARK

DECEMBER 2, 1930.
CARLETON COLLEGE.

CHAPTER I
UNIVERSAL POSTAL UNION ¹
CONVENTION OF STOCKHOLM ²

History

WHEN messages became capable of record, then messengers were found, carrier birds of the air, devoted dogs of the trodden ways, commissioned couriers on foot or horseback.³ Aztecs and Assyrians, Iroquois and Incas, Phoenicians and Persians, Macedonians and Merovingians, Jews and Gentiles, sent letters annihilating distance in the five continents. Herodotus bears witness, and the facade of the New York post-office borrows his witnessing, that "neither snow nor

¹ The Universal Postal Union, called in the beginning the "General Postal Union," is an excellent example of international organization as developed during the half-century before the organization of the League of Nations; it is the international union with the clearest scheme of government; it was the first international union proposed by a conference of world states; it is the international union with the largest membership today; it is the first international union in which the United States became a member; a discussion of the terms under which the United States exercises its membership involves the most delicate point in the constitutional power of the United States to enter international organizations.

² *League of Nations Treaty Series*, vol. xl (1925-1926), No. 1002; hereinafter cited as *L. N. T. S.* The preceding conventions and arrangements will be indicated currently in the text.

³ "To the lieutenants and deputies and rulers of the provinces, which are from India unto Ethiopia, six hundred and twenty-seven provinces . . . he wrote in the King Ahasuerus' name . . . and sent letters by posts on horseback, and riders on mules, camels, and young dromedaries." *Esther*, viii, 9, 10.

rain nor heat nor gloom of night stays these couriers from the swift completion of their appointed rounds."

The first "Director of Posts" or "Postmaster-General" may be revealed in the definite record that Count Francis von Thun and Taxis of Austria was nominated at Ghent by Philip the Fair, son of the Emperor Maximilian I, and son-in-law of Ferdinand and Isabella, as *capitaine et maître de nos postes*, on the first day of March, 1500.¹ The title became hereditary in the family, and ultimately the "*postes*" overran all of Western Europe, serving especially to unite the territorial diversities of the scattered Hapsburg dominions, Austria, Spain, the Netherlands, Italy, the German states, and, in that remote postal era as today, crossing France. Because royal correspondence was not sufficient to cover the post, the service was allowed to carry private letters, thus becoming an early international public utility.²

Certain French monarchs, or their ministers with a gift for organization, developed highly-organized systems of posts, largely maintained for state correspondence, never with the objective of furthering commerce, always with the thought of revenue or of espionage. In England, the post developed as an adjunct of increasing empire. Henry the Eighth, breaking ecclesiastical bonds with the sovereign pontiff, but eager to maintain any other connections with the continent, appointed the first English postmaster-general. James the First appointed a postmaster-general who was to supervise the "footpads", postmen of the route between England and Scotland. William and Mary, conscious of over-seas territory, appointed a colonial postmaster-general.³

¹ J. Rubsam, "Francis von Taxis," *L'Union postale*, vol. xvii, no. 8, et seq. (Berne, 1892).

² *Ibid.*

³ J. C. Hemmeon, *The History of the British Post-office* (Harvard Press, 1912), pp. 108-112.

And in the time of Queen Anne there was passed a Postal Act, as important in uniting the dominions as the Act of Union in uniting the kingdom.¹

The merchants of these late medieval and early modern times, and the universities, forwarded their particular correspondence as a private necessity. But gradually, as governments began to concentrate the activities of their territories, these individual relations were taken over by or affiliated with the government organization, as a national public service, a national monopoly. Then through a vast, uncertain, inharmonious, increasing network of agreements between two states, each two contracting parties developed supposedly separate problems, but, with no certainty for their correspondence in crossing a third country, or for the correspondence of a third country in their territories. Then, with increasing relations among states and among peoples, this bi-national service became international service, and ultimately an international monopoly through an international use of the national postal administrations.

Step by step, and with many mis-steps, this finality was achieved. The governments, working together in increasing numbers, have unified the world territory. Through thirteen international congresses, the Universal Postal Union has come into form. The constitution—the Convention—defines the extent and the powers of this "state;" creates the essential organs of the "government" and determines their procedure; contains provisions for amendment, for advisory opinion, and for judicial settlement by arbitration; the Union so completely answering the needs of the world that no government can afford to remain outside of it.

The German states, under Prussian leadership and because

¹ Statutes at Large of England and Great Britain from *Magna Carta* to the Union of the Kingdom of Great Britain and Ireland, vii, 139; quoted by Ruth Butler Lapham, *Dr. Franklin, Postmaster General* (New York, 1928), p. 21.

of the common bonds of nationality and of language, first worked out a multilateral problem in the midyears of the nineteenth century, a preliminary study in interstate postal organization. The Zollverein had demonstrated the advantage of a tariff union surmounting political boundaries before the North German Confederation had erased those boundaries. The German-Austrian treaty of 1850 united and zoned sixteen postal administrations of the *Bund*, brought a certain degree of unity into diverse German postal tariffs and demonstrated the advantages of postal union.¹

Conference of 1863

The United States in the Constitution had declared postal affairs to be federal affairs, decreeing to Congress the power "to establish post-offices and post roads."² The states thereby surrendered control over such matters. They had not experienced the struggle of the German states, but their successful unity in interstate communication, and the situation of disunity in international communications, especially critical for the United States and especially difficult with France, the chief country of transit,³ influenced the United States to suggest a conference of the nations, even during the Civil War.⁴ The suggestion was made to Napoleon, and the French Emperor was never averse from an international possibility.

Delegates from fifteen states⁵ met on May 11, 1863, with

¹ Neumann, *Recueil des traités et conventions conclus par l'Autriche*, vol. v, p. 161.

² *Constitution of the United States*, art. i, sec. 8, cl. 7.

³ See *Reports of the Postmasters-General*, both before and after this date, particularly for the years 1868-1874.

⁴ See *infra*, p. —, for American initiation.

⁵ Austria, Belgium, Costa Rica, Denmark, Spain, the United States, France, Great Britain, Italy, the Netherlands, Portugal, Prussia, Sandwich Islands, Switzerland, Hanseatic Towns.

M. Vandal, Director General of the French Posts, as president of the conference.¹ Twelve of the States were European, including the Hanseatic towns, remnants of an old internationalism; three were American, a curious trinity, the United States, Costa Rica, and the Sandwich Islands. The avowed purpose was, not to enter into a treaty, but to have full discussion one with another, to debate and if possible to agree on the general principles of postal administration between nations. As the presiding official remarked, any decision reached would "not be obligatory to anyone".²

On June 8, "Thirty-one Articles" were adopted, embodying principles which would serve as a basis for any future convention.³ The first step had been taken, the nations had met together to consider the common administration of communications.⁴

If no international convention resulted, there was however established with precision and authority *le diagnostic du mal*,⁵ from which international communication suffered. From this time on, bilateral postal treaties were based on the diagnosis of 1863, thereby approximating uniformity. In particular, postal rates were based on weight instead of distance, a principle imperative in international service. Neighboring countries reduced their tax to each other; there was increasing acceptance of responsibility for loss; account-

¹ See *Report of the Postmaster-General, 1863 Senate, Ex. Doc. No. 3380*, Congress, 54:3, p. 165. See also *L'Union postale universelle, sa fondation et développement, Mémoire publié par le Bureau International à l'occasion du 50^e anniversaire de l'union*, Berne, 1924. Hereinafter cited as *Mémoire*. Herein see particularly "Annexe, la Conférence de Paris, 1863."

² Hugo Weithase, *Geschichte des Weltpostvereins* (Strassbourg, 1895), p. 31.

³ *Mémoire*, pp. 10-12.

⁴ See address by Mr. Kasson, *Mémoire*, p. 11.

⁵ *Ibid.*, p. 12.

ings between administrations were simplified. As Mr. Blackfan, American delegate at the next conference at Berne declared, "the principles recognized at the conference of Paris have been generally adopted".¹

Conference of 1874

In the changing decade of the 1860's, Germany undertook the task of thinking the thing through. The German-Austrian postal treaty of 1850 was terminated by the battle of Sadowa, 1866; Austria was eliminated from the political and from the postal union. Prussia undertook a reorganization of the several postal services on a single-government basis; the Constitution of the North German Confederation of 1867 declared the post and telegraph service were to be "subject to the supervision of the Confederation and to its legislation" (Art. 4, 10), and that "the services will be arranged and administered for the whole territory of the North German Confederation as single institutions for state intercourse" (Art. 44).²

Having solved its own problem, the German postal administration began to meditate the larger hope. Moreover the International Telegraph Union had been formed at Paris, and had tentatively established its Bureau, leading the way to international administration of communications. Dr. Stephan, Director of Posts for the North German Confederation, responsible for the German-Austrian Convention of 1850, and for the German administrative success, set his mind to work on the European problem, and in 1868 published a scheme for international organization of the postal service.³

¹ *Documents de la Conference, 1874*, p. 36.

² *British Foreign and State Papers*, vol. 57, p. 305, London. Hereinafter cited as *B. F. S. P.*

³ C. J. Beelenkamp, *Les Lois Postales Universelles* (The Hague, 1910), p. 542.

Napoleon, if infirm on his throne, was still firm in his belief that France as the center of geographic transit would control the international situation if the service was unified. He did not fear but approved the Stephan plan, even though it was evident that it would cause an enormous hole in the French budget; he endorsed the project and the proposed conference before he rode to his fall.¹

Delayed by the Franco-Prussian war, this time Germany proposing,² but Switzerland inviting, the Congress was called in the neutralized territory of Berne for September 15, 1874.³

France hesitated; there was no enthusiasm for German leadership, and the government stood to lose through the proposed lowering of transit charges the estimated figure of five million francs annually.⁴

Russia hesitated. Her territory was tremendous, her population sparse, postal necessities as yet primitive and undemanding.⁵

Great Britain, if not hesitating, was not over-zealous; she

¹ John F. Sly, "The Genesis of the Universal Postal Union," in *International Conciliation Pamphlet* No. 233 (New York, 1927), p. 16.

² The United States, as the proposer of the preceding conference should have called this conference. If not, France as the host to that conference should have called its successor. But, as Dr. Stephan declared at Vienna, 1891, where there was sought a fixation of the honor of suggesting the origin, *c'était dans l'air*. *Mémoire*, p. 230.

³ There is a review of the conditions of the international post at the time of the calling of the conference in *Mémoire*, ch. 11.

⁴ It may be noted here that while France was hesitant in 1874, and did not sign the Convention when the other conferring states did, that the Congress of 1878 where the Union was reorganized and the fundamental law rewritten, was held in Paris (as the conference of 1876 had been), and that a medal struck in commemoration of the meeting shows on one side the Goddess of Liberty encircled with the words *République Française*, and on the reverse the words *M. Dr. Stephan, Grand Maître des Postes, délégué de l'Allemagne*. See *Mémoire*, p. 40.

⁵ *Archives Diplomatiques*, vol. liv, 1875, iv, p. 151.

had her own arrangements with over-seas dominions, and there was still a remnant of "mercantilism" lurking in the British international attitude; moreover there was the comfortable revenue derived from trans-Atlantic mails which served to offset the subsidy paid the Cunard line as a mail carrier.¹

But, the Congress met at Berne, September 15, 1874. It sat for fourteen sessions during four autumnal weeks. Twenty-two states were represented.²

The members of the delegations were all what is known today as "experts". In that older day of international conference, it was understood that postal affairs were technical matters; national administrations alone knew the complexities of postal correspondence, and if anything pragmatic were to result from the deliberations such practical method-ality must come out of technical experience. The invitations had been issued to "States and Administrations,"³ although this then meant to the administrations of independent governments. Consequently in almost every case the delegations were composed entirely of postal officials of high position. Twenty delegates were directors of posts, that is post-masters-general in their countries, an evidence of the importance of the congress similar to that shown in the presence of ministers of foreign affairs in the annual Assemblies of the League of Nations. Ten others—for the governments under the "rules of procedure" finally adopted⁴ could be represented by more than one delegate yet could cast

¹ Royal Meeker, *History of Shipping Subsidies* (New York, 1905), pp. 150-170.

² *Arch. Dip., op. cit.*, pp. 143-270. The states were Germany, Austria-Hungary, Belgium, Denmark, Egypt, Spain, France, Great Britain, Greece, Italy, Luxembourg, the Netherlands, Norway, Portugal, Rumania, Russia, Serbia, Sweden, Switzerland, the United States, Turkey.

³ *Arch. Dip., op. cit.*, pp. 143-145.

⁴ *Ibid.*

but one vote—were postal officials of lesser rank. Quite simply these governments sent their experts; there was no suggestion whatever of any political possibilities in this conference of states.

It is a pleasant thing to read in the *procès verbaux* with what single-mindedness these delegates set about their task. Only Yanco Effendi Macridi, Turkish representative, seems to have been absent at any time, and this after he had called the attention of the conference to the postal servitude to the Great Powers under which Turkey suffered, *certaines anomalies malheureusement aussi nombreuses que regrettables*, and was advised by these technical experts that they were not there to discuss and would not discuss political questions.¹ The press was not admitted, not because of any secrets of postal diplomacy, but because of the small size of the conference hall, the former meeting place of the Swiss Diet. A daily *communiqué* was issued.

M. Eugène Borel, Director of Swiss posts, was made president of the congress, and the Swiss government prepared the rules of procedure. Only thirteen of the delegations had "full powers" to sign the treaty envisaged; five had powers to represent their governments but no authority to sign; three were merely named by their governments to the Swiss government. With an eye to the probable results, this variation was solved by opening the discussions of the conference to all delegates while the delegates lacking powers took steps to secure these from their governments. All the delegates except the French secured such powers before the conclusion of the conference.

A "General Commission" was set-up, a sort of inner council, to which from time to time debatable points were referred for special consideration.² This commission

¹ *Arch. Dip.*, *op. cit.*, p. 153.

² *Ibid.*, p. 150.

created in the opening session of the congress, was not an expert body, but a small conference committee. States instead of delegates were nominated and any member of a state's delegation could represent it in the commission. The states so named were Germany, Austria, Belgium, Egypt, Italy, the Netherlands, Portugal, Russia, Sweden and Switzerland.

Great Britain and France were at first named to the group, but declined; the British delegation was cautious throughout, was entirely English not colonial, and in the beginning was not fully empowered; the French delegation was not empowered at any time, and reflected the hesitation of France.¹ The American delegation arrived late, otherwise it might have been named since the United States had been recognized as a leading postal power; but this delegation also was not fully empowered when it arrived. When it is understood that not until 1924, that is fifty years later, did the Postal Congress create a permanent technical committee, this commission of 1874 seems again a notable experiment in the precise logical direction.

The rules for the conference had provided that "the project communicated to the States and Administrations shall be the basis for deliberations" (Art. 4). The congress had before it the "Original Project presented by the Postal Administration of Germany, and communicated to the States and Administrations invited to be represented at the Congress." The draft consisted of fourteen articles providing for the creating of an international organization of member states, to constitute a "single territory in matters which concern the reciprocal exchanges of correspondence between

¹ See *supra*, p. 21. It should be noted that on account of a railroad accident wherein two of the French delegates were injured, M. Bernier was the only representative of France in the Congress. *Arch. Dip., op. cit.*, p. 148.

these postal bureaux" (Art. 1), with the expectation that each national government would still supervise its national area, and that regional arrangements would be made (Art. 12), with a provision for arbitration by "absolute majority of votes" (Art. 13), for periodical conferences to be held with a view to perfecting the system of the Union, of introducing into it improvements found necessary, and of discussing common affairs" (Art. 14). Suggestions for reform in technical postal affairs were included, covering uniformity of rates (Art. 3), allocation of receipts, gratuitous transit, and abolition of accounts (Art. 9). In short, the German draft, out of German interstate experience, had been so well wrought that the main provisions, incorporated into the Convention of 1874, remain the main provisions of the Convention of 1924.

The *procès verbaux* contain much interesting discussion of the particular provisions of the convention as developed, and also the debate as to an adjustment of independent sovereignties in an international treaty. As M. Borel declared at the conclusion of the labors, "it is not for us to judge our work; the future will develop the consequences."¹ Far consequences, as they proved.

The Convention was signed October 9th, 1874, to become effective July 1, 1875; having agreed, these experts wanted swift realization of their conclusions. A place was reserved for French signatures on equal terms with the other signatories.²

¹ *Arch. Dip., op. cit.*, p. 256. See also Le Croix, *Exposé du système général de l'Union postale universelle* (Toulouse, 1910).

² After much pressure from the French business world, the French government accepted the convention, delaying the effectiveness of its signature for a few months, for financial reasons. Le Croix, *op. cit.*, p. 78, n. 1.

*The Convention of Berne, 1874*¹

The original Convention of the Universal Postal Union consists of twenty articles, the Regulations of thirty articles. The treaty accomplished quietly a striking change in international relationships through a compromise between national and international interests, taken for granted in the cosmopolitan world of today but which in that new world of the 1870's, with its accent on nationalism, was an achievement. The states agreed, and continue to agree, that all matters not determined in the convention may be determined by a single state, or by a regional group of states.²

Three fundamental principles had been discussed in the preliminary conference of Paris, principles which have been the foundation of the Union as it has progressed through more than a half-century—uniformity of rate, uniformity of weight, simplification of accounts. The Convention of 1874 provides for a single maximum postal rate of twenty-five centimes for letters (Art. 3), with a permissible variation fixed in the convention (Art. 9), which rate still remains (Convention of Stockholm Art. 34).³ It provided a single weight of fifteen grams for letters (Art. 3), which remains today (Art. 34); the Convention of Stockholm provides twenty grams for the first unit.

Succeeding Congresses

While the fundamental principles have remained, "each

¹ *Arch. Dip.*, *op. cit.*, pp. 263-270. Also *Report of the Postmaster-General*, 1875, pp. 144-180.

² German *projet*, Art. 12; Convention of Berne, Art. 12; Convention of Stockholm, Art. 5.

³ It should be noted that the United States has established with Great Britain and with Canada a 2-cent (10 centime) rate, and such rate before the war with Germany for letters carried by direct steamship. There is a 2-cent rate for all members of the Pan-American Postal Union, which includes also Spain. See *infra*, p. 68.

succeeding Congress has marked a step forward in respect to improvements in the international postal service, and the adaptation of the fundamental principles to new economic conditions."¹

Some of the important developments in the conventions have been: 1876, the admission of colonies with independent votes; 1878, a remodeling of the treaty and the giving to the Union its present name, together with arrangements for the exchange of money orders and insured articles, with a discussion of the foundation of a parcel post service; 1880, the creation of the parcel post service; 1885, express-delivery service, private postcards, identity cards; 1891, collect-on-delivery service, subscriptions-by-mail service, and conferring on the International Bureau of the union the duty of serving as a clearing house for the settlement of accounts of all descriptions relative to the international service between administrations which claim its assistance; 1897, the lowering of transit charges, with a serious debate on gratuitous transit; 1906, further lowering of transit charges, free correspondence concerning and for prisoners of war, and reply coupons, together with a consideration of the recodification of international postal legislation.

But there had resulted through the decades a huge mass of tangled conventional agreement, with no clarification, no codification. Each congress faced an increasing number of new suggestions, demanding consideration. At Rome, 1906 there were 798 propositions which required fifty days to review. At Madrid, 1920, there were 2248 propositions, discussed through sixty-one days. The war had left economic gaps which the governments were inclined to fill by

¹ *Lecture* by Assistant Director, M. Garbini, at Geneva, Aug. 31, 1926, before a group of American professors, guests of the Carnegie Endowment. This is printed in condensed form in *International Conciliation* Pamphlet No. 233, Oct., 1927.

increasing rates, by limiting freedom of transit, by declaring the depreciated franc legal tender; in short, imperiling the old postal freedoms and securities of a half-century. The Madrid Congress, which had been postponed from 1914, was unable to solve the difficulties; 1920 was yet too near to the prejudices and upheavals of the war. Not until the Congress of Stockholm, 1924, did convention and regulations there placed under review, emerge as an international postal code. That convention retains the essential outlines, although a later Congress, London, 1929, considering more than two thousand propositions, developed a new method for obtaining transit statistics based on a count of sacks rather than weight, provided that senders may pay all fees including custom duties, admitted small packets to the international mail on the same basis as samples of merchandise, and incorporated in the convention the provisions of the Hague conference, 1927, relative to air mail.¹

Convention of Stockholm

The convention of 1924 consists of eighty articles, together with regulations of eighty-six articles.² The treaty was signed August 28, 1924, became effective October 1, 1925, "to remain effective indefinitely." The conference succeeded in bringing order into the mass of international legislation which had been produced during the half century; that is, there will be found in this code the same governing principles which were uncovered in 1863, and agreed to as law in 1874. These principles and laws remain; the congresses, being conferences of experts, almost never are compelled to rescind legislation, their task is rather to improve

¹ *U. S. T. L. Bulletin*, No. 1, Oct., 1929. Also *Report of the Postmaster-General*, for 1929, p. 40.

² There were in all twenty documents signed at Stockholm, *Rapport de Gestion*, 1924, p. 5.

provisions in the light of experience, and to meet new situations. Certain questions remain, such as post-office savings banks and a universal postage stamp, certain to come but not yet dated. Reduction of postage rates from those declared in the Convention of Stockholm, which were themselves an approximation to the rates of the Convention of Berne, will inevitably be made in the future, and possibly gratuity of transit, at least on certain routes or in certain regions. But these congresses do not startle by their innovations.

Transit rates and the monetary unit were the most perplexing questions confronting the Congress at Stockholm.

Accounts and Transit

The first lively debate of the Berne Congress of 1874 centered around proposals for a uniform rate of postage, and for gratuity of transit. These questions were embodied in Article 9 of the draft treaty, vital questions in the formation of the Union, but also as affecting the sovereignty of the member states of such a Union. The debate in the first two plenary sessions was so criss-cross that the whole matter was referred to the General Commission. The congress finally decided the question and embodied in the convention provisions which remain in the current convention.

Perhaps no agreement in international relations has ever been accomplished more startling in its time-environment, than that in Article 9 which begins:

Each Administration shall keep the whole of the sums it collects.

Unless it should be the agreement, equally striking when considered in relation to its time-environment, that begins Article 10:

The right of transit is guaranteed throughout the entire territory of the Union.

Yet the provisions were accepted in that age of extreme state sovereignty, and they remain valid today. "Liberty of transit is guaranteed throughout the entire territory of the Union" (Conv., Art. 25), and a country which does not grant such liberty is cut off from postal service (Art. 78). This liberty is not gratuity, except for a rigidly limited list of articles and documents, such as the correspondence of the Union itself (Arts. 43 and 72), and correspondence of or for or concerning prisoners of war (Art. 43). Gratuity, desired by certain members of the Union, has been achieved in the Pan-American Union for the American states.¹

Each administration retains the postage it collects (Art. 69), but payment of transit charges is due to each country traversed, or whose service participates in the conveyance, a table being worked out determining the charges for certain kilometric distances (Art. 70). The collectible transit charges are computed on "statistics taken once every five years during the first 28 days of the Month of May, or during the 28 days following the 14th of October alternately" (Regs, Art. 53).

The Bureau may "intervene as a disbursing office in the settlement of accounts of all kinds relative to the international postal service between administrations requesting such intervention" (Art. 23, # 2). Barring contrary agreement, the general accounting is made through the Bureau, thus limiting the number of payments made by the debtor administrations (Regs. Art. 65, # 1), each debtor administration paying to the creditor administration "in gold or by means of drafts payable at sight in the capital or in a commercial city of the creditor country" (Regs., Art. 66, # 1).

The manner of settling accounts with foreign countries for transit dues is well set forth by the Second Assistant Postmaster-General in committee *Hearings* before the subcommittee on postal appropriations for the year 1912:

¹ See *infra*, p. 71.

During the statistical period when the weight and number of articles is tabulated [all this] is recorded on bills prepared by the dispatching offices and forwarded with mails to the exchange offices at destination, where such bills are verified and the office of dispatch notified. As soon as possible after the conclusion of the statistical period, the exchange offices of destination prepare statements showing the weight and amount of mails received during that period for each office of other countries. These statements are forwarded by the offices which prepare them to the exchange offices at which the mails originated, for acceptance. After they have been accepted the statements are forwarded by such exchange offices to the central administration to which they are subordinate. For instance, the exchange office at Hamburg would forward a statement to the postmaster at New York of all such transit mails received from the United States, and the postmaster at New York, after accepting and signing the statement would forward it to the Post Office Department. At the end of the statistical period each administration determines, upon the accounts before it, whether the balance is found to be in its favor, or against it, with respect to other administrations. In those cases where the balance is found to be in its favor, it prepares an account against the debtor country and forwards it for settlement and payment, with as little delay as possible and within one year following the statistical year. If the office which sends the account receives no notice of amendment within four months for countries of Europe, five months for other countries (Art. 66, #2, Convention of Stockholm), from the date of the dispatch, the accounts are regarded as accepted. These accepted accounts form the basis of the annual transit charges payable by the debtor country. Our debts are settled by means of bills of exchange through the postmaster at New York, and as credit bills of exchange received from debtor countries.¹

¹ *Hearings* before a subcommittee on postal appropriations of the House committee on appropriations for 1912, Congress 61-2; March 1910, pp. 348-349. This method may be affected but not vitally altered by the new conventional agreement of London, 1929. See *supra*, p. 28.

Monetary Unit

The Convention of Berne expressed its monetary relationships in the franc and centime. Later conventions confirmed this, the Convention of Rome, 1906, making a definite declaration of the franc as the standard monetary unit of the union (Art. 4); Final Protocol, (Art. 6). The French franc, from the time of Napoleon First has been regarded as the international franc, with increasing international use under Napoleon Third, and after.¹ This unit of exchange suffered a war change, while the Swiss franc, in 1914 approximately the equal of the French franc, held its own.

It became necessary, especially in view of the fact that international transactions under the postal convention as under certain other international treaties, were paid through the Swiss government, to redetermine the *franc effectif*. This question was discussed at the Madrid Congress and a committee named for the purpose determined that the transit rate should be based on the gold franc; that the basis of conversion should be the currency of the country which had the highest rate of exchange together with free circulation of gold, and which had facility for exchanging bank notes for gold at sight—which three conditions practically were found in the United States. A permissive alternate provided that the standard could be determined by an agreement between debtor and creditor countries. The committee and the Congress neither one determined whether these provisions should apply to the future, only, or to accounts already settled or to be settled. The question was referred to the Congress of Stockholm. In that Convention of 1924, a specified gold

¹ The franc was the unit of the Latin Monetary Union. Other states approximated their unit to the franc; Austria and Sweden for a time, Rumania, Bulgaria, Serbia, Greece, the Papal States, Finland, Colombia, Venezuela. See H. D. Willis, *A History of the Latin Monetary Union* (New York, 1924).

franc of 100 centimes was adopted as the monetary unit of the Postal Union, with a weight of $10/31$ of a gram, and a fineness of 0.900. (Art. 29).

*Membership*¹

By the convention establishing the Universal Postal Union, and by the conventions continuing that establishment, the countries of the world have become a union, "a single . . . territory" (Art. 1). If the territory embraced by the signatories of the Stockholm treaty is considered, there are few postal patches on the earth's empire which the Bureau at Berne does not supervise.² There were fifteen states represented at the preliminary conference of 1863. There were twenty-two states signatory to the Convention of 1874. There are nearly ninety members (1930) in the Universal Postal Union.

The congress of 1874 may be regarded as European and as regional, notwithstanding the presence of the United

¹ Union of South Africa, Albania, Germany, United States, Possessions of the United States, the Philippines, Argentina, Australia, Austria, Belgium, Belgian Congo, Bolivia, Brazil, Bulgaria, Canada, Chile, China, Colombia, Costa Rica, Cuba, Denmark, Dominican Republic, Danzig, Egypt, Ecuador, Spain, Spanish Colonies, Estonia, Abyssinia, Finland, France, Algeria, French Colonies, Indo-China, other French Colonies, Great Britain certain Colonies, Protectorates and Mandated Territories, Greece, Guatemala, Haiti, Honduras, Hungary, British India, Ireland, Iceland, Italy, Italian Colonies, Japan, Korea, Japanese Dependencies, Lettonia, Liberia, Lithuania, Luxembourg, Morocco (except the Spanish zone), Spanish Morocco, Mexico, Nicaragua, Norway, New Zealand, Panama, Paraguay, the Netherlands, Dutch East India, Dutch Colonies in America, Peru, Persia, Poland, Portugal, Portuguese Colonies in Africa, Portuguese Colonies in Asia and Oceania, Rumania, San Marino, Salvador, Sarre, Yugoslavia, Siam, Sweden, Switzerland, Czechoslovakia, Tunis, Turkey, U. S. S. R., Uruguay, Venezuela. List of signatories to the Convention of Stockholm *L. N. T. S.*, vol. xl. Late adherents are Afghanistan, Iraq, Yemen, Vatican City.

² The exceptions are Nigeria, Northern Rhodesia, two of the Federated Malay States, the Laccadive and Maladive Islands, Trans Jordania, the States of the Alaouites, the Friendly Islands.

States; the United States and Germany had made preliminary studies in successful postal groupings; their experiences were important to the congress. However, the necessity of including states and administrations outside Europe, *pays d'outre mer*, the impossibility of keeping postal correspondence regional, was evident to that conference. In Article 16 of the convention, provision was made for additional membership. An applicant had to make declaration to the supervising administration of its desire, with the approval of administrations with which it had postal conventions or direct relations; if necessary approval to be obtained through a conference of such administrations. The applicant had also to declare acceptance of the provisions of the Convention, arrangements on the question of charges for maritime transport to be made later. Member states of the Union were given a right to veto the admission of an applicant, a right to be exercised during a six-weeks period after notification from the Bureau.

Reluctance to admit new members may be traced not to any desire to keep the Union regional, but to an anxiety concerning transit charges. It was felt that the expenses could not be evenly distributed among the co-member states if there were pronounced economic inequality in those states, and to admit undeveloped communities would increase the postal burden of the more developed countries.

As a matter of fact the undeveloped countries suffered more, as is indicated in the complaint made by the Persians again the influx of Bibles from the United States and Great Britain. Persia had to carry these Bibles to their destinations, while Persians did not in return send the Koran to Americans and Britons, compelling them to compensations in the carrying. The United States and Great Britain retained the postage paid by their nationals; Persia paid the cost of transportation in Persia. Therefore at Rome, 1906, this unequal-

ity to the advantage of more prosperous states was righted; Persia was permitted to tax such foreign mail distributed by her (Final Protocol V).¹

This process of demonstration has brought about a generous hospitality. As it stands in the Convention of Stockholm, any state may become a member of the Postal Union simply by notifying through diplomatic channels the Swiss government (Art. 2), which in turn notifies the governments of the member states, the applicant still having to deposit a declaration of intention to observe the convention, and having obtained the approval of countries with which it has postal conventions. A state may leave the union as simply, by withdrawal on one year's notice (Art. 11).² Any administration which maintains relations under bilateral arrangement with outside countries is required to place those relations at the disposal of other postal administrations for the purpose of public correspondence.³

Government units not independent politically but maintaining independent postal administrations in their areas, were of concern to the Congress of Berne. That congress emphasized its non-political character when, in considering the first article of the German draft creating "a single [postal] territory," it was decided to amend the article by inserting the words, "and Administrations," after the word "States," to indicate what units were participating. The President of the Congress declared for such changes throughout the convention, but the final draft did not recognize that equality. The problem did however continue to concern member states with colonies and in 1876 a special conference was called at Paris to settle this question.

¹ L. S. Woolf, *International Government* (New York, 1916), p. 204.

² Nigeria and the Alaouites have withdrawn.

³ Small states are attached to large states in postal service, as Monaco to France, Andorra to Spain, Lichtenstein to Switzerland, Greenland to Denmark, Spitzbergen to Norway (Art. 9).

Under the provisions there developed, the first sub-state to join was India, "French colonies," as a unit being also admitted. As of present standing, the eight nations of the British Commonwealth have independent representation and vote: Great Britain, Canada, Australia, South Africa, New Zealand, Newfoundland, India, the Irish Free State; or nine, with the mandatory Irak, 1929. But "Great Britain and various British colonies and protectorates" together with "mandated territories" have one vote. Certain French colonies also became members of the Union of 1876, the French votes in 1924 having reached four, or six with Morocco and Tunis. Other states with their sub-states have three votes, as the Netherlands, Japan, Portugal and the United States; others have two, as Italy and Spain. Germany and Russia each today has but one vote. A determined effort to eliminate votes for sub-states was made at the Congress of Madrid by the United States and South American states, at the Congress of Stockholm by Russia, Switzerland and Mexico in opposing the admission of Ireland. This problem is before all the international unions of communication.

The British Commonwealth has of course special arrangements within the Empire. The Pan-American republics have their special union. The Universal Postal Union makes provisions for limited unions in certain matters "on the condition that they do not introduce any provisions less favorable than those provided by the Acts of the Union" (Art. 5). Therefore beside the geographically "limited unions" just mentioned, there are several limited by unity of treatment of specified mail matters, set up by signature in the congress itself. For instance, that relating to *Insured Letters and Boxes* show its "limitation" by a lack of ten of the signatures to the main treaty, and includes four of the British units, Great Britain, Ireland, India, and New Zea-

land; that relating to *Parcel Post*, also lacks ten of the signatures to the main treaty, but not the same ten, none of the British units signing; that on *Money Orders* has sixty-three signatures; on *Postal Cheques* thirty-seven signatures; on *Payment on Delivery* forty-two signatures; on *Subscriptions to Newspapers* forty-six signatures.¹

The United States signs none of these special conventions. Great Britain and the British nations generally do not sign, as noted. Spain and the South American governments sign or do not sign, but with no clear basis for abstention.

The Government

The uniting of the countries of the world into "a single territory" necessitated the setting up of an organization with the usual three departments—legislative, executive, and judicial—through which this territory is governed in respect to its particular jurisdiction.

Legislative

The congress is the legislative body of the Union. It is an assembly of delegates, meeting periodically, practically every five years; Article 12 provides for a new conference five years after the going into effect of the convention emerging from the current conference.² The congress is composed of representatives from the treaty states, each country with one vote (Art. 12). This equality of unequal states has however been somewhat corrected, as noted above, by the allotting of separate votes to colonial units of large empires—although it should be remarked that in the case of the British votes, sub-states do not always vote with parent states.

¹ *L. N. T. S.*, vol. xii.

² The Congress at Stockholm should have been held in 1927, but was advanced to 1924 on account of the semi-centennial anniversary, *Mémoires*. The German draft convention, 1874 (Art. 14), provided for congresses every three years, *Documents du Congrès*, 1874, pp. 3-7.

Member states send representatives who are technical experts in the postal field and usually nominated from the department of posts and telegraphs, "plenipotentiary delegates provided with the necessary credentials by their governments" (Art. 12). These consult on postal affairs, debate conflicting points, learn the international art of give and take, and, through this postal parliament legislate for the single territory of the Union. Unanimity of vote is required to alter certain articles of the convention and the regulations which express fundamental agreement, two-thirds majority is required for altering certain other articles; a simple majority for interpretation (Act. 20). Cases of disagreement are submitted to arbitration (Art. 10).

The government which is host to the congress submits the resulting agreements to the governments of the member states for ratification. But as the new laws go into effect for each state as it ratifies, and preceding acts are repealed (Art. 13), and as no state can remain outside the communications of the modern world if it would live the modern life, no state does refuse to ratify the agreements. Therefore refusal to ratify, while possible in law, is impossible in practice. A state can threaten to secede if some new provision of the convention is inconvenient to its practice or adverse to what it claims is its national interest. The threat is seldom made, although France has passionately threatened and never carried out.¹

Each congress determines its own rules of procedure (Art. 15). Each congress appoints committees to further its work (Art. 17), the three principal committees with membership ranging from thirty-five to fifty-five being: the *First Committee*, on the convention; the *Second Committee*, on proposals concerning insured articles, parcel posts, etc.; the *Third Committee*, on proposals concerning money orders,

¹ Woolf, *op. cit.*, p. 195.

subscriptions to periodicals, etc.¹ These committees, appointed at the beginning of the sessions, study the suggestions which have been made to the Bureau during the interim since the last congress, and by the Bureau collated for the committees. When the committees have finished their considerations, the congress meets in plenary sessions to consider the results.

The president of the congress is the postmaster-general or the director of posts of the country where the meeting is being held, and the vice-president is the director of the Permanent Bureau, and ex-officially the permanent head of the organization. These two officials with the chairmen of the committees form a kind of steering committee to the congress, an excellent provision since it includes permanent functionaries who know the workings of the service. This combination of temporary and permanent officials for the furtherance of the legislation of the Union is one of the most valuable features of the congresses.

Extraordinary congresses, and conferences of administrations, may be summoned on a demand of two-thirds of the member states (Art. 14). During an interim, propositions concerning the convention and the regulations suggested by an administration and supported by at least two administrations, are circulated by the Bureau (Arts. 18, 19), six months being allowed for examination and submission of replies, these without amendment. If concerning the limited agreements and their legislation, signatory administrations are circularized. The replies are then assembled by the Bureau, collated, and resubmitted to the administrations for a final vote. Within another six months final replies must be made. Amendments to the convention are communicated by diplomatic declaration from the Swiss government; to the regulations, by a notice from the Bureau (Art. 21).

¹ Lecture by M. Garbini, *International Conciliation Pamphlet No. 232*, p. 51.

Executive

The executive organ, the permanent agency of postal government carrying out the decisions of the postal parliament and carrying on the work of international postal administration, is the Bureau (Conv. Arts, 23-24; Regs. Arts, 72-85). It was created in the first congress (Art. 13, 1874), and is in fact the first of the present permanent Bureaux of International Unions; its fundamental law of 1874 has been altered very little in the half century.

Not without doubt and debate did the Congress at Berne determine to create a permanent executive organ in international life. There was no provision for any central office in the German draft. But in the discussion on arbitration, it was suggested by the Belgian delegate that disputes might be first submitted to an international bureau to be set up, and on appeal to arbitration as provided in the treaty; the Bureau of the Telegraph Union, as yet not fully developed, was named as model.¹ Timidity however possessed the conferring minds, and it was determined that such an organ should not be an authority but an aid, that it should give opinions but not decisions.

It was however, made a bureau of information, which remains its chief service, to which have been added administrative functions in acting as intermediary for the exchange of accounts. The Bureau also serves as a preparatory committee to the international congresses. While its chief functions are those of "liaison, information and consultation" (Art. 23), the office is not merely a repository, though its work in this field is enormous and enormously important. It compiles, prints and distributes information. Some of its undertakings are: An alphabetical dictionary of all the post-offices of the world (Regs., Art. 74); a digest of informa-

¹ *Arch. Dip., op. cit.*, pp. 191-192.

tion on the organization of the administrations of the Union, and their internal service; a digest of general information on the Convention and its provisions; an up-to-date list of articles forbidden the mails in various countries (Conv., Art. 41); a list of packet lines at the disposal of the administrations of the Union, their routes, a frequency of service, and the distance between ports of call (Regs., Art. 82); and the functions of effecting the balancing and settling of accounts of all kinds relating to the international postal services between the administrations which declare themselves willing to use it as intermediary [telegraph accounts may be admitted in striking the balance (Regs., Art. 78)].

The official language of the Union is French (Conv., Art. 31; Regs., Art. 76), but *L'Union postale*, the monthly magazine published by the Bureau for a half-century, gives the same postal news in four parallel columns in English, French, German and Spanish.¹ The more technical side of the work is presented in the Annual Reports.

In choosing the permanent seat in 1874, there is an interesting parallel to the choosing of a seat for the League of Nations in 1919. Switzerland and Belgium contended equally for the honor; on the first ballot, which was secret the vote was ten to ten, with one blank; the second ballot stood twelve to nine, giving the choice to Switzerland.² The Bureau is now housed in a property of its own at 38 Schwartztorstrasse, Berne. The staff consists of a director, vice-director, two secretaries, one assistant secretary, a registrar, a clerk, an assistant clerk, and a stenographer; nine persons in all; a small group to direct the affairs of a universal union.³

¹ *Rapport de Gestion, 1922*, p. 1. Spanish was added by the Congress of Madrid.

² Gustave Moynier, *Les Bureaux internationaux des unions universelles* (Geneva, Paris, 1872), p. 43; *Documents du Congrès, 1874*, p. 79.

³ *Rapport de Gestion, 1928*, p. 1.

The Bureau is under the supervision of the Swiss Post-Office. The annual budget was limited at first to 75,000 Swiss francs. Since the congress at Madrid, the maximum amount is fixed at 300,000 francs (Regs., Art. 85).⁴ The expense is borne in common by all member states, on a basis of classification borrowed from the International Telegraph Union. (Conv., Stockholm, 1924, Art. 24; Regs., Berne, Art. 14). Expenses are divided into units, the value of each unit being as of 1926, 455 francs. The member states are divided into seven classes, each class paying a different number of expense-units. Countries of the first class contribute twenty-five units, countries of the seventh class, one unit.⁵

⁴ The expenses in 1926, that is after the Convention of Stockholm, were 219,107.16 francs; extraordinary expenses, for the new Dictionary, List of Steamships, etc. brought the total to 397,458.51 francs, *Rapport de Gestion*, 1926, p. 37.

⁵ Class One: Union of South Africa, Germany, the United States, Argentina, Australia, Canada, China, France, Great Britain, British India, Irish Free State, Italy, Japan, New Zealand, Turkey, U. S. S. R.

Class Two: Spain, Mexico.

Class Three: Belgium, Brazil, Egypt, Greece, Hungary, the Netherlands, Poland, Rumania, Yugoslavia, Sweden, Switzerland, Czechoslovakia, Algeria, French Colonies and Indo China, other French Colonies, United States Possessions, Dutch East Indies.

Class Four: Korea, Denmark, Finland, Norway, Portugal, Portuguese Africa, Portuguese Asia.

Class Five: Bulgaria, Chile, Colombia, Estonia, Latvia, Morocco except the Spanish Zone), Spanish Morocco, Peru, Tunis.

Class Six: Albania, Bolivia, Costa Rica, Cuba, Free City of Danzig, Dominican Republic, Ecuador, Abyssinia, Guatemala, Haiti, Honduras, Lithuania, Luxembourg, Nicaragua, Panama, Paraguay, Persia, San Salvador, Saar, Siam, Uruguay, Venezuela, Dutch Colonies in America.

Class Seven: Austria, Belgium Congo, Spanish Guinea, Iceland, Italian Colonies, Japanese Dependencies other than Korea, Liberia, the Philippines, San Marino.

Regulations, 1924, Art. 85.

Research Committee

To this organic scheme there should be added the Research Committee—*Commission d'Etudes*—reminiscent of the general commission of 1874.

It was designated at Madrid, with seven members, to consider revising the convention;¹ the committee consisted of Germany, Belgium, Spain, France, Great Britain, Italy, Switzerland. It was convened at Zermatt, July 29, 1921, and there developed a revised convention and regulations on broad lines. Two subcommittees met at Paris and at Frankfurt in December, 1921, to carry on special studies. The entire committee met again at Nice, March 15-April 14, 1922.² The International Bureau circularized the Report of the Committee," and sixty-one administrations having approved the Report, the convention as reformed was ready for submission to the technical-diplomatic conference at Stockholm.

At that congress, at the urge of the United States which had not been a member of the committee, it was determined to retain the new organ as a permanent part of the machinery of the Union, and the Convention of Stockholm so records it. The President of the United States in accepting the Stockholm Convention of 1924 had qualified ratification as "subject to the inclusion therein of Article xii thereof agreed to by the delegates from the United States and subsequently signed by them, providing for the appointment of a committee to suggest methods of procedure and to expedite the work of future congresses."

A Committee composed of representatives of fourteen Administrations is entrusted with the task of investigating and study-

¹ *Mémoire*, ch. 16.

² *Rapport de Gestion*, 1922, p. 5.

ing the ways and means for simplifying and accelerating the labors of the Congresses.

The result of these investigations shall be submitted to the decisions of the Administrations early enough to permit of them being applied to the next Congress.

With this end in view the Committee is authorized to make whatever propositions it may consider suitable; and should they obtain a majority vote, they will come into force. *Final Protocol*, Art. xii.

The duties of the Research Committee are therefore those of a preparatory or consultative technical committee, similar to the new committees set up by the Telegraph, Telephone and Radio Unions. The Postal Research Committee has a large charter of powers, since "whatever proposals it may consider suitable" are within the general scope of its activities, and may be submitted to the congress of the union, and made effective by a majority vote. The committee meets six months before the assembling of the congress, to consider the agenda, but without authority to omit items from the agenda. The committee may also be charged with special studies by a Congress, as it was by the Stockholm Congress, with the restudy of the journal of the union, *L'Union postale*.¹ The present members of the Research Committee are Germany, Belgium, France, Great Britain, Hungary, Italy, the Netherlands, Portugal, Russia, Spain, Sweden, Switzerland, and the United States.²

Arbitration

The judicial functions of the Universal Postal Union, the "courts" set up to adjudicate disputes, are important to all

¹ *Rapport de Gestion*, 1925, p. 6.

² These are as named at the Stockholm Congress. The committee met at Paris, 1928, prefatory to the London Congress, 1929, and will meet at Ottawa, 1933, prefatory to the Congress at Cairo, 1934.

administrations of the Union, and are significant in any history of progressive international juridical development.

The German draft convention provided (Art. 13) for arbitration in case of any disagreement between member states as to interpretation of the convention; each disputant to choose as its representative the administration of another member state not interested in the affair, the decision to be given by majority vote, another administration being chosen as umpire in case of a tie. At once it was seen that this was too elaborate a method for the greater number of disputes which would center around minor matters. It was then proposed that an international organ to be set up should have the power to make decisions in disputes between member states, which decision might be appealed to arbitration. The Belgian delegate proposed this. The Austrian delegate opposed granting such power to a permanent international body.¹ After much discussion the Bureau was granted only the quasi-judicial function of giving an advisory opinion (Convention of Berne, Art. 15), but arbitration was recognized as the judicial means for the settlement of all disputes, the decision to be given "by an absolute majority of votes" (Convention of Berne, Art. 16).

There have, then, resulted four classes of opinions and decisions:² (a) An administration may consult the Bureau in case of a doubt; the Bureau when giving the opinion, bases it on information which it possesses and experience which it has had. (b) Two or more administrations may ask the Bureau for an opinion, if all the interested parties desire it; and, if the opinion is not accepted, no consequences follow. (c) When one or more administrations desire an authentic interpretation of provisions of the convention involved in a dispute, they may request the Bureau to call for a

¹ *Arch. Dip., op. cit.*, p. 268.

² Lecture by M. Garbini.

consultation of all the administrations, the result of which is published and is circulated to all the member states. The solution then has the force of an authentic interpretation. If no solution is reached, the matter is referred to the next Congress of the Union.

(d) The fourth method of settling disputes is arbitration, more often resorted to than consultation (Convention of Stockholm, Art. 10).

In case of disagreement between two or more members of the Union as to the interpretation of the Convention and Agreements, or as to the responsibility imposed upon an Administration by the application of these Acts, the question in dispute is decided by arbitration. To that end, each of the Administrations concerned chooses another member of the Union which is not directly interested in the matter.

If one of the Administrations in the dispute does not take action on a proposal for arbitration within a period of six months, or nine months in the case of overseas countries, the International Bureau, upon a request made of it to that effect, may call upon the defaulting Administration to appoint an arbitrator, or may appoint one itself officially.

The decision of the arbitrators is made on an absolute majority of votes.

There is a limitation on the choice of arbitrators; while they may not have a direct interest in the dispute, their indirect interest is of ultimate importance, for only such administrations as are executing the agreement under litigation may be designated as arbitrators. That is, in case of dispute over any provision in the main convention, the administration of any member state could serve as arbitrator; in the dispute over any provision of the supplementary agreements, such as Parcel Post, Money Orders, etc. only those states which have signed the agreement may serve as arbitrators.

This, then, is a "court", jurisdiction being compulsory;

the provision for the appointment of an arbitrator if any administration defaults covers the case of a disputant reluctant to accept arbitration. The Bureau may hesitate to act, to make the choice, there may be a decade of delay as there was when the United States refused to arbitrate with Norway,¹ but in the long run postal arbitration is accepted.

The arbitration decisions during the past half century are filed, and form a body of jurisprudence for the Union.² They do not "bind" succeeding arbitrations. But, since the convention and the regulations are the laws of the Union, and the interpretation and application of these laws do impress the minds of arbitrators, preceding cases are cited, their argument is considered, and while not technically binding, these cases are persuasive, are precedents. Therefore in actual effect, if not in legal phraseology, the preceding decisions do "bind".

While it was possible to declare in the celebration at the close of the half-century cycle, that there had been little necessity for arbitration *depuis la fondation de L'Union Postale, il s'est produit, très peu de litiges pour lesquels il a fallu recourir à l'arbitrage*³—still there have been several notable instances during the reconstruction period since the war where the work of arbitration became significant as supplementing political adjustments. Two are chosen for review which were especially concerned with the maladjustments of the war.

*Rumania v. Hungary, Yugoslavia, Italy, and Switzerland*⁴

Out of the creation of new boundaries in 1919, and out of the relations defined by the Convention of Madrid, 1920,

¹ See *infra*, p. 74.

² *Mémoire*, p. 25.

³ *Ibid.*

⁴ *Rapport de Gestion*, 1923, pp. 9-14.

differences between Rumania and the intermediary states of Hungary, Yugoslavia, Italy and Switzerland, were submitted to arbitration, the administrations of Holland and Sweden serving. It is a case of interest to all countries of transit.

The administration of Rumania asserted that it had entered into a contract with the Oriental-Simplon Express for the transportation of its mails, that the express was an "extraordinary means of transport"—*moyen extraordinaire*—within the meaning of the convention (Art. 73), and that the administrations of the four countries had nothing to do with the correspondence, the Convention providing that such service must be effective—*intervienne effectivement* (Art. 74, # 4).

The four contending administrations asserted that the Express was not an extraordinary means of transportation, that each of them had contracted with the Express for the transportation of their own and of Rumanian mails, and that payment to each administration concerned was not affected by the Rumanian arrangement with the Express.

The arbitrators, considering the applicable provisions of the Convention (Arts. 3 and 4) and of the Regulations (Arts. 1, 2, and 3), declared that these do not envisage the exchange of correspondence without the use of postal administrations of intermediary states, such administrations being responsible for instance for articles lost and therefore concerned in the transportation of such articles,¹ and that

¹ The postal administration of the United States assumes this responsibility. "Every foreign mail shall, while being transported across the territory of the United States under authorized law, be taken and deemed to be a mail of the United States, so far as to make any violation thereof, or depredation thereon, or offense in respect thereto, or any part thereof, an offense of the same grade and punishable in the same manner and to the same extent as though the mail was a mail of the United States". *Postal Laws and Regulations of the United States of America*, Act of Congress, June 19, 1922, ch. 2, # 496.

the contracts of these administrations with the Express in reality assured the expedition of Rumanian mails. According to the decision reached, Rumania was obliged to pay transit charges to each administration of the four member states, according to article 4, # 3, cl. 1, *letter a* of the convention of Madrid.

*Japan v. Switzerland*¹

Another question arising out of the war, but with lasting value in the decision, concerned the franc as the medium of exchange.

Since 1886 Japan and Switzerland had exchanged money orders expressed in the money of a third country, the French franc, and up to and including 1914 the balance had been paid by Japan by means of drafts on Paris, excepting the balance for the second half of 1914 which was paid by means of a Japanese draft on London. Switzerland in 1915 demanded that the balance for the second half of 1915 be paid by a draft on Berne. Japan declared this impossible, and offered a check on Paris or on London. Switzerland in February, 1916 accepted such payment, as governed by Regulations XIII, # 3, the expense of the exchange to be borne by Japan. In 1916 Japan sent to Switzerland two checks; on April 22, a draft on London for £10,000; on July 13, a draft on London for £26,000, covering accounts due up to May 1916. Switzerland on June 7 and August 19, credited Japan with francs to the amounts respectively of 250,000 and 655,850. Japan disputed the rate of exchange, and asked that it be set at 27.25 francs to the pound. Switzerland refused this rate as constituting a loss on the account of 130,000 francs. Japan by telegraph, March 17, 1917, and by letter April 24, 1918, agreed that after June, 1916,

¹ *Rapport de Gestion, 1926, pp. 8-13.*

the account should be paid in Swiss francs, but refused to apply this to the preceding accounts.

Unable to agree therefore, Japan and Switzerland accepted arbitration, choosing the postal administrations of France and Holland, who in turn chose the postal administration of Sweden as the sole arbitrator in the case. Interpretation ran back to the understanding of Japan as to the " franc " at the date of the first arrangement, 1886, the *franc preponderant* of that time being the French franc; this interpretation had gained force through nearly twenty years of payment. However, since the Regulations of Rome, XIII, # 3, to which both were signatories declared that exchange should not result in loss to the creditor office, and since Japan had in March, 1917, offered that after June, 1916, the exchange should be expressed in Swiss francs, the arbitrator determined that the exchange of January 1, and May 31, 1916, should be expressed in Swiss francs, that the balance due for 1915 should be expressed in French francs, and the sum due minus the payments already made should carry interest after October 1, 1916, at 5 per cent per annum, under Article 6, # 3 of the Convention of Rome, applying at the time.

War and Peace

Wars have at times interrupted the postal relations of states. The arrangement made between France and England May 17, 1802, as part of the peace of Amiens, interrupted on the renewal of the Napoleonic wars, was declared again operative in 1814, and endured until 1833.¹ France and Germany formally restated their postal relations in 1871.² But suspension of the Convention of 1874 by

¹ Leon Poincard, *Études de droit international conventionnel* (Paris, 1894), p. 208.

² Le Clercq, *Traité*, 1871, vol. x, p. 422.

war has not been regarded as termination. Certain of the provisions of course become operative on the ensuing of war, as the arrangement for free correspondence to and from and concerning prisoners of war, a provision added in the last congress preceding the Great War.¹ As a general principle it has been held that the treaty is not terminated but suspended between belligerents when communication across frontiers becomes illegal, and the treaty is resumed in vigor on the resumption of peace relations, without re-ratification, by simple declaration, or by bilateral arrangement.

The Peace treaties recognized the Postal Convention of Rome, 1906, as part of the body of continuing law.² There had been no congresses held during the war, not even among the two groupings of the powers, although there were arrangements within each group concerning correspondence. The congress proposed for Madrid in 1914 was postponed. When, after the war, conference was resumed, Germany came to Madrid, 1920, Russia came to Stockholm, 1924; there were no reinstatements.³

The degree of immunity which should be granted to postal communications in war time has been a subject of increasing concern in conferences, and especially as between belligerents and neutrals. The Hague Convention (1907), "relative to certain restrictions with regard to the exercise of the right of capture in naval war," carries as its first article:

The postal correspondence of neutrals or belligerents, what-

¹ Convention of Rome, Art. 11, # 4. This provision carried out the provisions of the Hague Convention respecting the Laws and Customs of War, 1899, Art. 16.

² Versailles, Art. 283; St. Germain, Art. 232; Trianon, Art. 218; Neuilly, Art. 163; (Sevres, Art. 170); Lausanne, Art. 99.

³ It is interesting to note that in the *Rapports de Gestion*, where a list of members states is set down, with the date of admission, the date for Germany is given as July 1, 1875, for Russia ("U. S. S. R.") as June 24, 1924.

ever its official or private character may be, found on the high seas on board a neutral or enemy ship is inviolate. [An exception is made in respect to correspondence destined to or proceeding from a blockaded port].

The Institute of International Law, having frequently discussed this subject, embodied its considered opinion in the "Oxford Manual," Art. 53 B.¹

Postal correspondence whatever its official or private character may be, found on the high seas on board an enemy ship, is inviolable, unless it is destined to or proceeding from a blockaded port. [If the ship is seized such] correspondence is to be forwarded by the captor with the least possible delay. {There is no reference to correspondence found on board a neutral ship.}

Postal correspondence is assured a certain status in articles in the Convention of Stockholm, which would assume even more significance in war time; notification is to be made if forwarding on any route is suspended (Art. 28), a list of articles forbidden the mails is given (Art. 41), responsibility does not run in case of *force majeure* (Art. 51). However, postal correspondence lost even such relative immunity completely during the Great War. The Congress at Madrid met, the late belligerent nations still mindful of the necessities of their peril, the neutral nations still smarting under disregard of their rights. Switzerland introduced a resolution safeguarding postal immunity and explained that lacking such immunity, "the damage resulting was indisputably greater for the neutrals than the profit for the belligerents." The resolution was later withdrawn because of the disruptive differences of opinion immediately after the war.

But American neutrals had no such hesitation. Ecuador introduced a resolution which read:

¹ *Resolutions of the Institute of International Law*, p. 188.

We declare in conformity with the Swiss proposition . . . that closed dispatches and open correspondence in transit are inviolable both at sea and on land, and that consequently no country in the Union may submit them to the censor or sequestrate them in time of war.¹

The resolution was signed by Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, the Dominican Republic, Ecuador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Salvador, Uruguay, Venezuela. A "*Monroe doctrine postale*" commented Baron de Staël Holstein, not approvingly.²

It was expected that the Universal Postal Union, like other international unions, would be placed under the direction of the League of Nations (Covenant, Art. 24). Since all the member states of the Union did not sign the Covenant, the Union remains independent, with a larger membership than the League itself. Provision was made in the Covenant (Art. 6) to borrow the method of allocating expenses from the Postal Union; this was later changed to an independent basis.

CONGRESSES AND CONFERENCES³

| | |
|-------------------|------|
| Paris | 1863 |
| I. Berne | 1874 |
| Paris | 1876 |
| II. Paris | 1878 |
| Paris | 1880 |
| III. Lisbon | 1885 |
| Brussels | 1890 |
| IV. Vienna | 1891 |

¹ *Documents du Congrès de Madrid* (Berne, 1921), vol. ii, p. 758.

² Baron L. de Staël Holstein, "Immunité postale en temps de guerre," *R. D. L.*, 3 ser., vi, 1925.

³ The Congresses are numbered.

| | |
|---------------------|------|
| V. Washington | 1897 |
| VI. Berne | 1900 |
| VII. Rome | 1906 |
| VIII. Madrid | 1920 |
| IX. Stockholm | 1924 |
| The Hague | 1927 |
| X. London | 1929 |
| XI. Cairo | 1934 |

THE AMERICAN ATTITUDE ¹*History*

The general problem of communication, the particular problem of postal communication, has been ever-increasing in the United States, as it expanded toward the West territorially, as it expanded from the East by immigration, as it is expanding, east, west, north, south, in the era of world-trade and the correspondence therefor. Because of the make-up of its people and the demands of its business, more foreign mail originates in the United States than in any other country and therefore becomes of prime importance.

Because of the diverse and cosmopolitan character of our citizenship, our Foreign Mail Service is relatively as well as actually more important than that of any other country. It is the long arm of American business which, aided by the ties of sentiment and interest which bind us to all nations, is gradually extending the scope of its operations and making greater demands on the mail and parcel post services.²

And yet, it is difficult to read the history of the foreign

¹ *Convention of Stockholm.*

Signed, August 28, 1924.

President approved March 14, 1925.

Postmaster General approved, March 19, 1925.

² *Report of Postmaster General, 1925, p. 42.*

affairs of this important department of government in its own documents. As early as 1792, re-stated in 1844, Congress determined that the Post-Office Department should, "with the advice and consent of the President" carry on directly with the Post-Office departments of other countries.¹ President messages, however, make brief statement as to postal arrangements concluded during the year. Since such conventions are not submitted to the Senate, the correspondence of the State Department in *Foreign Relations* seldom refers to postal affairs. *Reports of the Postmasters-General* contain brief paragraphs, almost always colorless, always commendatory. From time to time the "Reports" of the Superintendent of Foreign Mails, or of the Second Assistant Postmaster-General who is in charge of the ocean service, and included in the *Reports* of the head of the Department, will yield some information. These *Reports* are of course submitted to Congress, and by that body accepted. But neither the House which guards jealously the raising of revenue and the expenditure, nor the Senate which with greater jealousy guards the right to "advise and consent" to treaties, has ever been disturbed over these *Reports* with contents that from time to time set forth acts bearing witness to the independence of a Cabinet officer who with the President makes and concludes postal arrangements. *Congressional Globes and Records* contain little if anything. In the *Statutes* of the United States there are set forth postal laws, which are always in harmony with the postal conventions, but which do not except in three instances, and these before 1863, explicitly adopt the conventions.² In *Hearings* it is possible, from time to time, to gather some information as to the relations between na-

¹ See *infra*, p. 83, for the effect of these laws.

² *Ibid.*

tional and international postal affairs. Out of such sparse material must the story be evolved.

Before there were American states, the American colonies realized the benefit of communication; whatever their geographic separation, they had no intention of separating themselves from business or cultural relations with each other, with England, or with Europe. The mother country had recognized the binding value of intercolonial intercourse. William and Mary, newly arrived in England from the continent, did in 1691 by letters patent make Thomas Neale their postal agent for "the chief part of their Majesties' colonies and plantations in America." Remaining snugly in England, Mr. Neale commissioned Andrew Hamilton in America, who therefore became the first American postmaster-general. Braddock's defeat led to a weekly mail-packet service in order that the colonies might feel the protective presence of the mother country. Benjamin Franklin was appointed postmaster-general in 1753. In 1774 he was removed from office. The Continental Congress reappointed Dr. Franklin to supervise the postal territory from New England to Georgia.

For the Continental Congress was resolved that "the communication of intelligence with regularity and dispatch from one part to another of the United States is essentially requisite to the safety as well as the commercial interests thereof."¹ But that Congress seems not to have attempted postal arrangements with foreign states. The times were disjointed, the Articles of Confederation granted no postal powers, the making of postal treaties would have been inconvenient under those Articles when three-fourths of the states had to register their approval.

¹ Quoted in *Opinions of Attorneys-General*, vol. xix, p. 513.

Having achieved independence and the right to control communications, having adopted the Constitution and provided therein the right of Congress "to establish post-offices and post roads," having set up the Post-Office Department by the Act of February 20, 1792, the United States in Congress moved slowly through many years and many vicissitudes before determining relations among themselves and with the always overwhelmingly important outside world.¹

In the "Roaring '40's," by the political treaties of 1846 and 1848, vast new territories were added to the United States, postal rates were lowered, postal routes were extended along the ways of the covered wagons, with due solicitude that the migrants should remain loyally American, but without much regard for the financial loss from such extended services. The annual deficits, which are still a striking feature of postal matters, began to make their appearance. Vast new migrations from Europe, and vast newly-opened markets increased the burden of postal correspondence. But ocean mail rates were uncertain, sea charges were as various as sea lanes.

During the Polk administration, which stands out as an era of sharply defined international hostilities, Congress authorized the Postmaster General to enter into ten-year contracts with American ships with a view to developing a merchant marine, and to reducing the prevailing postal

¹ Various studies may be consulted on the history of the post-office in the colonies and early states; Ruth Lapham Butler, *Dr. Franklin, Postmaster-General*, New York, 1928; Marshall Cushing, *The Story of Our Post-Office*, Boston, 1893; W. E. Rich, *The History of the American Post-Office*, New York, 1924; D. C. Roper, *The United States Post-Office*, New York, 1917; William Smith, *The History of the Post-Office in British North America*, Cambridge, 1920; Mary E. Wooley, *Early History of the Colonial Post-Office*, Rhode Island Hist. Soc. Publications, i, 230 et seq., Providence, 1893.

rates.¹ And during the Polk régime the United States signed its first postal convention one with an ancient Hanseatic Republic, the Free City of Bremen. Having made this venture, other treaties followed swiftly, with Great Britain, Prussia, France, Belgium, Canada, New Granada, Mexico, Costa Rica, a hodge-podge of uneven and uncertain agreements.

The United States-Great Britain convention December 15, 1848, contemplated "such arrangements for the conveyance of letters and newspapers, and closed mails, through the territories of the United States, of the United Kingdom, and of France, respectively, as should most conduce to the interests of the three countries" (Art. 12). The three countries were feeling vaguely for postal unity, but were expressing it chiefly in inequality and favoritism in rates. Even at that time the United States wanted a uniform rate, "as best in all international arrangements of this kind where simplicity of detail in every point of view is so essential."² The Postmaster-General recommended subsidies to encourage the building of American ships, the Collins Line apparently not being able to compete with the Cunard Line.³ But particularly the United States had difficulty with France, then as always the important intermediary country in postal transit.

The Civil War had its effect on innocent correspondence as upon contraband, it could not be kept national. In the first year of the war there was a reduction in the receipts from foreign postage of \$217,940.80, but the bill for transportation of foreign mails in that year ran to \$319,393.94.⁴

¹ Acts of March 3, 1845, March 3, 1847, Feb. 2, 1847. See Meeker, *op. cit.*, pp. 150-170.

² *Report of Postmaster General James Campbell*, 1853, p. 24.

³ *House Doc. No. 162, Congress 29: 1.*

⁴ *Report of Postmaster General*, 1862, p. 3.

During such tortuous times Postmaster-General Montgomery Blair attempted to negotiate a treaty with the German-Austrian Postal Union,¹ and in no way did he neglect his postal generalship because of the war. A significant passage in his report runs:

Our international mail system is extremely loose and defective. There is no common standard weight for the sea transit. . . The whole foreign system, as now established is too complex to be readily understood by postmasters, and many mistakes and unfortunate delays arise from its complexity. I had little hope of remedying these evils except by a general congress of postal representatives practically acquainted with their respective systems, and predisposed to facilitate the international social and commercial correspondence by which national prosperity is so much affected.²

The Postmaster-General was permitted to communicate with American representatives abroad, August 4, 1862, under covering letters from the Secretary of State, and to suggest "a conference of postal authorities of Europe and America to meet at a time and place to be selected by them."³

It is evident that the international adjustment on a common basis for direct correspondence, and for intermediate land and ocean transit and for an international registry system, and for the exchange of printed mail matter, is clearly of the first importance to the commercial and social intercourse between this and other nations.⁴

¹ *Report of the Postmaster General, 1862*, p. 5.

² *Ibid.*, p. 6.

³ *Report of the Postmaster-General, 1864*, quoting letter of Postmaster-General Blair to the Secretary of State, pp. 39-40.

⁴ *House Ex. Doc. No. 1, Pt. 4, serial no. 1159, Congress 37:3, Report of the Postmaster-General, 1861-1862, Appendix No. 10, pp. 165-168.*

From Paris came a response, prompt if somewhat cautious. Minister Dayton in the midst of suspended sympathies with the French Minister for Foreign Affairs, M. Drouyn de Lhuys, on account of the French attitude toward the Confederacy, and on the eve of diplomatic difficulties on account of the French adventure in Mexico, must have welcomed anything that would bring a ray of harmony into the relations of the American Republic and the French Empire. He wrote, on September 23, 1862:

The suggestion by Mr. Blair, as to improvements in international postal arrangements will be promptly submitted to M. Thouvenal, and through him to the proper department here.¹

Minister Pike at The Hague withheld any enthusiasm. He wrote on April 22, 1863:

I have to acknowledge yours of 17th March covering copies of a letter from the Postmaster-General in relation to the proposed conference at Paris, which I have laid before the Minister of Foreign Affairs.²

Minister Haldeman at Stockholm gave the proposition a warmer greeting on April 24, 1862:

I have also submitted, as instructed in your dispatch No. 25, the suggestion of the Postmaster-General relating to the proposed Conference of postal delegates, as contained in his second communication dated Dec. 27, 1862, and urged upon Count Manderstrom a prompt and favorable consideration of them. I expect and hope for a favorable reply at my next interview.³

It was probably not at any time expected that the conference would be held in the capital of the country which initiated it, even if diplomatic voyagers had not been

¹ *Messages and Documents, 1862-1863, Abridged, Pt. I, p. 392.*

² *For. Rel., 1863, vol. ii, p. 892.*

³ *Ibid., p. 1313.*

threatened by Confederate raiders. Napoleon the Third, not reluctantly, became gracious host.

Postmaster-General Blair, who had set the conference in motion through correspondence, and because of the needs of his own office, together with former First Assistant Postmaster-General Kasson, represented the United States. To Mr. Blair the conference was essential as affording aid in vexing postal problems; judging from the subsequent history of Mr. Kasson he must have been one of the few Americans of that time with the "international mind".

Mr. Dayton, resident minister at Paris, was not named a delegate, the customary compliment to permanent agents; postal congresses have been always composed of experts. Mr. Dayton wrote to Secretary Seward:

Mr. Kasson, commissioner for the United States to the Postal Convention to be held in Paris, arrived and delivered your letters. All proper notices have been given to the departments here, and I shall of course do everything in my power to render his mission useful and agreeable.¹

The American delegates came, having escaped Confederate ships, with a program of "Fourteen Points", particularly covering uniformity of weight and rate. These points were compared with the thirteen suggested by Great Britain, which resembled those of the United States, and with the thirty-four which France had tabulated. There resulted out of the comparison and the debate "Thirty-One General Principles" adopted by the Congress.²

The presiding officer remarked at the close of the conference that the "results are largely due to the liberal and

¹ *For. Rel.*, 1863, vol. ii, p. 734.

² See *Report of Postmaster-General*, 1894, which includes a sketch of the Conference of 1863, and prints at pp. 40-41, the fourteen American points.

conciliatory spirit constantly shown during the deliberations by the delegates of the government which took the initiative in the conference."¹ There was no attempt to give legal and fixed status to postal intercourse by means of a formal treaty. The discovery of fundamental laws, the discussion of difficulties, the common understanding of the problem—these were regarded as full fruition for the moment.

The delegates returned home, and the United States proceeded during the next decade to enter into a large number of bipartite treaties based on these principles, with European, American, and Asiatic countries, "reducing very largely the rates of ocean and land postage to and from and within those [treaty] countries."² It is of passing interest to note that Anthony Trollope came to Washington in July, 1868, to negotiate the postal convention of 1868, wherein it was finally agreed that "each office shall make its own arrangements for the dispatch of mails to the other office by well-appointed ships sailing on stated days, and shall at its own cost, remunerate the owners of such ships for the conveyance of the mails" (Art. 11).³

The United States had especial difficulties with the French administration. Mr. Kasson was sent to France among other countries in 1867, to negotiate a revision of the Convention of March 2, 1857, with the now unstable Napoleonic empire. The attempt failed, although Kasson achieved treaties with a half-score of other governments.⁴ Then the United States gave notice to France that it would terminate the existing convention in 1869.⁵ In the meantime Senator

¹ *Report of Superintendent of Foreign Mails*, 1895, p. 451.

² Message of Pres. Johnson, *For. Rel.*, 1867, vol. i, p. xviii. See also *Report of the Postmaster-General*, 1868.

³ *Ibid.*, p. 17.

⁴ *Report of the Postmaster-General*, 1869, p. 11.

⁵ *Ibid.*, 1869, p. 2.

Alexander Ramsay of Minnesota, chairman of the Senate Committee on Post-Offices and Post Roads, arrived in Paris, and spent three months conducting negotiations "with great ability, patience, and perseverance,"¹ but without success. On January 1, 1870, "all direct postal intercourse with France [was] suspended,"² but it was hoped that at the end of the Franco-Prussian War a new convention would be possible. Finally, in April, to become effective in August 1874, a convention was perfected with France.³

Bipartite treaties, however numerous, can never solve a problem which requires multipartite treatment, agreement in common. Yet the United States which had been so eager during its threatened dissolution to insure correspondence with other countries, took no part in calling the following conference, although the first had closed with a definite expression in favor of such reassembling; the United States turned its post-war energy toward developing the continent. It left leadership to whatever postal administration would act. Germany took up the cause and Switzerland called the conference.

When the Berne Congress assembled there was no American delegate, not from Costa Rica nor Ecuador, although these had accepted the invitation, and not from the United States. The United States had of course accepted, but Messrs. Blackfan, Superintendent of Foreign Mails, and Rambusch, special agent, did not reach the Swiss capital until September 21, in time for the third session. That morning M. Borel welcomed the Americans with warm remembrances of 1863.⁴ Mr. Blackfan replied, and explained

¹ *Ibid.*

² *Report of the Postmaster-General, 1870, p. 15.*

³ *Report of the Postmaster-General, 1874, p. 16.*

⁴ *Arch. Dip.*, vol. liv, 1875, pt. iv, p. 168.

the delay. The Postmaster-General of the United States had just been changed, Creswell had resigned in July, Jewell had taken office in September, and his "first official act" was the appointment of delegates to the Berne Congress.

These American delegates were appointed by the Postmaster-General, by and with the advice and consent of the President, by virtue of the Act of 1872, continuing and enlarging preceding acts which had made it possible for the executive to carry on international postal relations without the consent and advice of the Senate. However, Mr. Blackfan seemed reluctant to exercise such authority as Mr. Kasson had exercised, without reluctance, in 1863, which authority American delegates to postal congresses have used since with almost automatic precision. Mr. Blackfan had "no instructions upon the questions to be discussed, nor on the expected results of the deliberations." As he told the congress, he had "no diplomatic powers but the right to carry on as I judge best"; above all, "before adhering to the findings of the Congress I must demand special authorization from the President and Postmaster-General of the United States."¹

On September 29, Mr. Blackfan announced he had cabled for authorization to sign the treaty.² On October 6, he announced that he had received authorization. "The assembly applauded the communication."¹ Mr. Blackfan and Mr. Rambusch signed the convention. President Grant could announce in his December message that

an international postal conference was convened in Berne, Switzerland, in September last, at which the United States was represented by an officer of the Post-Office Department of much

¹ *Arch. Dip.*, vol. liv, 1875, pt. iv, p. 169.

² *Ibid.*, p. 206.

³ *Ibid.*, p. 222.

experience and of qualification for the position. A convention for the establishment of an International Postal Union was agreed upon and signed by the delegates of the countries represented, subject to the approval of the proper authorities of those countries.¹

The United States has, of course and of need, attended every postal congress since 1874. "The United States was one of the organizers of the Union," declared Postmaster-General New in his *Report* for 1925, "and has taken an active part in its Congresses."²

One exception may be taken to this comprehensive statement. In the Conference of 1880 at Paris, there was no American delegate. The resident American minister in France, Mr. Noyes, belatedly remarked on this absence of representation of his country; ³ his request that an American be admitted to the congress was not presented until the sixth session.⁴ The congress formally authorized the presence of the delegate from the United States. The *Documents de la Conférence* do not reveal that this American representative, M. Brulatour, took any part in the proceedings after he was admitted; apparently he acted the part of an "observer". He did not sign the protocols. However, the Post-Office Department of the United States did accept the agreements of the conference.⁵

From no regular Congress has the United States been absent. Washington served as host to the Postal Congress

¹ *For. Rel.*, 1874, p. xiv.

² *Report of Postmaster General*, 1925, p. 42.

³ There is nothing in the diplomatic correspondence as published in *Foreign Relations*, 1880, to indicate how Minister Noyes came to the conclusion that the United States should be represented.

⁴ *Documents de la Conférence Postale de Paris*, 1880 (Berne, 1880), p. 133.

⁵ *Report of the Postmaster-General*, 1881, p. 41.

of 1897, where fifty-six states were represented, and where Postmaster-General Gary, welcoming the delegates, could remember "with profound pride that the idea of the Union originated with us."¹ It may be noted that the baggage of incoming delegates received diplomatic immunity, that the meetings took place in the hall of the Corcoran Art Gallery, and that after the conference the delegates were taken *en tour* as far west as Chicago. The agreements resulting at Washington rank with the revisions of Vienna, Rome, Madrid, and Stockholm, as authoritative for the work of the Union.

Generally American delegates have been technical experts, and American experience has always contributed to the solving of international postal problems. As the Postmaster-General said in 1925, concerning the Congress of Stockholm:

The policy of this country . . . of sending as delegates postal officials of wide experience and long service was abundantly justified, . . . the structure of the international organization is necessarily intricate, and the discussions of the congress are so largely technical, that only experienced postal officials could be effective.²

Almost always the Superintendent of Foreign Mails, or today the Director of International Postal Service, and very often the Second Assistant Postmaster-General who is in charge of the transportation of mails including ocean mails, or both officials have been sent; a list of American delegates to various postal congresses and conferences will reveal how frequently the same delegates have represented the United

¹ "Report of the Superintendent of Foreign Mails," in *Report of the Postmaster-General, 1897*, pp. 557-567.

² *Report of the Postmaster-General, 1925*, p. 42.

X3.10K73.N3

91
14042

States, and therefore how continuous is the service of these men in the supervision of foreign mails as well as in the representation of the government in foreign postal affairs. It may be further remarked that the United States was the first government to send a woman delegate to a postal congress, that at Madrid.

Yet it cannot be alleged that the Congress of the United States is over-generous in providing for these delegations. "I find that other countries seem to take these conventions more seriously than we do," remarked the Second Postmaster-General before the subcommittee on the post-office appropriation bill for 1925.¹ There have been instances of the American delegates having to pay certain expenses out of their own pockets,² even contributing to such funds as that covering a banquet which the United States, as is the custom of other large countries, gives to the Congress.³

When the appropriation for the London conference of 1929 was being considered, the chairman of the subcommittee on appropriations exclaimed, "why it should take sixty days for such a conference was more than [he could] tell." In explanation Mr. Stewart advised that "the whole convention must be revised and they go through it from one end to the other." The chairman continued with the interrogative comment—"and we always get the worst of it?" The Superintendent of Foreign Mail flashed back, "No, I beg your pardon. We got the best of it last time. We reduced transit rates \$500,000 a year." The appropriation for the London conference was granted.⁴ Even the appro-

¹ *Hearings* before a subcommittee on postal appropriations of the House Committee on appropriations for 1925, Congress 68: 1, p. 199.

² *Hearings* (as above), 1927, Congress 69: 1, p. 233; 1929, Congress 70: 1, p. 260.

³ *Hearings* (as above), 1929, Congress 70: 1, p. 239.

⁴ *Hearings* (as above), 1929, Congress 70: 1, p. 237.

priations for the Pan-American Postal Congress are not automatic.¹

The United States is signatory only to the principal treaty covering the transmission of mails, and not to the supplementary agreements. When these were developed originally, as Insured Letters, 1878, Parcel Post, 1880, Identification Cards, 1885 and 1920, Newspaper Subscriptions, 1891, the United States did not accept them since it had not itself, at these dates, developed similar domestic services. As it later added these it has preferred "for various reasons of a domestic order to make individual arrangements with each country concerned;" but, according to the Post-Office Department, "if . . . the said agreements are modified in the future in such a way as to become acceptable to this country from a domestic standpoint, it will no doubt immediately adhere thereto, in the interests of uniformity and international solidarity."²

The parcel-post network of the United States is complete, "practically covering every nation and colony of the world, making 260 postal administrations."³ Similar networks have been developed to carry the other services.

Pan-American Postal Union

The Pan-American Postal Union is the largest regional grouping of independent states; it may be regarded as an

¹ *Hearings* (as above), 1927, p. 184. It is interesting to note that Mr. Glover answering a question of a member of the committee as to why it was necessary to send representatives to the Pan-American Postal Congress, remarked "if we do not go down there, they just soak it to us." *Ibid.*

² Mimeographed material on the Universal Postal Union, Post-Office Department.

³ Mr. Praeger in *Hearings* before a subcommittee on postal appropriations, of the House Committee on Appropriations for 1922, Congress 63: 3, p. 93.

appendix to the Pan-American Union; it is conventionally possible under Article 5 of the Stockholm Convention.

For many years the United States recognized the value of increasing the mobility of correspondence with the countries of South America. The Postmaster-General in 1877 declared, "There is no portion of the world with which the United States has as unsatisfactory mail arrangements as with South America. . . . The adhesion of all the South American countries to the Postal Union would greatly liberalize and perfect our postal intercourse with them."¹

Certain South American countries were interested in the Postal Conference of 1863, and gradually each one has become a member of the Union."² Gradually also the American states in developing trade developed an understanding of the value of postal communication. There were intimations of possible Latin-American solidarity as early as the Congress of Vienna³ but not until the Congress at Madrid did the regional union emerge. "Early during the sessions of the Madrid Congress the interests of the United States, Spain and the Latin-American countries began to be cemented together to form a Hispano-American bloc in the heart of the Congress."⁴

The other states of the Union were attempting to increase transit charges 200 to 300 per cent.⁵ The United States and the South American states blocked the move, although they were but twenty-one out of sixty-seven. They attempted a declaration of postal immunity in war time.⁶ They at-

¹ House Committee on Post-Office and Post Roads, *Report* No. 2889, 1890, Congress 51: 1, p. 20.

² *Rapport de Gestion*, 1923, lists member states with date of accession.

³ H. R. Turkel, "International Postal Congresses," *B. Y. I. L.*, 1929, p. 175.

⁴ Mimeographed material, Post-Office Department.

⁵ *Hearings* before a subcommittee on postal appropriations of the House Committee on Appropriations for 1922, Congress 66: 3, p. 91.

⁶ Turkel, *ibid.*

tempted to increase the value of their voting weight—since only the United States had dependencies but no wish for plural votes—by a move to eliminate votes for colonies, protectorates and dependencies. “While none of those aims were (*sic*) completely realized,” admits the Post-Office Department, yet it asserts approvingly, that “the voice of the Western World had begun to make itself heard in the Universal Postal Congress.”¹

There then emerged the American bloc. “As a result of the difference of opinions, the conflicts between delegates from the American states and the European countries, we organized there, under American leadership, the Postal Union of America and Spain,” Mr. Praeger told the House Committee on appropriations.² It might, however, be well to remember that the postal relations of American states with states in other continents have been and are at least an important, socially, culturally, economically, as the postal relations of European states with outside states.

The Pan-American Postal Convention was written at a conference held in Buenos Aires, September, 1921, and re-written at Mexico City, October, 1926, the treaty to go into effect July 1, 1927; nineteen states, including Spain—since the war ranking as a “Pan-American” state—and the United States, were members of the conference, and signed the Convention.³ They declared themselves

inspired by the desire to extend and perfect their postal rela-

¹ Mimeographed material, Post-Office Department.

² *Hearings* before a subcommittee on postal appropriations of the House Committee on Appropriations for 1922, Congress 68: 3, p. 93.

³ Argentina, Bolivia, Brazil, Colombia, Costa Rica, Cuba, Chile, Dominica, Ecuador, El Salvador, Spain, the United States, Guatemala, Honduras, Mexico, Panama, Paraguay, Peru, Uruguay. It is interesting to note, that while the United States signs the Convention of the Universal Postal Union as *Amerique*, thereby advancing her place in the list, in the Pan-American Postal Union she remains in her old position under the name *Etats Unis*.

tions and establish a solidarity of action capable of representing effectively in the Universal Postal Congresses the common interests of the American Republics and Spain, in regard to communication by mail (Preamble).

The territories of the Pan-American Postal Union are declared a "single postal territory" (Art. 1). Freedom and gratuity of transit receive the liberty desired by certain members but not yet achieved in the Convention of the Universal Postal Union.

The contracting countries are bound to transport freely and gratuitously by means of the territorial and maritime transportation service which they utilize for their own correspondence that which they may receive from any of these countries destined for any of them or for any country of the Universal Postal Union (Art. 2).

Low rates are also indicated. It is provided that the tariffs of the domestic service of each country will govern in the relations of the countries of the Pan American Union, except that if these are higher than those of the Universal Postal Union, these latter shall apply (Art. 3).

There is set up an International Office at Panama (Art. 15) which controls transportation, and an International Office of the Pan-American Postal Union at Montevideo (Art. 17) with purposes similar to those of the Bureau at Berne. Arbitration is provided for "every conflict or disagreement . . . in the manner established by Article 10 of the Universal Postal Union Convention" (Art. 16).

In fixation of rates, and in gratuity of transit, this Union has accomplished in generous measure its purpose. But in the expressed purpose of "solidarity of action," as a group in the Universal Postal Union, there may result difficulties. There have been no solid blocs in the Universal Union; not

even the units of the British Commonwealth always see alike. The value or the danger of regional unions attempting to force measures through the Universal Union will be evident in succeeding conferences.

It may be added that the South American states formulated a Pan-American Parcel Post Convention, at Mexico City, Nov. 9, 1926.¹

While Canada is not a co-member in the Pan-American Postal Union, it may be remarked that the United States and Canada maintain the closest postal harmony, which has endured since the year 1763 when Benjamin Franklin opened post-offices at Quebec, Two Rivers and Montreal, and established the first postal service between Montreal and New York by way of Lake Champlain and Lake George. Various postal conventions have been drawn up, and these are often barometers as to other interests. For instance, the Convention of 1875, providing for reciprocal free distribution of second-class mail matter, was terminated in 1907, when Canadian manufacturers objected to the effect of the advertising pages of American magazines.² The first postal conference held by the two countries, 1922, went far toward unifying the two services.³

Expenses

The annual expenses to the United States for membership in the Universal Postal Union, to cover its share in the International Bureau, are 11,345 Swiss francs, and the quinquennial congressional appropriation for a Universal

¹ Pan-American Postal Union, *Parcel Post Convention of Mexico*, (Washington, D. C., 1927). The signatories include Spain and the United States, and lack four of the smaller republics.

² Oscar D. Skelton, *The Canadian Dominion* (Yale Press, 1921), p. 241.

³ *First International Postal Conference between the United States and the Dominion of Canada* (Washington, D. C., 1922).

Postal Congress or for the Pan-American Postal congresses, runs from \$7,500 to \$10,000.

While it is easily remembered that there is an annual deficit in the United States Post-Office—which for the fiscal year of 1928-1929 ran to approximately \$137,000,000¹—it should be remembered that foreign mail pays for itself. In 1908, the Postmaster-General could say, “While the expenses of the Department as a whole have exceeded the revenue, our international mail service for many years has produced a large surplus.”² In 1923 the Second Assistant Postmaster-General, Mr. E. H. Shaughnessy, could say, “I am sure it is about the only branch of the postal service today that is self-sustaining and turns a surplus into the Treasury.”³

There is of course always a balance due to foreign countries for transporting our mail. “In every case the balance is against the United States.”⁴ This is because more foreign mail originates in the United States than in any other country, and the United States must pay for transit of this mail through intermediary countries; that is, originating more, it pays more. But, originating more, it receives more postage through its own post-offices, and it keeps all this postage. Therefore, notwithstanding that the annual cost of

¹ “Postal losses raise vexing problems,” *New York Times*, Aug. 4, 1929.

² Report of the Postmaster-General, 1908.

³ *Hearings* before a subcommittee on postal appropriations of the House committee on appropriations for 1923, Congress 67:2, p. 276. Therefore the reference of President Hoover, in his December message, 1929, is misleading, that “Our post-office deficit... of which perhaps \$14,000,000 is due to losses on ocean mail and air mail contracts.” See section on “Subventions”, *infra*, p. 77.

⁴ Mr. Glover, in *Hearings*, before a subcommittee on postal appropriations of the House Committee on Appropriations for 1927, Congress 69:1, p. 187. The balance due from the United States was \$1,700,000, in 1927.

transporting ocean mail has mounted steadily, and now runs something above \$9,000,000 dollars annually, "the postage on mail from the United States to foreign countries received in the Treasury is greater than the amount we pay for this service under the Postal Union."²

Arbitration

The United States has accepted compulsory arbitration as the method of settling disputes among the members states of the Postal Union—and has lost in the one case it has submitted.

The United States was a signatory to the Convention of Rome, which provided for arbitration (Art. 23). In accepting the Convention of Madrid, 1920, the United States made a reserve on Article 10 which contained this provision. In accepting the Convention of Stockholm, 1924, the United States did not continue this reservation (Art. 10). The United States had, just preceding the Congress of Stockholm, agreed to submit to arbitration, under the Convention of Rome which it had signed without reservation, its disputes over postal accounts with the Scandinavian countries.

The United States-Norway dispute of 1925, which had been hanging unresolved for nearly a dozen years, was a dispute over sea-transit charges claimed by Norway from the United States on mail sent, 1914-1919, from the United States to Norway, by the New York-Plymouth-Newcastle-Bergen route.³ On June 31, 1914, the Norwegian postal administration submitted its accounts to the United States for

¹ Remark of Mr. Slemm, in *Hearings* (as above) for 1923, Congress 67: 2, p. 276. The revenue from foreign mails, according to the estimate for 1921, was at least 16 million dollars, the expenses for transportation about 6½ million, leaving a surplus in the Treasury of about 9 millions.

² *Rapport de Gestion*, 1025, p. 13 *et seq.*; *L'union postale*, March 1, 1926; "American-Norwegian Postal Arbitration," Manley Hudson, *A. J. I. L.*, vol. xx (1926), p. 536 *et seq.*

sums due from the United States to Norway for the transporting of mail from Bergen to Newcastle by Norwegian mail packet during the year 1914. On September 17, 1914, the United States Post-Office Department returned the accounts to the Norwegian administration, with its acceptance, but with the sums reduced. The dispute then remained, and the situation remained as it had been created, during the war. That is, the all-sea route had been interrupted, and mail which had formerly followed the sea route, New York-Bergen, now followed a land-sea route, New York-Plymouth-Newcastle-Bergen, the land route being across Great Britain, the question therefore rising as to whether the Newcastle-Bergen portion of the route should be regarded as still a part of the long route, or as a new, separate, short route.

The legal dispute centered in an interpretation of the Convention of Rome, Article 4, fixing transit charges on maritime carriage of articles in closed mails.

The Norwegian administration claimed the Newcastle-Bergen route (404 nautical miles) as a separate route, and that therefore Norway was entitled to payment at the rate of 4 francs for letters and postcards, and 50 centimes for other articles, as provided under Article 4, no. 3, cl. 2, *letter b*.

The United States claimed that the total transit charge for the entire route, New York-Bergen (3,000 nautical miles), should be assessed, and that the rate of 8 francs for letters and postcards, and one franc for other articles, was covered under Article 4, no. 3, cl. 2, *letter c*, and that this total should be shared according to Article 3, no. 2, by the American and Norwegian administrations, and should be prorated according to the distance traversed. The United States of course stood to win a large sum.

During 1914-1919 Norway repeatedly submitted her accounts and claimed certain sums as due her, and suggested

that the difference of interpretation of the convention be submitted to arbitration. The United States repeatedly accepted the accounts, amended them, and rejected arbitration. Norway appealing to the Bureau at Berne early in the dispute, the Bureau asked the opinion of Germany, France and Great Britain. On October 1, 1915, the British postal administration recommended that since the matter was of interest to other administrations, it be referred to the next congress.

The unsuccessful negotiations continued for several years. On November 30, 1921, and on June 12, 1922 Norway proposed arbitration, and on August 18, 1922 the United States refused, and refused also to arbitrate a similar dispute with Sweden. On May 7, 1923, Norway again proposed arbitration, and the United States on April 24, 1924, finally agreed to refer the interpretation of Article 4 of the Convention of Rome to arbitration, and to apply the decision to the similar disputes with Sweden and Denmark. The United States named the postal administration of Hungary as arbitrator, Norway named that of Switzerland.

The United States lost, the Norwegian contention being upheld; that is, that the conveyance from Newcastle to Bergen was clearly a conveyance between "the ports of two states served by the same line of steamers," and came under *letter b* of the disputed Article; the contention was declared "irrefutable." The contention of the United States as to *letter c* was declared "applicable only when the entire maritime transport is effected by the same postal packet."

The United States was not only obliged under the terms of submission to pay the Norwegian administration at the rate of 4 gold francs per kilogram for letters and 50 centimes for other articles, but according to Article xxxvii, cl. 2, of the Regulations, to add interest on the sums due 1914-1919, at 5 per cent per annum.

As Professor Hudson said:

The award tends to give an impression that the case of Norway was so clear that the dispute ought not to have been allowed to go so far, and the reluctance of the United States to agree to the arbitration hardly comports with what is generally supposed to be the American attitude toward such settlements of international differences.

Subventions

According to Mr. Glover, Second Assistant Postmaster-General, the United States must pay subsidies, such payment meaning "it is the only way that the American flag can be kept on the seas."¹ The American merchant marine has certainly fluctuated in a century of history, and the flag has been run up or hauled down apparently according as subsidies have or have not been paid.

In order to encourage shipbuilding and to further the carrying of American mails on American ships, the United States began to practice the gentle art of paying subsidies as far back as the 1840's, and continued it during a decade of Anglo-American merchant marine rivalry; to the Collins Line in pre-Civil War times,² as an offset to the heavy subsidies paid to the Cunard Line by Great Britain, the United States then paying the heavier subventions;³ to the Pacific Mail in post-Civil War times, at a total cost during the decade of \$14,000,000.⁴ The Collins Line handicapped on

¹ *Hearings* before the subcommittee on the postal appropriation bill, of the House Committee on Appropriations, 1928, Congress 69:2, p. 192.

² This contract was entered into in 1847, when Congress authorized the Secretary of the Navy to accept the Collins offer, provided their service was faster than the Cunard. Meeker, *op. cit.*, pp. 150-170.

³ British subsidies to the Cunard Line are of course still being paid. See *Sen. Doc. No. 141*, Congress 59:1, "American Merchant Marine and American Commerce", p. 60, for the contract which resulted in the building of the *Maverick* and *Lastania*.

⁴ S. Litman, *Essentials of International Trade* (New York, 1927), p. 105.

account of the exacting terms of the contract in spite of the subsidy, and suffering losses of its main ships which lost it the confidence of the public,¹ and the Pacific Mail resulting in a national scandal through the exposure of the corrupt lobby, "throwing discredit on the whole matter of ship subsidies, . . . all contracts were terminated."² The habit of subsidies never became confirmed.

The American merchant marine, rudely shocked by the Civil War, lost the attention of the American people, who turned to the developing of the vast inland region. Still, floods of subsidy bills were introduced into Congress, and Postmasters-General in their *Reports* continued often to argue the brief of American mails in American ships. Typical of these is the appeal made by Postmaster-General Creswell in 1871, who recommended as

legislation to encourage American ships . . . a reasonable compensation for conveying the mails in excess of the postage receipts as probably the only government aid needed to increase ocean ships plying between our own and foreign ports.³

The Forty-eighth Congress made an appropriation for a subsidy to South and Central American and West Indian mail, to American-built and American-registered ships, but Postmasters-General Vilas and Dickenson did not make use of it; apparently because they could not find or evoke American ships to which to pay the subvention.⁴

¹ The Collins contract was reduced in 1856, terminated in 1858, possibly because of Southern influence in Congress. See *House Doc. Report No. 2889*, p. 6; Congress 51:1. See also Grosvenor M. Jones, *Government Aid to Merchant Shipping* (Washington, 1916).

² Warren D. Renninger, *Government Policy in Aid of American Shipping* (Philadelphia, 1911), p. 41.

³ *Report of Postmaster-General, 1871*, p. xx.

⁴ House Committee, United States Post-Offices and Post Roads, *Report No. 2889*.

Finally in the era of Postmaster-General Wanamaker, by the Postal Aid Bill of March, 1891,¹ a definite effort was made to develop American shipping through postal subsidies and naval supervision. Payment was provided for ships of four classes, under contracts which were to run from five to ten years, according to speed varying from 12 to 20 knots, according to mileage varying from 66 $\frac{2}{3}$ cents to \$4 per nautical mile, and according to tonnage, with particular reference to the possibilities of speedy conversion of the ships so favored into auxiliary cruisers, a frequent device for the expansion of navies in those days. American shipping, however, did not speedily respond to this persuasion, and when it did, just before the war, the profit shown was accomplished by dispatching all the mail possible on contract ships.²

The practice of postal subsidies became a prominent post-war policy. The Merchant Marine Act of 1920³ provided that "all [ocean] mail of the United States . . . if practicable," should be carried on American-built and registered vessels, the Postmaster-General being authorized to make contracts within the limit of appropriations made therefor by Congress." Steamships must as non-contract service carry mail at the rates prescribed by Congress, that of land plus sea postage; for ships of foreign registry 35 cents a pound for letters; for ships of American registry 80 cents a pound for letters; second-class mail in the same respective varying proportions. This rate for foreign ships is according to the schedule fixed in the Stockholm Convention, Articles 70 and 76.

The Merchant Marine Act of May 22, 1928, is frankly a mail-subsidy measure; "the main purpose of this act is to

¹ *Act of March 3, 1891*, c. 519, 26 Stat. 830.

² *Report of the Postmaster-General, 1914*, p. 25. Litman, *op. cit.*, p. 106.

³ *Public Laws, Congress 66: 2, June 5, 1920.*

develop American merchant marine."¹ In three pages it provides for the remodeling, improving, and replacement of ships, and for loans to promote building, with a limitation of \$250,000,000; in six pages it provides for ocean mail service. All ocean mail is to be carried on vessels documented under the laws of the United States.² The Postmaster-General certifies to the United States Shipping Board proposed routes for the subsequent five years. The Shipping Board then certifies to the Postmaster-General the type, speed, size, etc., of the vessels to be so employed, the Secretary of the Navy being consulted in the making up of these specifications.

The Postmaster-General then enters into ten-year contracts (or less) for the carrying of ocean mail with citizens of the United States, the lowest bidding. Vessels must be American-built, owned, officered, in part manned (one-half the crew American; after 1932, two-thirds the crew American), and registered (unless registered before February 1, 1928). Seven classes of ships are specified, the speed varying from 10 to 24 knots, the tonnage varying from 2500 to not less than 20,000 tons, the rates of compensation varying from \$1.50 to \$12 per nautical mile.³ The Postmaster-General has power to contract for ships of higher speed at a higher rate, and for airships.

¹ Public, No. 463, Congress 70: 1. See *Report of Postmaster-General, 1929*, p. 35.

² The exception made in the Act of 1928, of mail to Canadian ports was repealed. See *Stats. of U. S., Congress 71: 2, 1929-1930*, pt. 1, p. 169, ch. 173.

³ In 1930 in consequence of this Act, 12 new ocean mail routes were added to the 25 routes already in operation, the mail contracts entered into by the Postmaster-General for the building of the new ships to cover these routes calling for an aggregate of \$253,000,000, and the contracts involving a total mail pay of \$9,000,000 per annum. *United States Daily*, Jan. 21, 22, 23, 24, 1930.

Section 414 of this Act makes positive restrictions, which have not been found entirely convenient in practical application:

All mails of the United States shipped or carried on vessels shall, if practicable, be shipped and carried on American-built vessels documented under the laws of the United States. No contract hereafter made with the Postmaster-General for carrying mails on vessels so built and documented shall be assigned or sublet, and no mail covered by such contract shall be carried on any vessel not so built and documented. No money shall be paid out of the Treasury of the United States on or in relations to any such contract for carrying mails on vessels so built and documented when said contract has been assigned or sublet, or when mails covered by such contract are, in violation of the terms thereof, carried on any vessel not so built and documented.¹

In addition to these definite subventions, American ships are allowed a time-preferential in mail transportation, an attempt to offset similar preferences granted British and French ships in their ocean mail services; 24 hours preference to any American ship carrying mail under contract; 48 hours preference if there are sea postal clerks aboard.

As Mr. Glover recited the case before the Subcommittee on Post-Office Appropriations in 1929:

Following the Great War, the countries of economic importance have attempted to promote the economic welfare by securing advantages for its (*sic*) own business. Preference has been given to English ships in England, and to French ships in France, and as against the United States to English ships in French ports and to French ships in English ports, in the matter of carrying mail. The world is against this country so far as shipping mail on American ships is concerned, and they always

¹ See *Hearings*, before the House Committee on Merchant Marine, Jan. 27, 1930, on the Davis Bill. H. R. 8361.

give the preference to another flag. It [such foreign mail] is invariably sent on the ship under the flag of that nation.¹

Mr. Glover then proceeded to unfold a story of the rivalry between the *Majestic* and the *Leviathan* leaving Southampton, the *Majestic* leaving one day with 17,661 sacks of mail, the *Leviathan* leaving the next day with 1800 sacks, the *Majestic* delaying at Southampton and at Cherbourg for more mail, taking 8,000 sacks that should have been on the *Leviathan*.

The Chairman of the committee declared that the mail brought to the United States in American ships is less than 15 per cent, but that this is countered by the fact that mail sent from the United States in non-American ships is less than 20 per cent, adding "and we would not give them any if we had ships ready to take the mail out. . . . So we play the game that they do."²

That the rules of the game while benefiting American ships, do not always benefit American business, is evident in the comment of the Postmaster-General in 1925, who admitted that

from the standpoint of mail service alone we could wish that this preference were not necessary as it sometimes handicaps American business in competing with foreign trade.³

Or, as the Postmaster-General stated in 1929,

By the preference of 24 to 48 hours in the matter of letter-mail, and an even greater preference in dispatching parcel post, we

¹ *Hearings*, before the Subcommittee on the Post-Office Appropriation Bill of 1929, Congress 70: 1, pp. 258-260.

² *Ibid.* According to the *Report of the Postmaster-General*, for the Post-office Department, 1930, p. 39, the trans-Atlantic route received under the Act of 1928, 64 per cent of the weight, and 90 per cent of the pay, for carrying the mails.

³ *Report of the Postmaster-General*, 1925, p. 43.

are handicapping American business. [However, Postmaster-General Brown saw this as an argument for the encouragement of American shipping.] It is hoped that the operation of the Merchant Marine Act will eventually correct this situation.²

The Convention and the Constitution

President Grant did not submit the Convention of Berne, 1874, to the Senate for advice and consent. Only three postal conventions, all before 1861, have ever been subjected to the Senate.³ As remotely as 1792 Congress declared it

lawful for the Postmaster-General . . . to make arrangements with the Postmasters in any foreign country for the reciprocal receipt and delivery of letters and packets through the post office service.⁴

That the first Postmasters-General made use of this permission is certain; there was mail exchanged between the United States and foreign countries; it must have been exchanged under "arrangements" contemplated in that early Act of Congress. But such arrangements were entered into without much record, simply on the authority of the Postmaster-General, and with no question as to his power, no question as to the validity of such executive agreements. In 1844, Congress gave the Postmaster-General permission to enter into such arrangement or arrangements with the proper authorities in France and Germany, the owners and agents of the vessels plying regularly between those countries and the United States, whereby a safe and, as near as possible, regular and direct mail communication, under official guaranty, between

² *Report of the Postmaster-General on the Post-office Department, 1929, p. 34.*

³ *Stat. at L., vol. xv.* See Hunter Miller, "Proposed new Edition of the Treaties of the United States," *A. J. T. L., vol. 24 (1930), p. 244.*

⁴ Act of Congress, Feb. 20, 1792, 1 *Stat.*, 231, Sec. 26.

the United States and the continent of Europe, viz, the ports of Bremen in Germany, and Havre in France, and such other principal ports on said continent as the Postmaster-General shall deem proper, shall be secured, so that the entire inland and foreign postage on letters and all other mail matter sent over seas from and to the United States, and to and from any port of France, and of the States comprehended within the German Customs Union, and of those countries of the continent between which and France and the said German States there exists a continued arrangement of the like kind, may be paid at the place where they are respectively mailed or received.¹

An even more inclusive mandate from Congress to the Postmaster-General may be found in the "General Act to Consolidate and Revise the Laws Relating to the Post-Office Department," of June 8, 1872.

For the purpose of making better arrangements with foreign countries or to counteract their adverse measures affecting our postal intercourse with them, the Postmaster-General by and with the advice and consent of the President, may negotiate and conclude postal treaties and conventions, and may reduce or increase the rates of postage on mail matters conveyed between the United States and foreign countries.²

The use of the words "conventions and treaties" should be noted as new in the statute. This Act is still the charter under which the Post-Office Department proceeds in making treaties and conventions. It will be found in *Postal Laws and Regulations of the United States of America*, being chapter 2, section 496, of the Act of Congress, June 19, 1922. That Act declares simply that "the Postmaster General shall transmit a copy of each postal convention concluded with foreign governments to the Secretary of State"

¹ Joint Resolution, June 15, 1844, 5 *Stat.*, 718.

² 17 *Stat. at L.*, 304, sec. 167 (R. S. 308).

(section 497). As Crandall says in his study of the *Treaties* of the United States, "In virtue of this Act, conventions of this class have been concluded by the Executive without submission to the Senate."¹

There has been and there continues to be much discussion about this departure from constitutional ways of making treaties. There may be found authorities who declare that because the Senate does not share in the making of postal treaties, therefore these are not treaties. The Assistant Attorney-General of the Post-Office Department once advised that

the use of the term "treaties" in the statute, however, is inaccurate and rather unfortunate, for postal conventions do not rise to the dignity of treaties, which under the Constitution can be made only by the President by and with the advice of the Senate provided two-thirds of the Senate present consents.²

A doubtful admission of their status may be found in *Hearings* before the House Committee considering appropriations for 1922, when Chairman Madden in speaking of the Madrid Universal Postal Union Convention, remarked interrogatively, "It is like a treaty?"³

Certain "Opinions" of Attorneys General of the United States give positive weight to the other side of the argument, and accept the status of such conventions made in an extra-constitutional way. Attorney General Devens in 1878,⁴ Attorney General Garland in 1887,⁵ and Acting Attorney General Taft in 1890 may be cited. The latter asserted:

¹ Samuel B. Crandall, *Treaties, Their Making and Enforcement*, Columbia University Press (New York, 1904), p. 93.

² *Official Opinions of the Assistant Attorneys General for the Post-Office Department*, vol. iv, no. 1578.

³ *Hearings* before a subcommittee on postal appropriations of the House Committee on Appropriations for 1922, Congress 66: 3, p. 93.

⁴ *Opp. Att. Gen.*, xv, 462.

⁵ *Ibid.*, vol. xix, p. 39.

Where long usage dating back to a period contemporary with the adoption of the Constitution, sanctions an interpretation of that instrument different from that which would be reached by the ordinary rules of construction were the question a new one, the usage will be followed It is fair to presume that from the legislation of 1792 down to the present time, the Postmaster-General, by the authority conferred in the Acts of Congress has exercised the treaty-negotiating power of the government The concurrence of the Senate has not been deemed necessary to the validity of such treaties. The powers of the Postmaster-General in this regard, under the present statute, are larger, and at the same time better defined, than they were in the Act of 1792, but the general character of the power, that is, of binding the Government by a contract with a foreign nation with reference to inter-postal conveniences, has not changed from the foundation of the Government to the present day then, the Constitution has been interpreted to mean that the power vested in the President to make treaties, with the concurrence of two-thirds of the Senate, does not exclude the right of Congress to vest in the Postmaster-General power to conclude conventions with foreign governments for the cheaper, safer, and more convenient carriage of foreign mails.¹

Federal courts and the Supreme Court of the United States may be quoted as considering postal conventions to be treaties. Speaking for the Supreme Court seven years after the Berne Convention became operative, Mr. Justice Miller in a case concerning dutiable goods, declared a certain article

. . . forbidden by the express provisions of the postal treaty under which it came, which is the law of the land.²

Forty years later, Judge Dickinson of the district court of Eastern Pennsylvania said:

¹ *Ibid.*, vol. xix, p. 520.

² *Cotshausen v. Nasro*, 107 U. S. 215 (1882).

The ever-growing communications between the peoples of other countries and our own people made it necessary to in some way extend the operation of the postal service, so as to include packages and parcels other than what is recognized as ordinary mail matter. As a means to this end conferences of representative of the countries most concerned were held and conventions reached. The authority for entering into these conventions is to be found in the treaty-making power, and what they are by an examination of the statutes.¹

However, two years later, Judge Manton of the district court of Southern New York questioned the status of postal arrangements:

They cannot be considered treaties because the treaty-making power is confined in the President and the Senate by the Constitution. They are but provisions which determine what merchandise may be received in the mail. . . . If it was in violation of the Universal Postal Convention's rules, it is as a means of introduction.²

Evidently confusion as to the legal status of postal "treaties" persists, even in the higher courts. But the practice is so convenient that it is doubtful if any alteration would be found feasible. While not of course affecting their status in the United States, it may be noted that countries other than the United States enter into these postal agreements in their customary constitutional method of procedure and regard them as treaties, and that the cooperation of the United States with the other countries in the drafting of these documents is a cooperation in the making of international treaties. To quote Oppenheim:

The distinction made by the Government of the United States between *treaties*, which can only be ratified by the President

¹ *U. S. v. 18 Packages of Dental Instruments*, 222 Fed. 121 (1915).

² *U. S. v. 4 Packages of Cut Diamonds*, 247 Fed. 354 (1917).

with the consent of the Senate, and *agreements*, which do not require such consent, has nothing to do with International Law. It is a distinction according to constitutional law—or the constitutional practice—of the United States.¹

AMERICAN DELEGATIONS TO CONGRESSES AND CONFERENCES ¹

| | |
|------------------------|---|
| 1863, Paris | Montgomery Blair John A. Kasson Möhle |
| 1874, Berne | *Joseph H. Blackfan Rambusch |
| 1876, Paris | |
| 1878, Paris | James H. Tyner *Joseph H. Blackfan |
| 1880, Paris | Brulatour |
| 1885, Lisbon | William T. Otto *James S. Crawford |
| 1890, Brussels | |
| 1891, Vienna | *Captain N. M. Brooks William Potter |
| 1897, Washington | General George S. Batcheller Edward Rosewater James N. Tyner *Captain N. M. Brooks A. D. Hazen Colonel Charles Chillé Long Robert Stockwell Hatcher |
| 1900, Berne | W. S. Shallenberger *Captain N. M. Brooks |

¹ *International Law* (London, 1920), 3rd ed., vol. i, p. 664. An interesting comment on the status of postal treaties, as "charters of incorporation," is made by Professor McNair, "The Legal Character of Treaties," *B. L. J. L.*, vol. ii (1930), p. 116.

² Names starred are those of "Superintendents of Foreign Mails," except that of Eugene R. White, who is listed as "Director of International Postal Service."

UNIVERSITY POSTAL UNION

89

- 1906, Rome *Captain N. M. Brooks
Edward Rosewater
- 1920, Madrid Otto Praeger
*S. M. Webber
Elizabeth Lee Woods
Josec Topacio
Romualdez
- 1924, Stockholm Joseph Stewart
Eugene R. White
*Edwin Sands
Juan Ruiz
- 1927, The Hague W. Irving Glover
*Eugene R. White
- 1929, London Joseph Stewart
*Eugene R. White
H. S. Frankhauser
John E. Laniell

CHAPTER II

INTERNATIONAL TELEGRAPH UNION

CONVENTION OF ST. PETERSBURG, 1875.¹

REGULATIONS OF PARIS, 1925.²

History

THERE were telegrams before there were letters. In remote centuries signals were used, and those modern-minded people, the ancient Greeks, employed the heliograph as a means of communication.³ But, until the metal wire was strung almost invisibly across space, messages remained visible and elementary.

Experiments were made in the inquisitive eighteenth century; communication in the commercial nineteenth century began to move with electric speed. Puck's girdle thrown about the earth in forty minutes was a slow circumferation compared with that of nine minutes when the Pacific cable was opened on July 4, 1903, and President Roosevelt threw upon the wire an earth-engirdling message.⁴

No other invention was so promptly adopted by all people.⁵ Each country developed a usage, but there then resulted an impasse: telegraph wires from two countries would come up

¹ *B. F. S. P.*, vol. lxvi, pp. 19-87; *L. N. T. S.*, vol. 57.

² *International Telegraph Convention*, H. M. Stationery Office, 1926.

³ George Abel Schreiner, *Cable and Wireless and their Place in the Foreign Relations of the United States* (Boston, 1924).

⁴ Fortieth Anniversary of the Mackay System (New York, 1924), p. 24.

⁵ Louis Renault, "De la protection internationale des cables télégraphiques sous marins", *R. D. I. L. C.*, 1880, vol. xii, p. 251.

to the boundary line and stop; often that boundary line was not the old geologic division of mountains or the geographic division of rivers, but the new astronomical line drawn as a compromise between opposing claims of nations, invisible except as toll houses made evident national rivalries. It was an intolerable situation. The achievement of an international telegraph was more difficult than that of an international post, since the post involved the transmission of material objects, while the telegraph was concerned with things visible and invisible, with apparatus, language, hours of opening and closing of offices, and the minutiae of tariffs.¹

Treaties were made between two states, as Austria-Prussia, 1849, France-Baden, 1852,² telegraph frontiers began to fall. An interesting type of bilateral adjustment, going beyond convention and actually uniting offices may be cited in the Franco-Swiss treaty of February 7, 1853.³ The telegraph administrations of the two countries determined to unite their national services arriving respectively in Mulhouse and Basle, in Maçon and Geneva, through instituting *bureaux mixtes* in Basle and in Geneva. National wires and the national laws governing them came up to the common frontier office, agents of the two administrations served in the bureaux in a common service, enjoying a kind of diplomatic immunity (Art. 6), and accomplishing the exchange of messages across the frontier which then ran invisibly through this office.⁴

Regional Arrangements

Through the decade of the 1850's efforts were made among European states to unite territories which had some-

¹ Poinard, *op. cit.*, p. 279.

² *M. N. R. G.*, vol. xiv, p. 591; de Clercq, vol. vi, p. 213.

³ de Clercq, *ibid.*, p. 256.

⁴ Poinard, *op. cit.*, p. 281.

thing of common geography, common interests, but what was more feasible in each instance, a common language; the difficulty of language, the lack of an international language, is one of the problems which has presented itself in the making of each international telegraph convention.

On July 25, 1850, four German states, Austria, Bavaria, Prussia, and Saxony, united in a limitrophic telegraphic union, writing a treaty and three supplementary conventions,¹ covering the activities of governments and of private companies. The intention was to regulate not only the territory of the four states, but ultimately to control the telegraph in all the German states. (Preamble).

On October 4, 1852, a convention was entered into by France, Belgium, and Prussia,² Prussia stipulating that her signature included the states of Austria, Bavaria, and Saxony which had signed the German-Austrian treaty of 1850, of Hanover and Wurtemberg which had adhered to that treaty, of the Netherlands which had acceded to it. The purpose was "to assure to international telegraph correspondence the advantages of a uniform tariff and identical regulations." An examination of the convention, which was revised twice,³ reveals it as distinctly a forerunner of the international treaties of 1865-1875. The right to telegraph is assured to "everyone" (Art. 1). The administrations agree to the exchange of all the documents relative to the organization of the services, the apparatus and the improvements of their telegraphs, and express a wish for uniform apparatus (Art. 4). Dispatches even then were divided into three classes with an order of preference: government, service, general (Art. 8). Administrations could refuse to ac-

¹ Neumann, *Traité*s, vol. v, p. 196.

² de Clercq, *Traité*s, vol. vi, p. 224.

³ At Berlin, June 29, 1855, de Clercq, vol. vi, p. 5559; at Brussels, June 30, 1858, de Clercq, vol. vii, p. 499.

cept telegrams they considered against the public good (Art. 14). They did assure secrecy (Art. 17), but they refused to accept responsibility for telegraphic correspondence (Art. 7).

A third regional convention was entered into December 29, 1855, by France, Belgium, Spain, Sardinia, and Switzerland.¹ This conventional law is expressed often in the same terms as the triple treaty of 1852, France thereby becoming the connecting link in these regional arrangements of Latin states, with Prussia the corresponding connecting link in the regional arrangement of the German states. But even with the best intentions, expressed in the conventions, there were difficulties of dissimilar administrative régimes in the separate countries. Each union was zoned, the tariffs were still complicated and burdensome "*au point de paralyser le trafic*," says Poinard.²

These regional arrangements were concurrently supplemented by bilateral adjustments seeking uniform tariffs across frontiers, especially French frontiers, as those of France-Luxembourg, France-Switzerland, France-Spain.³ These were all negotiated in the 1860's. The Emperor Napoleon III, at the height of his imperial glory, and neglecting no means which would centralize the world in France, moved then to secure a European entente by the scarcely visible wires of telegraphic solidarity. Invitations for an international telegraphic conference were sent out in 1864 in the name of the imperial government.

Conference of 1865

There assembled in Paris, May 17, 1865, the delegates of

¹ de Clercq, *Traité*, vol. vi, p. 591.

² Poinard, *op. cit.*, p. 286.

³ de Clercq, *Traité*, vol. viii, pp. 612, 618, 630.

twenty European states.¹ These were Austria, Baden, Bavaria, Belgium, Denmark, Spain, France, Greece, Hamburg, Hanover, Italy, the Netherlands, Portugal, Prussia, Russia, Saxony, Sweden-Norway, Switzerland, Turkey, Wurtemberg. Only three of these, Russia, Sweden, Norway, had not been connected with the regional unions of the German or Latin states. The conference was, beyond the subtle intentions of Napoleon to control Europe through international organization, an inevitable result of the preceding limited conferences. The "regional" aspect now covered Europe, continental Europe, however, for Great Britain was not there. Quite naturally at this stage there was no representation from the Americas nor from the other continents.

As soon as the conference was called, a committee was designated to draft the convention. This committee held sixteen laborious sessions; there were but three plenary sessions.² The *avant-projet* of the French delegation, embodying the results of the preceding experiments of partial unions, was a deliberate preparation to control the conference, Napoleon's objective; France kept the strings of the deliberations in her hands. The provisions aimed to secure a single continuous territory, to suppress zones, reduce rates, send telegrams in any language or in cipher, cause to *faire suivre*, and establish the franc as the monetary unit of exchange.

The general aims of a single territory, of unified service, and of reduced tariffs, are the aims of every conference which attempts by a convention to secure a simplified international administration out of the mass of multi-national administrations, regional laws, local administrations, and

¹ *Arch Dip.*, vol. xxi, 1866, pt. i, pp. 17-38; *B. F. S. P.*, vol. lvi, pp. 294-316.

² Poinsard, *op. cit.*, p. 286 *et seq.*

local tariffs expressed in local moneys. A convention failing in these, the public will have none of it. Succeeding in these the public will compel the sovereign state to accept the limitations. The nations accepted this Convention of Paris; it became, as it were, a preliminary study in the laws governing such communications.

Conference of 1875

There were still many difficulties to be adjusted, and Europe was of uncertain content in 1865. Nations were being made and unmade, and nations were becoming owners of telegraph utilities. The conference in 1868, held at Vienna, admitted remaining European fragments, Luxembourg, Rumania, Serbia, and it enlarged itself to something beyond a European regional union by admitting Persia and India. When the third conference met, 1871-1872, at Rome, the new capital of new Italy, Great Britain had become owner of her telegraphic line and therefore joined the union,¹ while colonial expansion was indicated by the admission of the Dutch East Indies. In 1875, at St. Petersburg, when the permanent set-up of the union was developed through twenty sessions and many meetings of committees,² Europe had been adjusted as it was to remain until 1914. Because of the erasing of boundaries there were only fifteen European states represented; but Egypt was there for Africa, independently of Turkey; the United States was there from the Americas. The International Telegraph Union had become something more than European.

¹ By the *British Telegraph Act of 1868, 31 and 32 Vict., c. 73*, the Postmaster-General is given authority to purchase the lines.

² *For. Rel.*, 1875, vol. ii, p. 1070.

*Convention and Regulations*¹

The convention of 1875, consisting of twenty-one articles, remains operative even after a half-century. As Mr. Schuyler said, "the Convention was drawn up in such form as to avoid the necessity of future revision."² The regulations, which up to 1875, were not separated from the convention, have been amended in accordance with Article 13, in various conferences, the current rules being those drawn up at Paris, 1925, consisting of eighty-eight articles. The convention was cast on simple lines, two general principles controlling: the essential duties and relations of member states to each other in telegraphic communication as directed by their administrative organs; the common duties of the international administration working through the respective national organs. After a half-century, there was expressed at Paris, 1925, a wish that the Convention should be rewritten and a wish that the radio-telegraphic conference would pass a similar resolution, which it did, advocating a combining of the telegraph and radio-telegraph treaties.³

Each member state agrees to put into international service an adequate number of special wires to be established and

¹ The Conventions and Regulations for the definite years are to be found: 1865, *B. F. S. P.*, vol. lvi, p. 394 *et seq.*; de Clercq, *Traité*s, vol. viii, p. 254. 1868, *B. F. S. P.*, vol. lix, p. 322; de Clercq, *Traité*s, vol. x, p. 121. 1872, *B. F. S. P.*, vol. lxxvi, p. 975; de Clercq, *Traité*s, vol. xi, p. 1. 1875, *B. F. S. P.*, vol. lxxvi, p. 19; *M. N. R. G.*, 2 ser., vol. iii, p. 1. 1879, *B. F. S. P.*, vol. lxxx, p. 62; *M. N. R. G.*, 2 ser., vol. viii, p. 51. 1885, *B. F. S. P.*, vol. lxxxvi, p. 597; *M. N. R. G.*, 2 ser., vol. xii, p. 205. 1890, *B. F. S. P.*, vol. lxxxvii, p. 369; *M. N. R. G.*, 2 ser., vol. xvii, p. 294. 1896, *B. F. S. P.*, vol. lxxxviii, p. 112; de Clercq, vol. xix, p. 433. 1903, *B. F. S. P.*, vol. xcvi, p. 736; de Clercq, vol. xxii, p. 296. 1908, *B. F. S. P.*, vol. cii, p. 214; *M. N. R. G.*, 3 ser., vol. v, p. 208. 1925, H. M. Stationery Office (London, 1926). 1926, H. M. Stationery Office (London, 1929).

² *For. Rel.*, 1875, vol. ii, p. 1072.

³ See *infra*, p. —.

operated under the best conditions (Art. 4); each state reserving the right to make special arrangements in respect to other than the international service. (Art. 17). Government telegrams have precedence, then telegrams of administration, then general telegrams (Art. 5).

The rates are not fixed as they are in the treaties of the Universal Postal Union, but are covered by agreements among the sending and the receiving and the intermediary administrations, who must account to one another for the tariffs paid to each of them. Article 10 provides for a uniform tax, except that a single European state may be subdivided into two zones, and a tax created which will run in each zone separately. Telegrams must be prepaid, and the amount of the tax is fixed in a table covering several pages of the regulations.

The "right of everyone" to correspond by means of international telegraph is established (Art. 1), the individual being given more conspicuous consideration in telegraph charters than is usual even in international unions. Secrecy is assured the correspondence of these individuals (Art. 2), the state however reserving the right to stop any telegram dangerous to its security, contrary to the laws of the country, to the public order, or to good morals (Art. 7), or to suspend and for any length of time all communication on one certain line, or even certain correspondence (Art. 8).

Mr. Schuyler reporting officially to the Department of State, said that there was discussion at St. Petersburg of an agreement whereby telegrams should be forwarded by the most direct routes,

though not openly expressed in the conference in so many words, [it was considered] unsafe to make the change, as for many reasons it was undesirable to have all messages from the east and the west or the north and the south of Europe, sent through Germany and exposed to the inspection and possible indiscretion

of German officials. Both Russia and France were desirous of retaining some way of communication which did not pass through Berlin.³

There was recent memory of the Ems telegram, and the "war scare of 1875" was in the consciousness of both France and Russia. The Convention of St. Petersburg being still in effect, free speech is still limited over international wires, and is subject to a certain surveillance of government officials in order that it may be discovered whether or not the public welfare is being threatened.

The Language Problem

The language problem, always important in international agreement, has been a particular difficulty in telegraphic communications. The first union, the German-Austrian group of 1850, was of course confronted by no such question since it was a grouping of German peoples. The second union, of France, Belgium, and Prussia, at first granted complete freedom to three languages, English, French, and German (Art. 13); but the revision of 1858, while enlarging the liberties of dispatches of state so that any language expressed in Roman characters was accepted, now eliminated English as a conventional language for private dispatches, recognizing only French and German, with each member state free to designate any other language, for the international service (Art. 10). The third union, of 1855, recognized English, French, Italian, Spanish, and German as languages for international telegraphic correspondence (Art. 11), with Spain reserving the right not to accept dispatches in German.

The International Union in 1865 declared that each state should indicate the language it would use (Art. 9). In 1868, telegraph correspondence was permitted in one of the

For. Rel., 1875, vol. ii, p. 1070.

languages to be designated as used in the territory of the contracting state, and in Latin (Art. 9), an attempt no doubt to utilize what was then regarded as a universal language. In 1875, French or the language of the country of destination was recognized (Art. 8).

By the date of the conference of St. Petersburg the union had become inclusive of all Europe, and not every telegraph office in Europe could cope with all the languages of Europe. Therefore the difficulty persisted, and each conference attempted its solution. At one time the Bureau was charged with the preparation of a *Vocabulaire du langage convenu*, a work destined to contain about 200,000 words, never completed.¹ The rules of 1908 (Art. 8) recognized only the "pronunciation" of current languages—German, English, Spanish, French, Dutch, Italian, Portuguese, and Latin. That is, the phonetic similarity of the Scandinavian tongues might come under this ruling, but certainly not Russian, Balkan, Chinese, Persian, Egyptian, Japanese. Ciphers were allowed if the laws of the transmitting state permitted, and even if these prohibited, provided the telegram were in transit.²

Since words vary in length, even in the languages recognized by the Regulations of 1875, efforts were made to cope with this particular difficulty. The preliminary conventions of the 1850's had attempted to regulate the length of words, of hyphenated words, and such devices. The determinations of 1875 went farther because abuse of the concept "word" had gone far. It had become evident that to the Germans, through the comprehensive possibilities of com-

¹ Moynier, *op. cit.*, p. 32. See Behrendt, *Esperanto, die Internationale Hilfssprache* (Lübeck, 1926).

² P. E. D. Nagle, *International Communications and the International Convention* (Washington, D. C., 1913), pp. 12-18.

pounds, a word could be stretched on the forefinger of the telegraph to extraordinary proportions—"a paragraph could at times be condensed to a sentence," said Mr. Schuyler in his report.¹ The regulations of 1875 permitted that a word might consist of only fifteen Morse characters if it was in a European telegram, of only ten such characters as it was in an extra-European message (Regs., Art. 21).

At the Paris Conference, 1925, the consideration of language was one of the most important items on the agenda. The regulations of 1908 had provided that the acceptance of telegrams in plain language was obligatory; and that telegrams in secret language could be refused, except those in transit which must pass unless the government of the country of transit had suspended services on that line (Art. 7). Each administration designated which of its own languages it authorized for international telegraphic correspondence: but beside these, Latin and Esperanto were to be admitted (Art. 8, # 3). Codes were to be formed only of syllables which could be pronounced according to ordinary usage in German, English, Spanish, French, Dutch, Italian, Portuguese or Latin, no word being permitted longer than ten Morse characters (Regs., Art. 9, # 3).

This was not considered sufficiently exact in a world where telegraphic correspondence had become not only something more than European, but multi-continental, and in a world where code languages were a useful and necessary device in business. Therefore the international conference set up a special committee on code language. It met at Paris, 1925, concurrently with the conference, and at Cortina d'Ampezzo in August, 1926, and formulated a report,² which it had been determined at Paris should be submitted "to the

¹ *For. Rel.*, vol. ii (1875), p. 1072.

² *Documents of the Committee for the Study of Code Language*, in five parts, Gov't. Printg. Off. (Washington, D. C.), 1928.

first telegraphic or radio conference following the conclusion of the work of the committee".¹ There were two reports, a majority report signed by fourteen of the fifteen members, approved by the telegraph companies, carrying recommendations for a five-letter or five-character code-word, the rate of the co-efficient to be determined; a minority report, signed by Great Britain, holding for a ten-letter code-word.²

The government of the United States, in response to a request from the French government as "director" of the International Telegraph Union, on recommendation of the special committee, and considering the radio-telegraph Conference about to be held in Washington, invited the countries there to be represented to empower their delegates to consider the Cortina Report.³

On October 13, 1927, the Fifth Committee of the Washington Conference, charged with examination of the Report, and with power to determine whether the Radio-Telegraph Conference was competent in the case, broke up on the first day on protest from the British delegation, supported by the French delegation and others, that it had not been legally summoned as an international telegraph conference according to Article 15 of the St. Petersburg Convention, and it so reported to the radio conference. It recommended that the next international telegraph conference, scheduled to meet in Brussels in 1930, be advanced and held in 1928, and that it should concentrate on the question of code language.⁴

Consequently, in due order, an international telegraph conference was summoned by the French government to meet at Brussels, September, 1928, which conference was able to

¹ *Ibid.*, pt. i, p. 20.

² *Ibid.*, pp. 22-27.

³ *Ex. B.*, pp. 117, 122.

⁴ *Ex. B.*, p. 170.

reconcile the divergent views of the member states, and to develop a scheme acceptable to the Union.¹ Messages are therein divided into two categories. Category A provides for ten-letter words, conditioned as to their formation, which has been the custom of the union for fifty years; Category B provides for five-letter or five-character words, not conditioned (Art. 21). Messages cannot be mixed in the two categories; the rates are higher for Category A (Art. 9).

A Committee on Analysis and Presentation of Proposals, established at Brussels, "experts" named by Germany, Belgium, France, Great Britain, and Italy, met at Berne, February 5, 1929, to consider Articles 9 and 21 of the Regulations of 1925 as modified in 1928, and decided that as to Category A, the condition of pronounceability hitherto required had been replaced by the obligatory presence of one or two vowels properly distributed, and that as to Category B, the decision of the office of origin could not be disputed.²

The possibility of all this language difficulty coming to an end through development of the art of transmission of "facsimile," has been indicated by Mr. Owen D. Young³ and by Mr. Winterbottom of the R. C. A.⁴

Membership

Any nation may adhere to the convention, accepting the defined responsibilities and paying a definite contribution for the support of the International Bureau, by notifying

¹ *Press Release*, Dept. of State, Oct. 5, 1929.

² *Press Release*, Department of State, Oct. 25, 1929, p. 2. The International Bureau circularized the member states as to their opinion as to whether this arrangement would result in uniformity; of the thirty-one replying, the great majority affirmed.

³ Owen D. Young, "Freedom of the Air", *Sat. Eve. Post*, Nov. 26, 1929.

⁴ *Hearings*, Senate Committee on Interstate Commerce, December, 1929, Congress 71: 2, *New York Times*, Dec. 13, 1929.

through the usual diplomatic channels the government which was last host to the conference, which in turn communicates the notice to the member states; there is no provision for rejection of an applicant state.

The convention may be denounced by any state, notice to take effect at the end of a year, but the convention to remain in vigor for the other member states—the customary rule that no single state can disrupt a communications union by withdrawal, and no two states can break it through war. In even so remote a day as 1892, M. Moynier could say of the International Telegraph Union, *elle est la loi universelle*.¹

The International Telegraph Union has become one of the largest leagues of states. Colonies and dependencies were first admitted in 1868, India being the first, and India together with Persia at this date enlarged the Union to something more than a European grouping. In 1875, Egypt, independently of Turkey, was admitted to membership, thus enlarging the scope of the union to three continents. The United States of America was a member of that conference, thereby contributing the experiences of a fourth continent, but not becoming a member of the union. In 1879, at London, the union became highly internationalized with such a variety of new member states as Brazil from South America, Japan from Asia, New Zealand and certain of the states of Australia from the Pacific area. In 1890, Argentina from South America was admitted, and the Spanish colonies, Cuba, the Philippines, and Porto Rico. Conspicuous by their absence are the United States, Canada, Mexico, Cuba, Central American states, Peru, Paraguay.

Private Companies

In a telegraph world of diversities, the adjustment of the service of public administrations with the service of private

¹ Moynier, *op. cit.*, p. 15.

companies has been a difficult problem. Telegraph in the great majority of countries is publicly owned, in a very few countries is private enterprise. Therefore the great majority of governments, owning and regulating the telegraph service, enter into an international convention which sets up an international union through which is executed international regulation of this means of communication. The small minority of countries remaining outside the union regulate their telegraph services in whatever degree their constitutions and public opinion permit; they do not become members of the International Telegraph Union, nor directly benefit by its uniformity of regulation.

To reconcile the diversities between public and private ownership is a major problem in communication. At Rome, 1871, the question was raised; at St. Petersburg, 1875, the adjustment was made in the convention (Art. 19), to be fully covered in the regulations.

It happens that private companies exist both in states where the governments do administer the telegraph, and in states where there is no government administration. The current Regulations of 1925, provide that those private companies working within a member state and carrying international service, shall be regarded as an integral part of the telegraph system of their state (Regs., Art. 91, # 1). The private company in a non-member state carrying international service, may, on notification through diplomatic channels from its own government to the government directing the union, and on acknowledging the "obligatory clauses" of the convention and regulations, be permitted to enjoy "all the advantages of the convention" (Art. 91, # 2). Private companies, even when not formal members of the union, do however, on invitation from the directing government, send representatives to telegraph conferences where they serve as experts, a necessary adjunct to such meetings

since the resulting regulations must be of practical effect, and must be observed in all international service.

Private companies can connect their cables to the telegraph system of a member state only "by formally undertaking to submit their tariffs to the approval of the state granting them the concession, and to make no modifications, either in the tariff or in the regulations, except after a notification through the International Bureau" (Art. 91, # 4); a two months interval runs before such modification may be regarded as effective, and at least twenty days for changes in the tariff (Art. 86, # 10).

The Government

The organs of government are the Conference and the Bureau; but there is limitation on the power of these legislative and executive bodies.

The Conference (Arts. 15, 16), during the period from 1865 to 1875, had diplomatic character as well as technical. Since 1875, with no remaking of the convention, the conference has regarded itself rather as one of experts to consider the workings of the agreement, and when necessary to alter the regulations. It meets, not at periodic intervals, but at the time and place fixed by one conference for the succeeding; if ten or more states request it, the date of meeting can be advanced (Regs., Art. 88). Changes in the regulations as well as in the convention must be submitted to the member states for approval, and that approval must be unanimous (Art. 16).

Between conferences an amendment to the regulations which is suggested to the Bureau, may be submitted by the Bureau to the member states with a four-month period for consideration, the replies to be collated by the Bureau and the result to be submitted to the member states for approval, with a four-month period for registering the vote; if no

reply is received that state is considered as not voting. In order to change the regulations the vote must be unanimous of the states voting; in order to interpret a regulation the vote may be a majority; two months must elapse between the notification of the change and its going into effect. If the change is in the tables of tariffs, the assent of concerned administrations only is necessary, but these must be unanimous; notification must be twenty days before the change is effective (Regs., Art. 86).

The Bureau

The Bureau (Art. 14) is in a sense the administrative organ, in that it watches over the operation of the convention, and arranges the details of the conference which the secretary-general attends as an ex-officio member (Regs., Art. 86).

The Bureau was not created without difficulties. France suggested at Paris, 1865, a permanent commission composed of delegates from each contracting state, which should sit at the seat of the last conference and carry on under the direction of the chief of the telegraph administration of that state. Possibly this was the *ballon d'essai* Napoleon liked to send up to see how the European wind was blowing. It was not blowing so internationally; only an exchange of information and views was provided. By 1868, the inadequacy of this was demonstrated, and the French plan was attempted. A so-called Bureau was set up, January 1, 1869. It did not work, it was too cumbersome, not sufficiently technical. In 1872, the Swiss plan was adopted (Art. 60), with a secretary-general attached to the commission. In 1875, that is in the year after the Universal Postal Union had profited by the experience of the Telegraph Union, the modern Bureau was set up, *une creation originale, une veritable innovation*,¹

¹ Moynier, *op. cit.*, p. 25.

declared M. Moynier. It had taken twelve years to evolve the plan, and the Universal Postal Union had already captured the idea.

The International Bureau of Telegraph Administrations then, is an intermediary for the administrations, organized under the authority of the Swiss telegraph and postal administration. It is charged with collecting and publishing information, announcing the opening of new lines, the closing of old, notifying of interruptions in service, and changes in tariffs both internal and international. It makes studies in the interest of international telegraphy, prepares tables of statistics, publishes documents, tables of tariffs, and annual reports.

The expenses of the Union, that is of the Bureau, were fixed in the Convention of St. Petersburg with a classification similar to that of the Postal Union (Art. 14), which has not since been changed, although the expenses of the Bureau have of course increased, and the "unit" has therefore been increased. Member states of the first class pay twenty-five units, those of the sixth class pay three units, each administration choosing the class it will enter.

Consultative Committee

An "International Consultative Committee on Telegraph Communications" was set up in 1925 (Art. 87), just as the Postal and the Radio unions have developed Research Committees. It is "charged with the task of studying technical questions concerning international telegraph particularly as regards long-distance telegraphy, and the necessary measures for obtaining the best output from the installations." The committee reports to the Bureau; it does not meet periodically, but each meeting arranges for the next and names the next directing government which acts as a permanent secretariat during the interim, receives questions

and determines the agenda. It is itself composed for each meeting of experts from administrations which wish to take part.

Settlement of Disputes

There is no provision for arbitration, for judicial settlement, among the member states; this is left for the states to develop between themselves. In this respect also the International Telegraph Union may be regarded as more elementary, certainly less highly internationalized, than the unions which control postal and radio communications, or the Pan-American regional controls.

There was no suggestion for methods of judicial settlement in the treaties of earlier regional groupings; nor was there any such provision written into the original convention of the International union. But the Convention of 1868 provided (Art. lx) that if there was a difference of interpretation of the convention, the telegraph administration of the state where the last conference was held, the directing government, should convoke a conference of member states, and the decisions of this conference should have effect even for the administrations not represented. This impressive but clumsy measure was dropped by the conference of Rome, 1872.

War and Peace

The effect of war upon telegraphic communication between belligerents is of course complete, communication can be and is prohibited.¹ Bilateral arrangements are quietly made for restoration. The Peace treaties following the Great War do provide that the Convention of the International Telegraphic Union shall be reaffirmed by the Central Powers.

¹ Moore, *Digest*, vol. vii, # 1135.

This union of states is one of the international organizations which it was expected would be placed under the direction of the League of Nations (Art. 24). The United States is not a member of this union, nor of the League. With certain other countries which did not accept the League the United States had accepted definite articles of the Telegraph Convention, set over into the Radio Telegraph Convention of London, 1912 (Art. 17). This convention continues in force among its signatories who have not yet accepted the Convention of Washington. This latter convention omits the preceding Article 17, but embodies the necessary provisions in its own articles, and retains the Bureau of the Telegraph Union for the prescribed administrative activities of the International Radio Union. Because of this situation, the International Telegraph Union is not directed by the League. The League however has a committee in its divisions of Communications and Transit which considers international telegraph matters.¹

The Bureau and the union are of increasing importance in the history of international communications, as electric correspondence furthers the processes of the swift-working world. It can no longer be said, as said M. Saveny in 1878, that *en raison même de la sagesse de son attitude, le Bureau International [télégraphique] n' a pas d'histoire.*² Every telegraph conference held during the post-war decade, whether international or inter-American, increases the historical record. Wire has no fear that it will be supplanted by wireless, but confidently expects to extend the visible evidence of its service.³

¹ *Official Journal*, vol. vi, p. 82a.

² *Revue des Deux Mondes*, 1873, p. 559, quoted by Moynier, *op. cit.*, p. 36.

³ See *Annual Reports*, Western Union Telegraph Co., 1928, 1929.

CONFERENCES

| | | |
|------|-------|----------------|
| 1865 | ..... | Paris |
| 1868 | ..... | Vienna |
| 1871 | ..... | Rome |
| 1875 | ..... | St. Petersburg |
| 1879 | ..... | London |
| 1885 | ..... | Berlin |
| 1890 | ..... | Paris |
| 1896 | ..... | Buda-Pesth |
| 1903 | ..... | London |
| 1908 | ..... | Lisbon |
| 1925 | ..... | Paris |
| 1928 | ..... | Brussels |
| 1932 | ..... | Madrid |

THE AMERICAN ATTITUDE

History

The United States has never been a party to the International Telegraph Convention, it is not a member state of the International Telegraph Union.¹ In this respect it remains with Canada and certain American republics. To be a member, a government must be "in a position to insure the general acceptance of the principles and rules of the international telegraph conference on the part of the private companies within its territory."²

Telegraph communication in the United States, except for a brief number of years, has always been under private own-

¹ Through the convention for the protection of submarine cables, the United States has cooperated in marine telegraphic arrangements internationally; see *infra*, pp. ——. Through the radio conventions, the United States has been an associate member of the Telegraph Union; signing the Radio Convention of 1912, it accepted certain articles in the Telegraph Convention and accepted in that way membership in the Telegraph Bureau, paying its contribution to the upkeep of that Bureau.

² Report of American Delegates to the 10th conference of the International Union," *House Doc.*, No. 1205, Congress 60: 2, p. 3.

ership. Therefore the United States has been forced to decline the repeated invitations to membership or to conference which, since 1865, have been addressed to the Department of State. It has from time to time been represented by delegates who had the right to speak but not to vote, who played the well-recognized rôle of "observers."¹

The United States was not certain in the early days of telegraphic correspondence whether or not to take over the medium as a government activity, or to permit its development to private enterprise. The Constitution had given to Congress the power "to establish post-offices and postroads," and this power might be interpreted to cover the transmission of intelligence by whatever roads, through whatever mediums might be discovered. Congress experimented in public ownership of telegraph lines, and later passed a fundamental permissive law which remains on the statute books.

On March 3, 1843, Congress appropriated \$30,000 to test the practicability of the electric magnetic telegraph;² the test ran on a wire stretched from Washington to Baltimore. On March 3, 1845, Congress appropriated \$8,000 to further the experiment, and directed the Postmaster-General to supervise the disbursement. Again, on August 10, 1846, Congress directed the proceeds from the telegraph line to be paid into the United States Treasury for the benefit of the Post-Office Department, "in the same manner as other revenue from postage." The experiment was abandoned March 4, 1847. The splendid active Forties were not the

¹ The United States was officially represented in the Conferences of 1875 and 1925, and unofficially at the Conferences of 1903 and 1908.

² "Government Ownership of Electrical Means of Communication," *Sen. Doc.*, No. 399, Congress 63:2. This indicates an association of post and telegraph in the United States twenty years before this was accomplished in Great Britain, but there the arrangement was permanent. See Evelyn G. M. Carmichael, *The Law relating to the Telegraph, Telephone and the Submarine Cables* (London, 1914), p. 100.

era for the sobriety of public ownership. The government adventure was followed by private adventures, "wild cat" concerns, which lasted until two major companies alone survived.¹

On July 24, 1866, Congress passed an act "to aid in the construction of telegraph lines, and to secure to the government the use of the same for postal, military and other purposes." The act had a dual purpose; to afford aid to private development; to make possible public ownership if the future should find the need. The use of the highways, the crossing of navigable waters, and the use of material from the public domain was granted. The right was expressly retained to take over such developments:

The United States may at any time after the expiration of five years from the date of the passage of this Act purchase all the telegraph lines, properties and effects of any or all of said companies, at an appraised value, to be ascertained by five competent disinterested persons, two of whom shall be selected by the Postmaster-General of the United States, two by the Companies interested, and one by the four so previously selected.²

In the 1860's the United States was immensely interested in world communication. It was apparently not invited to the International Telegraph Conference at Paris, 1865; that was a regional affair. But the United States had in mind an "American" scheme to girdle the earth with electrical communication, and was therefore indifferent to what was happening in Paris. Secretary Seward, as Napoleon III, thought in continents. They were not America and Europe, safely separated by the Atlantic. They were America and Asia, with Alaska as the bridge even as early as 1864-1865;

¹ *Hearings, C. L. L.*, p. 40.

² *37 Stat. at L. 560; R. S. 5263.*

a grandiose scheme for telegraphic communication across the tundras of Siberia, a practical employment of the Alaskan territory, and its use in the interest of both nations, perhaps a reason for its later purchase. It was a gallant attempt to link together Washington and St. Petersburg in an evidence of solidarity, a consummation of the significant act of 1862-1863 when the Russian squadron sailed into an American harbor and demonstrated that the United States had a friend. This would counter the then approaching British monopoly of international telegraph, which, having joined Europe and India across Persia, was proposing to use India as a bridge to China and Japan.¹

Or, since "neither England nor the United States were (*sic*) were invited to take part" in the Paris Submarine Telegraph Conference of 1864,² it might be possible to combine with the British efforts and make an Anglo-American development. In any event, the government of Great Britain was agreeable to this Asia-Alaska-American scheme. As Minister Charles Francis Adams wrote to Secretary Seward,

The British government has very liberally acceded to the application made by Mr. P. McD. Collins, and has granted him the right to continue his proposed telegraph communication from Russia over the English territorial possessions in North-west America.³

Mr. P. McDonough Collins and Mr. Hiram Sibley started on their intercontinental adventure. The Czar Alexander had approved a charter to be issued to "P. D. McD. Collins and Co." on May 15, 1863.⁴ The company had been incor-

¹ *For. Rel.*, 1865, vol. ii, p. 371.

² *Messages and Documents*, 1864-1865, vol. iii, p. 88.

³ *Ibid.*, vol. i, p. 192.

⁴ *For. Rel.*, 1865, vol. ii, pp. 365, 369.

porated as a subsidiary of the Western Union Telegraph Company of New York. Mr. George Kennan among others had been sent to Kamchatka, where he remained for three years, exploring the telegraphic possibilities of eastern Siberia.¹ Finally Messrs. Collins and Sibley had sent their ship to sea with the cable ready.²

Now, in 1864, these representative Americans were received personally by the Czar. As Minister Clay wrote to Secretary Seward, the Czar "promised them his cordial cooperation in this great enterprise." Other Russians of course followed suit.

All the persons who are connected with this line, in the administration, have been consulted, and seem well disposed to give our countrymen all the aid in their power towards the perfection of the charter, the rectification of the route, and all other facilities in its structure. As our American friends are anxious to have a branch of this continental line running through the populous and wealthy country of China, I shall ask this government at once to aid us through their minister in China to procure a charter there. Should this course meet with your views, you can interest our minister, the Hon. A. Burlingame to cooperate with the Russian authorities in this matter. The Russian Fur Company seems friendly, and anxious to cooperate with our friends in carrying on their work and seems to have also all confidence in their success.³

Minister Clay congratulated Secretary Seward

upon this auspicious result which marks a new era in the inter-communication of the nations, which must greatly promote the civilization of our race and tend to bind all to keep the peace of the world.

Mr. Haldeman at Stockholm wrote to Secretary Seward in

¹ George Kennan, *Tent Life in Siberia* (New York, 1870).

² *For. Rel.*, 1864, vol. ii, pp. 373, 375.

³ *For. Rel.*, 1865, vol. ii, *passim*.

answer to a communication from the Secretary, that the Swedish papers

expressed surprise that the first minister of the United States government in the midst of a great civil war had the time and disposition to employ his mind to so critical and exact a statistical and geographical examination of the subject.¹

It is evident that Sweden did not entirely approve the project. "Russia is Sweden's chronic dislike," wrote Minister Campbell to Secretary Seward. And Secretary Seward had to remind Sweden that "this friendship [Russian and American] is neither more intimate nor more cordial than that which the United States desires to preserve with Sweden."²

Whether from Swedish protest, British private opposition, or Russian fear of being linked up with the world, the scheme was thwarted. Russia did not carry out the terms of the charter. Messrs. Collins and Sibley lodged a formal protest "against the actions, doings, and decisions of the Russian government and the imperial department of Russian telegraph." Apparently the Russian telegraph administration was attempting to so interpret the charter that the intercontinental telegraph would pay for the all-Russian telegraph.³ Finally Prince Gortchakov expressed a desire to exclude from diplomatic correspondence the subject of the intercontinental telegraph.⁴ The scheme of 1865 fell through.

Yet, it may be added that in 1871 a Danish corporation, the Great Northern Telegraph Company, succeeded where the American company failed, and securing a charter from Russia, trailed a line cross Siberia which today follows the

¹ *Messages and Documents, 1864-1865*, vol. iv, p. 363.

² *For. Rel.*, 1865, vol. iii, p. 294.

³ *Ibid.*, pp. 372, 375.

⁴ *Ibid.*, 1865, vol. iii, p. 380.

Trans-Siberian Railway, and obtained monopoly rights in China and in Japan, which hampered the successors of "P. McD. Collins and Co.," as American cable companies have sought landings in the Far East.¹

During the decade which followed the Civil War, the United States turned its back upon Europe. Trans-Atlantic immigration was in full flood, as the great European tidal wave of people swept inward and swept westward. Trans-Mississippi migration was in equal spate, resulting in a tremendous expansion of communications across the continent. The caravans of the covered wagon demanded "a transmission of intelligence" as important in linking these people with their homelands as postal communication had been in linking the colonies with the mother country.

Therefore when Russia in 1875, became host to the conference which was to revise the International Telegraph Convention, the United States considered an invitation from St. Petersburg. Russia was not quite Europe. Russia was America's great friend among the nations, and a great potential customer. The Russian Foreign Office in repeated invitations urged the government at Washington to send delegates to the first administrative international conference to be held in the Russian capital.

The United States at first refused "on the ground that telegraph in this country is a private enterprise not subject to control of government."² Russia then announced that representatives of private telegraph companies would be received. "This was made known by Secretary Fish to the presidents of two of the most important companies," who "long held it under consideration," but both ultimately "declined to be represented on the occasion." Finally, because

¹ The government of the United States objected to the concession, and objected to the renewal, but without success. *For. Rel.*, 1883, 142-152.

² *For. Rel.*, 1875, vol. ii, p. 1070.

"Russia was so earnest" and because the Congressional Act of 1866¹ had made it seem probable that the telegraph lines of the United States would become government-owned, making membership in the International Union possible to the United States, President Grant felt justified in sending a delegate to St. Petersburg. Secretary Fish cabled to Minister Schuyler to "attend the telegraphic convention and report results without committing this government."²

Mr. Schuyler's report to his chief occupies four closely printed pages in Part II of the diplomatic correspondence for that year.³ "In accordance with your instructions," he admits, "I took no other part in the conference than simply to attend its meeting." He was asked, in conversation "many times" whether it was probable that the "government of the United States would take into its own hands the administration of the telegraphs." Europe had read the enabling Act of 1866, and was keen as to the possibilities of Congressional action. "To this I could only reply that the subject had several times been brought to the attention of Congress, and had been there considered, but that it would be impossible for me to predict the result of any bills which might be in future brought into Congress." Mr. Schuyler's chief criticism on the conference was its "too great tendency toward conservatism". The American delegate did not sign the convention.

Since this was the second and last diplomatic conference of the International Telegraph Union, the United States has not since been confronted with "repeated invitations," and the issue of American membership in the union has not appeared acute. American observers have sat in on technical discussions on regulations and, following the war,

¹ See *supra*, p. 112.

² *For. Rel.*, 1873, vol. ii, p. 1069.

³ *Ibid.*, p. 1074.

the government of the United States accepted the invitation of the government of France, to send delegates to the eleventh telegraph conference.¹ The United States was not, however named to any of the five commissions set up by the conference to carry on the work, and it did not of course sign the convention. It invited the nations of this union to hold a conference in Washington, 1927,² and following the Brussels Conference, 1928, the Department of State admitted that "these new rules will affect codes used by American firms doing business abroad"; therefore the Department issued a full summary of the Brussels rules and translations of circulars issued by the Telegraph Bureau concerning interpretation of these rules.³

Private Companies

As has been noted, the convention and the current regulations cover the accession of private companies. Since the entire telegraphic business of the United States is private enterprise, the United States can share in the working of the Union only through its private companies. It will be recalled that although Russia invited American companies to be present at St. Petersburg in 1875, and the President suggested such representation to the two leading American companies, they refused. Mr. Schuyler in reporting this conference expressed the hope, himself, that "in the next session the American companies may be willing to take part, for it is for the convenience of the public that messages everywhere should be subject to the same regulations and be sent at fixed rates."⁴

¹ *Jnl. Télég.*, vol. xlix, no. 9, Sept. 25, 1925, *et seq.* See also *A. J. I. L.*, xix (1925), p. 777.

² See *supra*, p. 101.

³ *Press Release*, Department of State, Oct. 5, 1929. See also *Report of the American Delegation to the International Telegraph Conference of Brussels*, September 10-22, 1928 (Washington, 1929).

⁴ *For. Rel.*, 1875, p. 1074.

Out of the many telegraph companies of the pioneer decade, only two main companies survive; neither of these has accepted the convention. Within the confines of the United States these companies can of course act independently of the International Telegraph Convention. But since each one, as an important arm of its service, has its own cable system, and trans-oceanic cables must perforce transmit messages to the telegraph systems of other countries, these private companies must accept the international rules.

"We have always complied with practically all of the regulations of the International Convention", said Mr. Clarence H. Mackay of the Postal Telegraph Company.¹

"The private Atlantic cables companies have been in operation for over fifty years, and to our knowledge have never offended by their refusal to adhere to the convention. In all essentials for the conduct of telegraph or cable business, we have complied strictly with the provisions of the convention," said Mr. Newcomb Carlton of the Western Union Company.²

Neither company has had any serious controversy with European administrations. "Any minor difference has always been settled satisfactorily, with the aid of the United States government when necessary."³

In the matter of rates, the American companies of course must accept foreign tariffs. "Certain terminal charges or transit charges are imposed by the governments concerned on messages destined for delivery in, or transmitting through, their respective countries. The [cable] company has to provide for these governmental charges in making up its tariff, but the governments in general do not prescribe what that tariff shall be."⁴

¹ *Hearings, C. L. L.*, p. 277.

² *Hearings, C. L. L.*, p. 181.

³ Private letter, Assistant Vice-President, Commercial Cable Co.

⁴ *Ibid.*

It is, however, a "troublesome and difficult question," said Representative White, "as to how you are to fix an international rate that involves not alone the service of your own company, but involves the reception of a message from a foreign company and the transmission of the message, the relaying of the message by a foreign company, and the handling of the message after the terminus, by a foreign company." This could be covered only by treaty, thought Mr. White, and with detailed supplemental legislation.¹ Such a treaty might, Mr. Mackay warned, "not only destroy the enterprise of competitive service, but reduce the private companies to the conditions of government ownership."²

The solution of international difficulties by government ownership in the United States remains a theoretical possibility, and the permissive Act of 1866 provides the practical possibility. Intermittently up to today, suggestion has been made for carrying this act into effect. These suggestions were particularly forceful in 1884, following the bitter political campaign, when the Western Union was accused of having distorted election returns; and in 1887, when many small private companies had been absorbed by the Western Union, causing "great excitement and scandal." Even Senator Edmunds of Vermont, and Senator Cullom of Illinois, giants in their day, introduced bills providing for government ownership of the telegraph.³ In all nearly one hundred such bills have been introduced into Congress, more often killed in committee. In the Postal Act of 1902, Congress went so far as to direct the Postmaster-General, "if he had sufficient

¹ *Hearings*, House Committee on Foreign Affairs, Congress 70:2, March, 1928.

² *Hearings*, C. L. L., p. 277. See *infra*, p. — for further consideration of private companies and government ownership. See Nagle, *op. cit.*, for further comment on the relation of companies to the convention.

³ *Senate Report*, No. 577, pt. iii, Congress 48:2.

available information to enable him to do so, to report to Congress the probable cost of connecting the telegraph and telephone systems with the postal service by some feasible plan."¹

More than one President in his message has suggested that electric mediums of communication should have the same relation to the government as have the mails;² and with frequency, almost with unanimity, Postmasters-General during the half-century have pled for a union of these means of correspondence.³

So convinced that the two services, post and telegraph, were inextricably interwoven was Postmaster-General Wanamaker, and so confident of the legality of his power to unite them, under the Constitution and according to the Act of 1866, that he considered installing telegraph apparatus in the Post-office Department for the general transmission of correspondence without further authority.

The Attorney General was, however, asked for an advisory opinion. It happened that William Howard Taft was then Acting Attorney General. He reviewed the history of communication in the United States, from the resolution of the Continental Congress in 1775 providing "for the conveying of . . . intelligence," through the experiments in telegraph control under Congressional direction in the 1840's, down to modern practice. He found authority for "transmitting telegrams, placing them in postal custody

¹ *U. S. Statutes, 1900-1901, Congress 56: 2, ch. 851, p. 1104.*

² President Grant, *Richardson's Messages*, vol. vi, 150 (1871), 198 (1872), 220 (1873); President Hayes, *For. Rel.*, 1880-1881, xv; President McKinley, *For. Rel.*, 1900, xxxv; President Roosevelt, *For. Rel.*, 1901, xxxiv, 1902, xxxiii.

³ The list includes Postmaster-General Johnson, Randall, Maynard, Howe, Creswell, Wanamaker, Gresham, Dickinson, Payne, Cortleyou, Hitchcock, Burleson. See article by Secretary Burleson, *New York Journal of Commerce*, Jan. 2, 1919.

and delivering them according to the address," the mess then held to be "mail matter." But, he found no authority for the "employment or establishment of telegraphic appliances for the general transmission of correspondence."¹

AMERICAN DELEGATIONS TO CONFERENCES

| | |
|----------------------|----------------------------------|
| 1875, St. Petersburg |Eugene Schuyler |
| 1903, London |General Greeley * |
| 1908, Lisbon |Charles Page Bryan * |
| | Roland R. Dennis * |
| 1925, Paris |J. Beaver White |
| | Wallace H. White |
| | Major General Charles McK. |
| | Saltzman |
| | Commander Joseph C. Mauborgne |
| | William D. Terrell |
| | Lieutenant Commander Jules James |
| | H. H. Kelly |
| | R. H. Redmon |

¹ *Op. Att. Gen.*, vol. xix, p. 651 *et seq.* Compare with the Opinion of Acting Attorney General Taft on postal conventions, *supra*, p. 86.

* Unofficial.

CHAPTER III

SUBMARINE CABLES¹

CONVENTION, MARCH 14, 1884²

DECLARATION, DECEMBER 1, 1886³

FINAL PROTOCOL, MAY 21, 1888⁴

History

The general problem of submarine telegraphy is one of the particular jurisdiction. States have been as reluctant to unite for legal control of cables on the high seas as they were reluctant to give up their ancient, separate, territorial claims over "King's Chambers" of great oceanic areas.

International legislation which should protect marine telegraphy was slow in evolution, not because the need was unseen, but because of the situation. Laid at the cost of millions of pounds, or francs, or dollars, and binding continents together in their increasing intercourse, the cable became a fundamental in international life, indispensable in the

¹ There is no international union for the protection of submarine cables; there is conventional law, as expressed in the treaty under consideration; there is no organization to execute or watch the execution of the provisions of the law, no organization to amend the law in conference. But, since cables are an essential link in communication, and since wire and wireless international unions use this link and therefore draw it into the circles of their unions, and sometimes even recommend legislation, cables have been considered as if they were "unionized".

² Malloy, *Treaties*, vol. ii, 1949; *For. Rel.*, 1884, pp. 286-291; *M. N. R. G.*, 2 ser., vol. ii, p. 281, *U. S. Statutes*, vol. 25:41.

³ Malloy, *Treaties*, vol. ii, p. 1956.

⁴ Malloy, *Treaties*, vol. ii, p. 1958.

mechanics of international trade. Running from the coast of one sovereign state to the coast of another sovereign state, under the control of each sovereign in its own marginal sea, the cable ran also through the international seas. Yet, far out on the ocean, an obscure fisherman who dragged a careless anchor or raised a pregnant net, might interrupt the relations of states to their peril, of business to its loss, of property in its actual existence. The nations in spite of the intricacies of the marine situation were forced sooner or later to come into agreement to administer cable protection. It was later; they took twenty years to work out a convention covering this situation on the high seas. The same convention obtains today, covering a greatly enlarged and complex situation.¹

France, as usual, anticipated the future. The very new republic, as early as 1849, gave permission for the new venture in communication. A control-convention, in the form of a treaty,² was entered into between the French Minister of the Interior and certain English capitalists, establishing the law for the land attachments of the cable. The first submarine cable was laid through the Channel from Dover to Calais in 1851.

The first trans-oceanic cable, owned by a British company, trailed through the Atlantic abyss as early as 1856, but the thread was frail; a second venture, made in 1858, was successful only from August 15 to September 1, but in that brief fortnight it demonstrated its advantages to the nations. The Queen sent the first deep-sea message to the President, "Glory to God in the Highest, on earth peace,

¹ Mr. G. Stanley Shoup in *Hearings* before the Senate Committee on Interstate Commerce, on a bill to provide for a "Commission on Communications," Congress 71:1, pt. ix, 960-97a (hereinafter cited as *Hearings C. on C.*), lists the submarine cables of the world.

² *B. F. S. P.*, vol. lvi, p. 364.

good will to men." It was an evidence of the high value of communications in determining peace.

Not until 1865 did the *Great Eastern* pay out the cable which was to serve at least for a dozen unbroken years.¹ There was "wild cat" cable laying; much private capital was invested. States authorized land attachments; they acted slowly to regulate the new service jointly in the territory of the high seas.

France again led, as an Empire, in seeking international legislation. A concession had been obtained by one Balestrini, May 16, 1864, granting the right to lay a cable connecting the European and South American continents.² The states interested were France, Haiti, Brazil, Portugal, and Italy, a Latin-American venture demonstrating the invisible linking of the commerce and culture of the meridional old and new worlds.

A conference was called at Paris, the international city, in the decade of Napoleonic international sagacity. An attempt was made to extend the horizon; Great Britain and Holland were invited but did not come; Spain and Denmark came but did not sign; Denmark acceded, May 19, 1865.³

A convention resulted which must be considered the preliminary in any study of international jurisdiction of the high seas.⁴ The exclusive concession (Art. 8) was to run ninety-nine years (Art. 7), with subsidies (Art. 13) which were determined in later instruments. The states guaranteed the protection of the cable in peace (Art. 1), its neutralization in war (Art. 2). The guarantee extended only to the

¹ Eugene Webster Sharp, *International News Communications*, University of Missouri Bulletin, vol. 28, no. 3 (Columbia, Mo., 1927).

² Renault, "La Protection des télégraphes sous-marins", *R. D. I.*, vol. xv (1883), pp. 17-43.

³ *Journal Télégraphique*, 1923, p. 75.

⁴ de Clercq, vol. ix, p. 22 *et seq.*

land attachments and through territorial waters; nothing was said as to the situation on the high seas. These signatory nations had no mind to legislate for that area, and apparently did not have in mind that the property of a citizen of one of their jurisdictions might suffer a sea change, and find itself perilously beyond any jurisdiction. The convention was never in vigor, the concession was withdrawn in 1872.¹

Later in the decade the United States attempted to carry on. Many cables had been laid, and it was evident that only the nations acting together could protect in peace time and neutralize in war time. The United States realized the value of such neutralization out of its recent war experience. It suggested, therefore, a draft treaty, providing for general neutralization and general protection of submarine cables.²

But another war disrupted the preliminaries of 1869, as of so many international rapprochements in the very international decade of the 1860's. The conference was not called. There disappeared from the scene the most internationally minded of monarchs—who no doubt had seen the advantage to his country, but also the advantages to the nations. The United States to an extent disappeared from the international arena; post-Civil War, it faced the colossal task of communication over its own continental land area.

Nevertheless, the seas became networks of cables, as private enterprise in European countries and ultimately in the United States, risked the venture for the profit. The aspects of marine telegraphy intrigued the mind of publicists and of scientists as the national telegraphic key started international messages along slender wires in the international

¹ Renault, *op. cit.*, *R. D. I.*, vol. xv, p. 17.

² The treaty is not anywhere conveniently printed. Quotations are from a photostat copy, Department of State. See Moore's *Digest*, vol. iv, p. 475. Also *Journal Télégraphique*, 1923, p. 76; Reinsch, *op. cit.*, p. 63; Poinard, *op. cit.*, p. 321.

oceanic track, and, as casuals of the sea or rival cable layers broke the electric current of communication and came under no jurisdiction. Delay in coming to an agreement is no doubt attributable to the fact that although an increasing number of nationals conducting international business in the 1880's were becoming dependent on international telegraphy and were asking for an international law to protect cables,¹ the states in the 1880's were nationalistic, moved slowly in international affairs, and were suspicious of that neutralization which the United States had advocated in the less nationalistic 1860's.

It was seen that a conference was desirable, but no nation would call it. Governments were reluctant to revive what the United States and France had apparently abandoned. When Italy was host to the international telegraph conference at Rome in 1871, it did not include marine telegraphy on the agenda. It was, however, discussed there informally but insistently by Cyrus Field, American technical expert, never inclined to be a mere observer.² Norway proposed a commission, the conference expressed a hope for neutralization, and the Italian Foreign Minister was requested to communicate that *voeu* to the powers.³

The Institute of International Law, 1879, adopted the discussion as one in which international law was vitally concerned. Resolutions were drafted favoring a convention for the protection of submarine cables: that the destruction or injury of cables on the high seas should be an offense

¹ British companies petitioned the British Foreign Office as did other private companies petition their foreign offices. *Journal Télégraphique*, Jan. 25, 1882, pp. 9-14.

² Cyrus Field represented here not the government of the United States, but the New York-Newfoundland-London Telegraphic Co. Renault, *R. D. I.*, vol. xii, p. 253, n.

³ *For. Rel.*, 1875, p. 1071.

against the law of nations; that the right of seizure should be to the ship of any contracting state; that the right of jurisdiction should be to the national tribunals of the flag of the captured boat. The Institute emphasized in discussion the difficulty of taking the offending boat to the territory of its own jurisdiction. The resolutions included a declaration that a submarine telegraph cable uniting two neutral territories was inviolable, but they went no further toward neutralization.¹

Then in discussing the policing of the North Sea, to which seven contiguous states covenanted in 1881, it was discovered that many of the fourteen cables² threading that lake of the northern nations had been broken, that fishermen were entirely indifferent to property on the high seas if the cable interfered with the fall of their nets. A *voeu* was expressed in favor of international measures to protect the cable.³ The English Board of Trade on receiving the recommendations remarked that the matter would better be taken up with the post-office. In the North Seas conference itself it had been suggested that the question be submitted to the International Telegraph Conference. This is at least evidence of the close corporate interest of communications. The international congress of electricians which met in Paris in September, 1881, expressed a desire and a conviction that the nations should act.

Finally, since individual citizens were losing enormously and continuously in their investments in the deep sea, and since other individual citizens were committing offenses on the high seas which could not be reached, and since the communications of individuals and states through the seas

¹ *Resolutions of the Institute of International Law*, ed. J. B. Scott, Oxford Press, 1916.

² *M. N. R. G.*, 2 ser., vol. ix, p. 526.

³ *Ibid.*, 2 ser., vol. xi, p. 109.

were being constantly interrupted, it became apparent that something must be done. Seven times did the nations meet in conference before they were able to agree on international legislation to protect submarine cables.

The Conferences

The French government summoned thirty-two governments, together with the Bureau of the International Telegraph Union, to a conference of diplomats and technical experts, at Paris, October 16, 1882. It was an international gathering, including land-locked Switzerland, India and China and Japan from Asia, with nine American states besides the United States. There were eight sessions of the conference.¹

There were many sessions of a committee of distinguished legal experts, Dambach, Renault, Trevor, Velasco and Asser, delegates respectively from Germany, France, Great Britain, Mexico, and the Netherlands. The United States was offered a place on this committee, but the American delegates declined the honor. The committee fought out the tangled situation, and thought out the convention.

A draft treaty was drawn up by M. Renault as *rapporteur*, and "every article was adopted unanimously or by a big majority."² But the United States and Great Britain stood for a *projet* alone, and refused to commit their governments further. The draft then was submitted to the home governments, criticized by them, and was redrafted in a second

¹ *Ibid.*, pp. 104-307. The states were Germany, Argentina, Austria-Hungary, Belgium, Brazil, China, Colombia, Costa Rica, Denmark, Santo Domingo, Spain, the United States, France, Great Britain, Greece, Guatemala, India, Italy, Japan, Mexico, Nicaragua, Norway, the Netherlands, Portugal, Rumania, Russia, Salvador, Serbia, Sweden, Switzerland, Turkey, Uruguay.

² *For. Rel.*, 1883, "Report of the American Delegates," pp. 256-258. This includes the draft treaty.

conference. Of the thirty-two states which had conferred in 1882, two were absent in 1883, Switzerland and Guatemala. Persia came newly from Asia. The significance of India's presence in 1882 was doubled by the presence of Canada in 1883; the over-seas substates began in the cable conferences to assert that independence which has matured today.¹

This second conference made few modifications, and re-submitted the draft with the understanding that it should not be amended by the powers on ratification.² A third conference was called, and on March 14, 1884, the states affixed their signatures to the convention. This is the treaty as it stands today. Yet, although ratifications were exchanged April 15, 1885,³ there was postponement of operation of the agreement in order to secure an interpretation of certain articles. A further conference therefore met in Paris in May, 1886, which developed a declaration submitted to the powers and signed in conference.

Not even then did or could the convention go into effect. The contracting parties had engaged to take action if they were autocratic, or to urge action if they were democratic, of measures necessary in order to secure the execution of the Convention (Art. 12); that is, to cause the punishment either by fine or imprisonment or both of such persons as should violate the provisions of Articles 2, 5, and 6. When these laws were enacted, or if laws were already enacted for such purpose, the states agreed to communicate them to the other contracting parties (Art. 13).

Concurrent legislation moves slowly. Not until late in 1886 did Germany, Guatemala, Spain, and Russia pass such

¹ *M. N. R. G., op. cit.*, p. 234. Sir Charles Tupper was the Canadian representative.

² *Ibid.*, p. 215; *For. Rel.*, 1883, p. 287.

³ *M. N. R. G., op. cit.*, p. 288.

laws; as late as July, 1887, the United States, Argentine, Austria, Brazil, and Rumania had failed to enact them. Another conference was held, in July, 1887, to examine the concurrent legislation. The delinquent states explained that there was no material obstacle to the passage of such legislation "at such time as might suit the convenience of the legislative bodies of the several countries."¹

The British delegate, however, "expressed the desire of his government that the convention should not go into operation until all the parties to it had adopted the necessary legislation to give it full effect, and he referred especially to the United States as one of the powers most interested in the question, whose legislation had not yet been consummated." He proposed an adjournment. This "met with very little encouragement," the powers agreed to sign at once, and "with entire unanimity."²

The protocol was to become effective May 1, 1888, provided all the parties to it had enacted the necessary laws to execute it. By that date all the signatories had passed practically identical legislation.³ The Convention for the Protection of Submarine Cables came into effect.

The Convention

The convention consists of twenty-seven articles, and is still operative. It is "applicable outside of the territorial waters to all legally established submarine cables landed in the territories, colonies, or possessions of one or more of the high contracting parties" (Art. 1).

¹ *For. Rel.*, 1887, p. 341.

² *Ibid.*, p. 342.

³ For the legislative acts of Great Britain, France and Italy, see *M. N. R. G.*, 2 ser., vol. xi, p. 290 et seq. For those of the United States, see *infra*, p. 147.

Membership

Membership in this "union" may be secured by adherence to the treaty, notice being given to the French government and communicated by that government to the other signatory powers (Art. 14). No administration is set up in the treaty. There is no provision for conference to reconsider the situation and revise the treaty,¹ although there is provision for withdrawal on the customary notice of one year (Art. 16). There is no permanent bureau or commission to carry out the mandate.

Jurisdiction

The Convention sets forth the correct attitude toward cables, as defined in Article 1, by the ships of all nations, merchant ships, fishing ships, and repair ships (Arts. 5, 6, 7). It defines what are the offenses against which the nations will act. The "breaking or injury" of a cable "done willfully or through culpable negligence" is to be a "punishable offense" (Art. 2), whether it is due to the act of a fisherman or the overzeal of those who mending their own cable shall break or injure another cable (Art. 4). These articles were the subject of the interpretive declaration of the third conference.

It is understood that the imposition of penal responsibility . . . does not apply to cases of breakage or injury occasioned accidentally or necessarily in repairing a cable when all precautions have been taken to avoid such breakings or damages.

It is also understood that Article 4 has no other object and is to have no other effect than to charge the competent tribunals

¹ A conference was held in London, 1913, but the proposed changes in the law were prevented from becoming effective by the war. The states represented were Belgium, Denmark, France, Germany, Great Britain, the Netherlands, Norway, Portugal, Spain, Sweden. See *Command Paper of Great Britain, 7079*.

in each country with determination in conformity with their laws and according to circumstances of the question of civil responsibility of the owner of a cable, who by the laying or repairing of such cable, causes the breaking or injury of another cable.

A common right to police the high seas, to exercise the right of "visit and search" is given to warships and to specially commissioned ships of any of the contracting powers (Art. 10). These ships may demand ship's papers from suspected ships; "they may require the captain or master to exhibit the official documents furnishing evidence of the nationality of the said vessel." A report of such visit is to be drawn up, a *procès verbal* to be "used as evidence" of the violation of the international law; such report is official, is of legal force.

The insertion of Article 10 is an international achievement, for therewith is created a jurisdiction outside the limits of the national states. The offender can be apprehended, his person can be delivered internationally to national custody, his case can be submitted internationally in the national court.

The compromise between international and national jurisdiction is the most marked feature. In the beginning of the long discussion running through twenty-five years, as the nations tried to understand their need and provide for it, they concluded that authority to try offenders in the international area should be given to all nations, and the crime be assimilated to piracy, which was then regarded as an act over which all nations had equal jurisdiction since it was committed where all nations had a common and no nation an exclusive jurisdiction.¹ Granting a common right of "visit and search," seemed to require rounding out in that fashion. The United States, in its draft convention of 1869

¹ *Dana's Wheaton*, 193, n. 83, quoted in *Moore's Digest*, vol. ii, p. 953.

for the protection of submarine cables, was willing to go farther than it had ever proposed to go in joint suppression of the slave trade. Article 5 of the treaty of 1869 ran:

The contracting parties further agree, that wilful destruction of, or injury to, submarine cables or lines in any of the following cases, shall be deemed and taken to be an act of piracy, and that the person or persons convicted thereof may be adjudged to be a pirate or pirates, and may be punished accordingly; and that laws shall be enacted by each of the contracting parties to secure a trial in such case, and a punishment in case of conviction. The cases of wilful destruction and injury, which are to be taken and deemed to be acts of piracy are, 1st, Wilful destruction or injury to any existing line or cable upon the high seas at a distance of more than one marine league from the shore; 2nd, Such wilful destruction or injury within one marine league of the shore to any line or cable hereafter to be laid, under a grant or concession hereafter to be made by either of the contracting parties; 3d, Destruction or injury within one marine league from the shore to any line or cable hereafter to be laid, with the consent of both nations under grants already laid; 4th, Such wilful destruction or injury within one marine league of the shore to any existing line or cable, unless such destruction or injury shall be made in obedience to a lawful mandate of a constituted authority of the country within whose jurisdiction the act is committed.

Field in his *International Code* of 1876, Article 83, continued such interpretation of crime, and advocated such punishment:

Every person who . . . removes, destroys, disturbs, obstructs, or injures any oceanic telegraph cables not his own, or any part thereof . . . is deemed a pirate.

Gradually it was concluded that the punishment as of piracy was excessive for such felony.¹ But still the need

¹ Renault, in *R. D. I., op. cit.*, calls attention to the fact that the French law of 1825 makes punishment of piracy, death or life imprisonment.

of wider jurisdiction than the national jurisdiction of the offender was regarded as necessary because of the evident difficulty of always proceeding in the national court, perhaps far from the area of commission of the crime.

Great Britain in particular was concerned with the idea of national jurisdiction out of which she saw many offenders escaping, and she made strenuous effort to secure a wider latitude.¹ It is of course possible that she urged this on account of her widespread empire, eager that jurisdiction should be large, not a mere European solution. The British delegation suggested this particular drafting:

The tribunals competent to consider infractions of the present convention shall be those of the state nearest to the place where the offense was committed.

That is, not the courts of the country to which belonged the ship accomplishing capture, nor the courts of the ship accused of crime, but the courts of the country nearest to which the crime happened. This suggests old claims of territorial jurisdiction over high seas; it would have meant an extension of national jurisdiction, not an international solution. And in view of the fact that Great Britain proposed to and did exempt the self-governing colonies from her covering signature, and secured an additional article which permitted these to sign the convention as co-signatories—an early expression of the independence of the self-governing dominions—the conclusion may reasonably be reached that “the state nearest” would most often be found to be British territory, and that British jurisdiction over the seven seas would ultimately be wide as that of the seven dominions. In any event, twenty-five of the conferring states would have none of it; only Great Britain and her one associate, India, voted for the version.

¹ *M. N. R. G.*, 2 ser., vol. xi, *passim*; *For. Rel.*, 1883, *passim*.

In the second drafting conference she made another effort to widen the latitude, this time to cover acts in the marginal seas. Great Britain proposed

to adhere conditionally, that is to say, if it [the convention] was supplemented by such international agreements as may sufficiently provide for the case, not governed by the proposed convention, of a person injuring, within territorial waters, any cables within the definition contained in Article 1, and afterwards escaping from the particular jurisdiction to that of another state, a party to the convention.

This point had been discussed academically by Renault in connection with Article 7 of the draft treaty of 1869, which declared damaging acts done in territorial waters punishable in the courts of the territory where committed. This, he commented, would take away any concurrent jurisdiction from the state of the delinquent.¹ Great Britain now asked for special penal laws, or preferably for extradition, which of course in current practice would have to be by bilateral arrangement.

M. Pherekyde, delegate from Rumania, in the first conference proposed a solution "which already prevails in like circumstances when several states have come to an agreement for the preservation of a commercial route; they reciprocally grant executory force to judgments rendered by each other to infractions of rules made in common." M. Pherekyde cited the Convention of Mannheim, 1831, relating to Rhine navigation, Article 85, and suggested that the judgments of the tribunals for the protection of submarine cables in each of the member states

shall be executory in relation to pecuniary penalties in all other states, on observing the forms prescribed by the law of the

¹ Renault, *op. cit.*, *R. D. I.*, vol. xv, p. 18.

country where they are to be executed. The judgments and other court orders, the summons for and orders of postponement of cases pending before a tribunal, shall be considered as regards to notice to parties in each state as emanating from the authorities of that state.¹

M. Orban, delegate from Belgium—which, it may be remarked, was nearer the territory covered by the Convention of Mannheim—criticized the plan, saying that such infringement of sovereignty being accepted in this matter, it would have to be accepted in other matters.

M. Pherekyde's suggestion was sent to the committee for study. M. Renault, in commenting on it, declared that

it touches a problem very delicate and very important in international relations: how can a judgment rendered in one country be carried out in another country, since it is a point regulated by national legislation, or by treaties as yet very few.

He cautioned that if the suggestion were included in the proposed convention, some countries would not adhere.

Much later the member states were urged, in five resolutions passed by the Conference of London on Submarine Cables, 1913, that each government should definitely designate in each of its ports a competent authority who should receive the declarations provided for in the convention (Art. 7), and also designate definitely a central juridical authority to which appeal should lie.² Twelve years later, the International Telegraph Conference at Paris, 1925, recalled these resolutions and endorsed them, although there was criticism that the resolutions were not applicable to post-war conditions.³ Something still remains to be done.

¹ *M. N. R. G.*, 2 ser., vol. xi, p. 143.

² *Journal Télégraphique*, 1914, p. 80.

³ *Ibid.*, p. 222. The Resolutions are printed in the *Service Regulation of the International Telegraph Convention*, 1925, pp. 138-139.

An International Bureau

There is no permanent organ charged by the member states with watching over the operations of the convention. A bureau was suggested when the five Latin nations made the first treaty concerning submarine cables in 1864,¹ but no such organ was considered in the conferences which developed the treaty of 1884. A commission was set up in 1909 by the Lisbon Telegraph Conference, in order to promote amity between the cable companies and the fishing industry but that commission was not permanent.² It may be noted, however, that the International Telegraph Bureau at Berne, which is also charged with the information service and whatever of supervisory service is connected with the International Radio Telegraph Union, does not neglect the oceanic cable, in its reports, in its suggestions, and in the pages of the official Journal.³

War and Peace

The Submarine Cable Convention and Protocol are among the twenty-six treaties "of an economic or technical nature" which are listed as revised in the peace treaties.⁴ The Treaty of Versailles further provides (Pt. VIII, Annex VII) that Germany "renounces on her own behalf and on behalf of her nationals in favor of the Principal Allied and

¹ *Journal Télégraphique*, 1923, p. 76.

² That such a permanent commission would be useful may be derived from the complaints of the telegraph companies presented to the Paris conference on telegraphy in 1925, where the companies complained of the damage done to cables by fishing operations, the Western Union declaring that in 1919 it had experienced 28 interruptions on seven of its principal cable lines, with a loss of 559 days, amounting to £143,000. *Journal Télégraphique*, 1925, p. 272.

³ See, *inter alia*, *Journal Télégraphique*, 1906, p. 279; 1914, p. 280; 1923, pp. 75, 94.

⁴ See *supra*, p. 51, n. 2.

Associated Powers, all rights, titles, and privileges of whatever nature " in existing submarine cables.¹

CONFERENCES

| | |
|------------------|-----------------------|
| Paris | 1864 |
| Washington | 1869 (proposed) |
| Paris | 1882 |
| Paris | 1883 |
| Paris | 1884 |
| Paris | 1885 |
| Paris | 1886—May and December |
| Paris | 1887 |
| London | 1913 |

THE AMERICAN ATTITUDE ²*History*

The United States entered into submarine telegraphic correspondence with the European members of the family of nations just before the days of the Civil War. But the communication was neither certain nor constant. If Minister Charles Francis Adams had had cable connection with Secretary William F. Seward, certain phases of Civil War diplomacy would have been vitally affected.

Realizing more acutely than could the other nations the

¹ See *infra*, p. 164, for the American attitude.

² *Convention:*

Signed March 14, 1884.
Senate consents, June 12, 1884.
President ratifies, January 26, 1885.
Proclamation, May 22, 1885.
Effective July 7, 1888.

Declaration:

Signed December 1, 1886.
Senate consents, February 20, 1888.
President ratifies, March 1, 1888.
Proclamation, May 1, 1888.

value of correspondence unbroken by the hazards of war, more interested in international telegraphing because of its isolation than was even Great Britain with her far-flung dominions, the United States sought international agreement.

Secretary Fish circularized twenty-three governments, stating that the President thought the moment favorable for the negotiation of a joint convention of the maritime powers for the protection of submarine cables. Even sixty years ago the Secretary of State ventured to state that its "central position in the communication of the world entitled the United States to initiate this movement for the common benefit of the commerce and civilization of all."¹ It was expected that the representatives in Washington of these governments would be empowered to conclude the convention. A draft treaty, *très comprehensif*, says Renault,² was enclosed. While a joint treaty is referred to in the Fish dispatch,³ the actual wording of the proposed convention indicates rather a series of identic bilateral agreements.⁴

The draft, of nine articles, expressed the desire "to increase the means of telegraphic communication," and "to prevent the wilful injury to cables in parts beyond the jurisdiction of national authorities, and also to better protect the same in parts within such jurisdiction." It provided for protection "in time of peace and war," against "wilful or wanton destruction or injury," and declared that "such acts shall be deemed acts of piracy and punished as such." Damage on the high seas was to be punished in the territory of any contracting party, damage in territorial waters to be

¹ Mr. Fish to Mr. Motley, Nov. 23, 1869, Moore, *Digest*, vol. ii, pp. 475-476.

² Renault, *op. cit.*, *R. D. I.*, vol. xv, p. 18.

³ Moore, *op. cit.*

⁴ Photostat copy, Department of State.

punished in the country where committed (Art. 7). Dispatches were not to be examined by employees or agents of the states through which they passed, or under whose eyes they might come (Art. 3).

The convention prohibited monopolies: "No exclusive concession or grant of a monopoly for a submarine cable shall hereafter be made or renewed by either of the high contracting parties without the consent of the other party with whose territories such concession or grant contemplates a connection" (Art. 1). This is an anticipation of President Grant's crystallization of the American policy.

It was on the whole a convention of stern provisions, of stiff professions. It may be hazarded that the United States would not today accept all of these propositions.

After the Franco-Prussian War, the United States did not urge further international conference. If it had remained in the field it might have prevented that "world monopoly" of the cable situation¹ by Great Britain which began to develop during that war. The government of the United States was, however, still concerned with communications with Europe, for itself and for the expanding business of its people. The single cable between the United States and Great Britain was a British monopoly, its rates exorbitant.² Negotiations which had been opened between the United States and France uncovered the fact that the concession granted by the French government to the French cable company constituted a monopoly in that it prohibited any American company from a corresponding right to land cables in France.³ President Grant refused to accept this unequal situation, and declared, "I shall endeavor to secure by nego-

¹ See *infra*, pp. 150-151.

² *For. Rel.*, 1875, pp. xiii, xv.

³ *Messages and Documents*, 1868-1869, p. 10.

tiations an abandonment of the principle of monopolies in ocean telegraphic cables."¹

Under such circumstances the President enunciated the American policy: the granting of concessions was claimed as an executive right until Congress should pass legislation; the granting of concessions would be withheld whenever monopolistic features were present. Since it embodies the continuing American policy, the Message of President Grant is worth quoting at length:

In the absence of legislation by Congress I was unwilling, on the one hand, to yield to a foreign state the right to say that its grantees might land on our shores while it denied a similar right to our people to land on its shores; and, on the other hand, I was reluctant to deny to the great interests of the world and of civilization the facilities of such communication as were proposed. I therefore withheld any resistance to the landing of the cable on condition that the offensive monopoly feature of the concession be abandoned, and that the right of any cable which may be established by authority of this Government to land on French territory and to connect with French land lines, and enjoy all the necessary facilities or privileges incident to the use thereof upon as favorable terms as any other company, be conceded. As the result thereof the company in question renounced the exclusive privilege, and the representative of France was informed that, understanding this relinquishment to be construed as granting the entire reciprocity and equal facilities which had been demanded, the opposition to the landing of the cable was withdrawn. . . .

As these cable-telegraph lines connect separate States, there are questions as to their organization and control which probably can be best, if not solely settled by conventions between the respective States. In absence, however, of international conventions on the subject, municipal legislation may secure many points which appear to me important, if not indispensable,

¹ Richardson, *Messages*, VII, 36.

for the protection of the public against the extortions which may result from a monopoly of the right of operating cable telegrams, or from a combination between several lines:

I. No line should be allowed to land on the shores of the United States under the concession from another power which does not admit the right of any other line or lines, formed in the United States, to land and freely connect with and operate through its land lines.

II. No line should be allowed to land on the shores of the United States which is not by treaty stipulation with the Government from whose shores it proceeds, or by prohibition in its charter or otherwise to the satisfaction of this Government, prohibited from consolidating or amalgamating with any other cable-telegraph line, or combining therewith for the purposes of regulating and maintaining the cost of telegraphing. . . .

I present this subject to the earnest consideration of Congress. In the meantime, and unless Congress otherwise direct, I shall not oppose the landing of any telegraphic cable which complies with and assents to the points above enumerated, but will feel it my duty to prevent the landing of any which does not conform to the first and second points as stated, and which will not stipulate to concede to this Government the precedence in the transmission of its official messages, and will not enter into a satisfactory arrangement with regard to its charges.¹

The French government modified its contract with the French company.² The President granted the landing license. The cable was laid. But while one object of the American policy had been to break the monopoly held by the British, still cable companies were absorbed, cable wires were broken, cable rates went up, cable wars went on.³ There was no security for the actual wire, and no certainty of reasonable rates.

¹ *For. Rel.*, 1875, pp. xiv-xvi.

² *Hearings, C. on C.*, p. 352.

³ *For. Rel.*, 1876, p. 174.

Secretary Fish was concerned. But since offenses committed beyond the jurisdiction of the United States "could not be punished by our laws as now existing," he recommended a general convention, for "it does not seem practical for a single country to assume to protect telegraph cables under the high seas."¹ In 1882, the international Cable Conference was called for Oct. 16, in Paris.

The United States received its invitation on Oct. 6. It did not, as it has since done, refuse the invitation on so short a notice; the need was too great. "In view of the importance of the subject,"² President Arthur cabled Minister Levi P. Morton at Paris to represent the government at the conference, "believing that it is clearly the true policy of this government to favor the neutralization of this means of intercourse."³

The conference met at Paris within ten days after the United States received its invitation. The United States was offered a place on the small expert committee appointed to do the work of the convention, the committee to be composed of delegates from the United States, Great Britain, France, Germany, and Holland. But, because his instructions were not covering,—although the very cable for which protection was sought could have carried complete data as to the wishes and the powers of the United States, and the Department of State had authorized the American delegates to "feel at liberty to ask for special instructions if you deem it necessary during the progress of the negotiations,"⁴—and because he was not an expert, Mr. Morton decided not to serve.

As Mr. Vignaud, secretary of the legation, and associated

¹ *For. Rel.*, 1876, p. 176.

² *Ibid.*, 1883, p. 253.

³ *Ibid.*, 1882, p. iv.

⁴ *Ibid.*, 1883, p. 253.

with Mr. Morton, explained to the conference at the fourth sitting, in announcing that the United States declined the place, it was

not from indifference to your work nor to escape the serious work entailed by membership in the Commission. . . . Less fortunate than a number of our eminent colleagues, we have no scientific knowledge of the technical questions posed before you, and we are without special instruction upon the question of international law you are about to discuss. Our presence would be only an embarrassment to the competent members who compose the commission, since we should bring neither light nor direction. We are of course confident that if we address a suggestion to the Commission, it will be well received. But if we abstain we are not uninterested. We shall follow attentively and sympathetically the progress of your work. As you, we desire to see the goal reached, in as short a time as possible. We will give our fullest cooperation.¹

The United States thereby lost the opportunity to cooperate in the codification of this important subject of international law. Mexico was substituted on the commission.²

Apparently the United States and Great Britain were on terms of intimate understanding at this conference; they worked together. Secretary Frelinghuysen wrote to Mr. Morton, "It is desirable that you and the British delegate should compare your texts so that they may be identical."³ They stood for a draft convention, and at the seventh sitting insisted on reserving the right of their governments to propose amendments, a right that "could not be questioned."

¹ *M. N. R. G.*, 2 ser., vol. xi, p. 135. Translated from the French.

² *Ibid.*, p. 127. There is no evidence that Mexico was substituted for the United States in order to secure representation for the Americas, although the interest of South America is evident. The delegates of the United States were absent when the committee was appointed.

³ *For. Rel.*, 1883, p. 265.

Both were conscious that the governments at home had no settled convictions of favor toward their labors. Mr. Morton reporting to Secretary Frelinghuysen remarked:

You will notice the guarded language of the protocol. We do not make a convention, we only make a project of a convention. We do not pledge our governments.¹

The *projet* was submitted to the home offices. Within a year seventeen governments had agreed to a diplomatic conference for converting the draft into a convention, and still other governments were reported as being favorable. Thereupon the French government notified the United States that the powers would meet October 15, 1883, for this purpose. The Secretary of State authorized the American Minister in Paris to meet "to conclude the proposed treaty." To a hint from the French Minister at Washington that it was hoped the United States and others would not delay the treaty by modifications, Secretary Frelinghuysen replied:

I have to inform you that the Government has no desire to hamper the conclusion of the treaty by any suggestions or amendments, but is prepared to sign it on the day fixed.²

The United States signed the treaty in 1884, the Senate gave its consent the same year "unanimously in the affirmative."³ But four years were to pass before the convention became operative. American private companies objected, as did British, to Articles 2 and 4,⁴ and brought about the conference of May, 1886, where the interpretive Declaration on these articles was fashioned. The American Minister

¹ *For. Rel.*, 1883, p. 254.

² *Ibid.*, p. 305.

³ *Congressional Record*, Senate, vol. 15, pt. 5, June 12, 1884. *Ser. Ex. Jnl.*, June 12, 1884, p. 286.

⁴ *For. Rel.*, 1887, p. 291.

in Paris was notified that the declaration was "satisfactory to the two American companies," and he was authorized to sign "subject to the Senate's approval."¹ When the French Foreign Office suggested that it might not be necessary to secure senatorial approval of this amendatory declaration, Secretary Bayard asked Minister McLane to explain that a treaty in the United States had to be "viewed in the light of politics and in the light of juridical law," and he reviewed the American constitutional practice at great length, concluding that the State Department would have to await decision by the Senate.²

The Senate delayed action on the declaration, and further delayed the operation of the treaty by failing to pass a bill for carrying the convention into effect, which the House had passed on February 8, 1887. In the meantime the French Foreign Office, faithful to its position as guardian of the Convention for the Protection of Submarine Cables, criticized the American bill as including in *Section 8* a limitation of the scope of the treaty that had already been provided for in the additional declaration.³ A new bill, omitting *Section 8*, was introduced into the new session, passed by both Houses, and approved February 29, 1888.

The Act provides:

Section 21. Any person who shall willfully and wrongfully break or injure or attempt to break or injure, or who shall in any manner procure, counsel, aid, abet, or be accessory to such breaking or injury, or attempt to break or injure, a submarine cable, in such manner as to interrupt or embarrass, in whole or in part, telegraphic communication, shall be guilty of a misdemeanor, and, on conviction thereof, shall be liable to imprison-

¹ *For. Rel.*, 1887, p. 273.

² *Ibid.*, pp. 275-276.

³ *Ibid.*, p. 363.

ment for a term not exceeding two years, or to a fine not exceeding five thousand dollars, or to both fine and imprisonment, at the discretion of the court.

Section 22 provides penalty for those who break or injure a cable by "culpable negligence".

Section 23 exempts from penalty those who break or injure a cable in an effort to save "life or limb" or "a vessel", provided "reasonable precautions" have been taken to prevent such break or injury.

Section 24 provides fines for negligent master of repairing or fishing vessels.

Section 26 permits "ships of war of the United States or of foreign states", or ships specially commissioned, to perform the duties envisaged in the Convention, such as visit and search, and compelling the production of ship's papers.

Section 27 provides that "any person having the custody of the papers necessary for the preparation of the statements" provided for in Article 10 of the Convention, "who shall refuse to exhibit them, or shall violently resist", shall be guilty of a misdemeanor and fine or imprisonment or both, accordingly.

Section 28 gives jurisdiction to the District Courts, providing that "the ship must be a vessel of the United States", with appeal as in other cases.¹

Private Companies

The Government of the United States has never experimented in public ownership of cables, as it did in ownership of the telegraph. It did consider such ownership in the Pacific when it appeared that private capital was reluctant to run the risks of that wide expanse. It has been compelled because of the situation to own and administer coastal cables in the Philippines and Alaska. It has not subsidized cable companies, but it has been zealous for the advancement of the interests of American private companies, and

¹ Act of February 29, 1888, c. 17, 25 Stat. 41.

for the protection by international law of such submarine telegraphy.

American capital, when cables became commercially important both as a business and an aid to business, was engrossed in the economic development of the American continent as empire took its remarkable way westward. The submarine cable, requiring huge investments, had to compete with the winning of the West by means of railroads and other tangible objectives. Therefore, foreign private companies, British and French, provided the first ocean telegraph between the United States and Europe.

However, the year before the first Atlantic cable was laid, on March 3, 1857,¹ Congress passed "an Act to expedite telegraph communication for the uses of the government in its foreign intercourse," authorizing the Secretary of State under the direction of the President, to enter into contract with competent persons to furnish not exceeding two ships in laying cables to connect existing telegraph lines between the coasts of Newfoundland and Ireland, providing for complete equality of status of Americans and British citizens in cable-laying. Further acts covering the concession were passed in 1865, to further the schemes of the Collins Company; in 1866, in order to develop relation with the Caribbean region; in 1867, for a cable to Europe by way of the Azores, with others in 1876 and 1877. Generally these were speculative, although they did lay foundations for future development.

Not until men of such large imagination and daring as Jay Gould and his associates, having won riches in land adventures, and having merged telegraph land lines, became willing to risk capital in deep-sea affairs, did an American-owned cable actually span the Atlantic by way of the Azores.

¹ This and the subsequent Licenses for Landing and Acts of Congress up to 1920 may be found in *Hearings, C. on C.*, pt. 8, pp. 345-686.

"A few hours after the opening of the service the cable of the American company snapped."¹ Such were the hazards, sometimes rivals being suspected. But in spite of such ill fortune, in 1883 John W. Mackay and James Gordon Bennett, projecting the Postal Telegraph Company into the deep sea as the Commercial Cable Company, laid the second American cable between Europe and the United States, with Nova Scotia and Ireland as the intermediate points.

Eventually the "telegraph plateau" of the North Atlantic became a network of submarine cables, twenty-two connecting North America and Europe, with the Azores and Newfoundland as "ports of call" in order to break the long stretch. These cables are generally privately owned, British, French, American, with American telegraph companies owning several² and leasing others, with liberal permission from the British government to lease land wires and maintain offices in British cities, with less liberal provisions in France.³

Whether the Atlantic situation approximates a "virtual" British or American monopoly depends on the point of view. The question came up at the Peace Conference. In the Council of Ten, May 1, 1919, Lord Balfour declared that the British cable owners had been "forced to give them (cables) up by 'freeze out,' by discrimination in land rates on the part of the American telegraph companies."⁴ In a letter to President Wilson, Mr. Rogers, technical adviser on communications, declared "the American cable companies

¹ Schreiner, *op. cit.*, p. 98.

² The *New York Times*, Nov. 20, 1929, reporting the break in North Atlantic cables by earthquake, stated that the Western Union operates ten, the Commercial Cables Company seven, the French company four, and the Imperial Cable Company one.

³ Sharp, *op. cit.*

⁴ Baker, *op. cit.*, vol. ii, p. 468.

could not live a day except for the arrangement with the British government telegraph system for the interchange of business."¹ Each statement is relatively right, and perhaps only an examination of the books could determine whether ownership is American or British.

Although as early as 1866 the United States provided for the future of cable relations with South America, by granting a concession to James A. Scrymser of the International Telegraph Company, a British company was able to oust the American company,² and British cables connected the world with the east coast of this continent, having monopolistic rights in Brazil, granted in 1873 for sixty years. Later the American company went into the Caribbean region, and profiting by the British lesson, obtained in 1878 an exclusive concession for fifty years from Mexico; in 1879 it organized itself as the Central and South American Cable Company, went down the west coast to Valparaiso in 1890, reaching the Argentine by crossing the Andes on acquiring the Trans-Andine Telegraph Company, and thence north into Brazil, where it could land in places not already occupied by the British monopoly.³

Here the contest went on. As Mr. Elihu Root, Jr., said, in the *Hearings* on the Cable Landing License Bill, "The British Foreign Office has actively assisted the British line, and the American State Department has actively assisted the American line,"⁴ with South American states generally favoring monopolies.⁵ In 1917 came "the culmination of

¹ Baker, *op. cit.*, vol. II, p. 469.

² *Hearings*, C. L. L., p. 52.

³ *Ibid.*, Addenda, pp. 361.

⁴ *Ibid.*, p. 53.

⁵ Tribolet, *International Aspects of Electrical Communications in the Pacific Area* (Baltimore, 1929), p. 149.

forty-eight years of untiring labor by Mr. Scrymser, ably supported by the American secretaries of state, from Mr. Seward to Mr. Lansing;"¹ the Brazilian Supreme Court declared the Brazilian monopoly broken,² and the All America Cable Company, successor to the International Oceanic Telegraph Company, gained the right to encircle the continent. Since the passing of the Cable Landing License Act, 1921, monopolies have been terminated also in Argentina, Uruguay, Colombia, Ecuador, Peru, Haiti, Santo Domingo, Venezuela.³

The "virtual" cable monopoly on the part of American companies in the North Atlantic, the "virtual" cable monopoly by the All America Company in the western hemisphere, is countered by the situation in the eastern hemisphere, where there is "virtual" monopolistic control by British companies. Land wires stretching across Asia, cheaper to install, if sometimes difficult to maintain, together with coastal cables, have covered the Far East situation, British and Danish concessions dating back to the 1870's, and running to 1931, with America eliminated.⁴

Cables crossing the Pacific were of much later laying, because of the greater depth, the greater width, therefore the greater expense. The first scheme for linking North America with Europe before the Atlantic was spanned, contemplated a short cable of perhaps fifty miles across the Bering Straits, the major part of the route being telegraphic. The success of the Atlantic cable ended this scheme. While it is still possible in theory, the threat of fog and winter storm so far

¹ *A Half Century of Cable Service to the Three Americas*, published by the All America Cables (New York, 1928).

² *Hearings, C. L. L.*, pp. 55-56.

³ *Hearings, C. on C.*, pt. 8, p. 336.

⁴ MacMurray, *Treaties and Agreements with or concerning China, 1894-1919*, p. 67.

has prevented its realization. Hence the effort to span the Pacific.

In 1873, Congress authorized the Secretary of the Navy to map the floor of the Pacific. In 1880, President Hayes, anxious for understanding between the United States and China, recommended the cable as a medium:

It may be that such an enterprise, useful, and in the end profitable as it would prove to private investment, may need to be accelerated by prudent legislation by Congress in its aid, and I submit the matter to your careful consideration.¹

Such "acceleration" did not take place, and not until the final years of the century when the United States was making and unmaking its mind as to annexation of the Hawaiian Islands, was a bill brought before Congress providing for a Pacific cable to the Islands, and to China. Not until Hawaii and the Philippines were acquired, did the subject win attention.

The British discussed a Pacific cable in the Colonial and Imperial Conferences; in 1900 such cable was authorized, in 1902 it was laid. It was operated by the Pacific Cable Board, an "All Red" cable, touching no lands but British. In order to accomplish this, one span, running from Vancouver to Fanning Island, is 3,454 miles in length; to break such a span would have necessitated a landing in American Hawaii.²

To counter these discussions and this achievement, President McKinley and President Roosevelt both advocated Pacific cables, either government-owned or by contract with private companies.³ Two American companies were there-

¹ *For. Rel.*, 1880-1881, p. 15.

² Tribolet, *op. cit.*, pp. 161-165. The Pacific Cable Board was composed of British, Canadian, Australian, and New Zealand representation. *Hearings, C. on C.*, Pt. 9, p. 932.

³ *For. Rel.*, 1900, p. xxxv; 1901, pp. xxxiv-v; 1902, pp. xxxii-iii.

upon formed, the Pacific Cable Company of New York, the Pacific Cable Company of New Jersey; they fought for favor, various bills were introduced into Congress. The Department of State then advised the organization of the Commercial Cable Company (a Mackay concern), and in 1902, the year the British cable was laid, this company offered to lay the cable without government aid. It had made arrangements with the British and Danish companies already in the Far East field, and in fact its stock was one-half British, one-quarter American.¹ The cable was opened in 1904.²

Cable Landings Licenses

Cable companies, foreign or American, can make a landing in the territory of the United States only on permission from the President.³ This has been the practice of the American government since 1875. It has been the law only since 1921.

In the absence of congressional action, President Grant had regarded such permission as "an executive function." An Under Secretary of State was to say, a half-century later, "It is something which should be controlled by the department which is charged with the conduct of our foreign relations."⁴

The French company, whose attempted landing concerned President Grant, had laid its cable from France to St. Pierre, had bought land on Cape Cod, and had its cable-laying steamer waiting to lay the wire to the United States, and

¹ *Hearings, C. L. L.*, p. 269; *Hearings, C. on C.*, pt. 8, p. 579.

² The cable situation in the Pacific is not satisfactory but radio is being used as supplementary.

³ The British Board of Trade acts for Great Britain. Mr. Carlton, in *Hearings, C. L. L.*, p. 99.

⁴ Norman H. Davis in *Hearings, C. L. L.*, p. 36.

attach the end to the landing apparatus on its privately-owned property.¹

Secretary Evarts declared to the French company that "the authority of the executive government to admit the laying of transmarine cables . . . is exercised only in the absence of legislation of Congress regulating the subject . . . and subject to such future action as Congress may take on the general subject."

Secretary Frelinghuysen continued the policy. "While there is no special statute authorizing the Executive to grant permission to land a cable on the coast of the United States, neither is there any statute prohibiting such action."

The Attorney General in 1898 upheld this executive action.

Congress acted, after a half-century, and after a dramatic episode in ocean telegraph history.²

The Western Union had been asked by a member of President Wilson's cabinet, to consider the South American situation, Secretary McAdoo had sent for Mr. Newcomb Carlton, and remarking on "the paucity of cable connections with South America," had said, "We want you to extend your system to South America."

The Western Union proceeded to investigate the situation. Barred from the west coast, since "All America" had occupied the field with monopolies, barred from the east coast because of the British monopolies, the Western Union in order to carry out the wishes of the administration, planned a cable from Miami Beach to Barbados, there to connect with the British Barbados-Brazil cable, that is, with a monopoly. "Of course there was no cable business to Barbados that amounted to anything."³

¹ *Hearings, C. on C., passim.*

² *Hearings, C. L. L., passim*; also *Hearings, C. on C., passim.*

³ Mr. Vallance in *Hearings, C. L. L., pt. 8, p. 859.*

The President did not back up the advice of his Secretary; he refused the landing license for Miami, maintaining the principle expressed in President Grant's Message of 1875. The Western Union challenged the right of the President to control the granting of licenses. It had its cable manufactured and on board ship. Since a cable should seek the sea water as soon as possible, the cable was attached at Barbados, the cable-laying ship then steaming toward Miami, trailing the wire. It would attach the Miami end to a buoy at the three-mile limit, and await the processes of executive action; the landing end, the apparatus, was not on board the *Colonia*.

The cable was not landed. The license was not granted. Instead there was met the opposition of the United States government, of the Secretary of the Navy, expressed in the presence of an American cruiser and of American marines.¹ The Western Union brought suit against the Secretary of the Navy, but later withdrew it. The case caused the enactment of a Cable Landing License Bill—a half-century after Presidents had begun the practice.

The bill provides that the landing and operating of cables connecting the United States with foreign countries cannot proceed "unless a written license to land and operate such cable has been issued by the President of the United States." The President is also empowered to revoke such license, and to prevent any attempt to land a cable without such license. Furthermore, in carrying out the American policy of opposition to monopoly through vested rights, it is provided that no right shall accrue to any government, person, or corporation under the terms of this Act that may not be rescinded, changed, modified, or amended by Congress. [The American company must not be] "associated and shall not associate with any foreign company or concern which enjoys . . . any con-

¹ Hyde, *International Law*, vol. ii, p. 375, n. 5.

cession, or which is a party to any contract, understanding, or working arrangement, by reason of which any American company is denied privileges or rights similar to those enjoyed by the foreign company or concern affecting traffic between the United States" [and the other country].³

Neutralization

The convention for the protection of submarine cables is applicable only in peace times; it does not protect in war times; it leaves at hazard the commerce and communications of neutrals. It definitely permits "liberty of action of belligerents" (Art. 15). The effort to assimilate war-time and peace-time security for cables is as difficult as for other private property on the high seas.

Neutralization of cables was written into the Latin-American treaty of 1864, made during a war that seriously affected the commerce and communication of European and American states; such positive provision for neutralization may be considered the result of war experience.

The contracting states agree not to cut or destroy in war the cable [therein protected] and to recognize the neutrality of the telegraph line. Art. 2.

It will be remembered that Great Britain and the Netherlands, both of which had scattered dominions between which cable service was of prime importance, refused to confer over that convention, and that Denmark, a carrying country with at that time a developing interest in cables, did not accede until later.

Neutralization was deemed by the United States the most important provision in its *avant projet* of 1869, developed also out of war experience and prevented also by war from becoming a convention. The draft ran simply (Art. 6):

³ Kellogg Cable Landing License Act, May 27, 1921, c. 12, 42 Stat. 8.

In case of war the provisions of the convention shall remain in force.¹

Such neutralization was advocated for a decade thereafter. In the Telegraph Conference at Rome, 1871, Cyrus Field produced a letter from Samuel Morse expressing "the hope that in war as in peace the telegraph in the air and in the sea should be considered as a thing sacred, protected by universal agreement against all attack and damage." Field himself in an extended address recognized the necessities of war, but suggested free passage of dispatches "containing nothing which belligerents could object to," the cable to be placed under an international commission.²

When the international telegraph conference met at St. Petersburg, 1875, the member states reserved the right of stopping any message in transmission which appeared dangerous to the safety of the state, and the right of suspending the international service for an indefinite time, subject only to the obligation to notify the other member states (Arts. 7, 8). These two articles crystallized the international policy which for ten years had been veering from neutralization to liberty of action.³

It became apparent, out of the more sober aftermath of post-Civil War thinking, that cables were of supreme importance to belligerents, and to leave them untouched, to declare them untouchable, would nullify an important element in a

¹ Photostat copy, Department of State.

² Renault, *R. D. I.*, vol. xii, *op. cit.*, pp. 253, 269.

³ There was a temporary revival of the idea of neutralization in regard to cables in the Far East, during the time of Secretary Blaine; suggestions can be found in *For. Rel.*, 1881, p. 295; 1882, p. 115; 1883, p. 142, etc. The United States was particularly anxious to block the Danish Great Northern from its monopoly of cable rights in China. It is interesting to note that China at that time expressed a preference for isolation, by remarking that "if the cable is cut at sea, it will be no great damage to China." *For. Rel.*, 1881, p. 294.

blockade, that of breaking correspondence with the outside world. Neutralization was deliberately omitted from the draft convention which France submitted to the powers in 1882; there was full consciousness of the renouncement of that principle. Neutralization meant internationalization; the nations were too individualistic for that; it was well understood that certain governments would absent themselves if there was prospect of any such provision being entered in the treaty. Therefore, when the invitations to the conference of 1882 were issued by the French government, the United States was particularly reassured that "in the opinion of the French government deliberations should be restricted to the protection of the cables in the time of peace."¹

The United States did not, in 1882, speak in the same voice that she had used in 1869. Great Britain also would have none of neutralization, this being her consistent attitude. Her far-flung dominions would never be safe if they should remain linked to possible enemy countries in war time. The British delegates at Paris obtained assent to the printing in the Journal of a Declaration to the effect that the convention would apply only during peace.

In order to avoid all possible misunderstanding, I think it would be useful to declare formally, before reading the project of the convention, that this convention for the protection of submarine cables which we are going to submit to our representative governments, will be applicable only during peace.²

In the interim of the two main conferences, when the convention was being discussed in the thirty-two conferring states, there developed the general opinion that a war between two states would terminate the convention for all the

¹ *For. Rel.*, 1883, p. 295.

² *Ibid.*, p. 237.

signatories.¹ The United States did not so understand it. Neither did Great Britain. When the conference met in the second session of 1883 for revision, these two joined to secure the adoption of their viewpoint. Great Britain proposed that the powers who had signed the convention in peace time could withdraw in war time. The Article ran:

The High Contracting parties agree that the present convention will not be obligatory on any power in case of war provided that that power should give due notice to the other powers of its suspension during the war. The convention shall remain in force between these other powers unless terminated as provided in Article 15.²

The conference approved. All but one. The German delegate could not be persuaded to accept it. The American delegate reported that he, the German, declared:

We had been convened to make a convention for time of peace and that he would not consent to any article having in view a possible state of war. If we insisted, he said, upon such an article being introduced in the convention, he could neither sign it nor recommend it to his government. He entrenched himself in that position. . . . The refined scholars of the French delegation tried to turn the difficulty by shaping the proposition differently, but he resisted the temptation of their adroit language. The sense of the conference was taken and was found to be overwhelmingly against him, but he was not moved. Finally as he would not yield to us we had to yield to him.

The British delegate withdrew his proposition; he announced that his government would bring it directly before the other government.³ Then, the British won their point

¹ *For. Rel.*, 1883, p. 287.

² *M. N. R. G.*, 2 ser., vol. xi, p. 271.

³ *For. Rel.*, 1883, p. 287; *M. N. R. G.*, 2 ser., vol. xi, p. 267.

through diplomatic notes exchanged in the following year. The convention as it was submitted to the final conference of 1884 carried a new Article 15:

It is understood that the stipulations of this convention shall in no wise affect the liberty of action of belligerents.

Lord Lyons entered a declaration, that these stipulations meant "that in time of war a belligerent who is signatory to the convention will be free to act with respect to submarine cable as if the convention did not exist;" which declaration was repeated by the Belgians.¹

The advantages are evident. A swift auxiliary cruiser cannot so quickly affect the outcome of a possible hostile situation as can a cablegram. A swift transport cannot so quickly add to the war resources as a cablegram transferring credit. A bridge across a river is not so useful as this bridge between territories or between continents. The cable cannot be visited and searched for contraband, as can a mail steamer. But, it can be cut whenever the interruption of sea communication becomes a war need.²

During the Spanish-American war, the only war the United States has carried on with an outside enemy where the cable situation was important, the American government revived its traditional policy and declared the cable neutral; an order was issued in April prohibiting cable cutting. But the prohibition was revoked almost as soon as made.³ By the end of the war, that is by July, Cuba was *incommunicado*

¹ *For. Rel.*, 1883, p. 287; *M. N. R. G.*, 2 ser., vol. xi, p. 267.

² George Grafton Wilson, "Submarine Telegraph Cables in their International Relations," *Naval War College*, 1901, pp. 28-30. See also Phillipson, *Two Studies in International Law* (London, 1908), p. 90; A. Pearce Higgins, "Submarine Cables and International Law," *E. Y. I. L.*, 1921-1922, p. 27.

³ *Moore Digest*, vol. vii, p. 369. The Havana-Key West cable was excepted, but messages over it were severely censored.

to the outside world. The Philippines were similarly isolated after Commodore Dewey's suggestion that the United States and Spain should both use the cable was rejected by the Spanish Captain General. These cables were owned by neutrals and many of them were connected with neutral territory. But the Hague convention was not yet formulated, and the United States enjoyed an advantage in thus separating Spain from her colonies—even the advantage of fighting the battle of Manila, August 13, after the preliminary peace protocol was signed, August 12.¹ The United States refused to pay compensation.

The Peace Conferences at The Hague formulated laws of control, and in the regulations annexed to the Convention (1907) respecting the laws and customs of war on land—not, be it noted, as sea—it was declared:

Submarine cables connecting an occupied territory with a neutral territory shall not be seized or destroyed except in case of absolute necessity. They must be likewise restored and compensation fixed when peace is made (Art. 54).

This is the only law developed by the nations preceding the Great War, and one needs but to read the comment in various journals on international law to detect a disbelief in any law applicable in war time, certainly in naval war.²

However, the Institute of International Law, meeting at Oxford in 1913, the year before the war, developed a draft of "laws of naval warfare governing relations between

¹ "Eastern Extension Australian and China Telegraph Company, Lmt.," *A. J. I. L.*, 1923, p. 835. It is interesting to note that the claims of the Eastern Extension Co. against the United States were not decided until Nov. 9, 1923, twenty-five years after the close of the Spanish-American war, five years after the close of the Great War.

² See particularly A. Pearce Higgins, "Submarine Cables and International Law," *B. Y. I. L.*, 1920-1921, p. 27, with quotations from other authorities.

belligerents," with explicit regulations for the capture, cutting, and return of cables (Art. 54 C) :

Belligerent states are authorized to destroy or to seize only the submarine cables connecting their territories or two points in these territories, and the cables connecting the territory of one of the nations engaged in the war with a neutral territory.

The cable connecting the territories of the two belligerents or two points in the territory of one of the belligerents, may be seized or destroyed throughout its length except in the waters of a neutral state.

The cable connecting a neutral territory with the territory of one of the belligerents may not, under any circumstances, be seized or destroyed in the waters under the power of a neutral territory. On the high seas, this cable may not be seized or destroyed unless there exists an effective blockade and within the limits of that blockade, on consideration of the restoration of the cable in the shortest time possible. The cable may be seized or destroyed in the territory of and in the waters belonging to the territory of the enemy for a distance of three marine miles from low tide. Seizure or destruction may never take place except in case of absolute necessity. (No distinction is made between government-owned or privately-owned cables.)

Submarine cables connecting belligerent territory with neutral territory which have been seized or destroyed, shall be restored and compensation fixed when peace is made.¹

In the Great War—into which the United States entered too late to share the determination of submarine telegraphing—the cutting of communication was the most important of war acts in the first days. Great Britain and France cut German cables in the Atlantic, Japan took them in the Pacific, in August, 1914. Two of these cables were cut in the English Channel, that is, on the high seas; cables which ran to the United States, that is, to neutral territory. The European ends were carried, one into Penzance, one into Brest.

¹ *Resolutions of the Institute of International Law*, p. 188.

Censorship, exercised rigidly over all cable service, against which the United States protested, was exercised over these. British cable landing licenses obligated the American companies to turn over cable dispatches to the British government.¹

Later as the United States entered the war, and perhaps to fix the status of cables as spoils of war, since these two had been for three years British and French, the western ends were severed. The British in March, 1917, cut the American end of their once-German cable which was still connecting with the United States, 600 miles from American territory, and towed it into Halifax. The French in November, 1917, cut the American end of their one-time German cable five miles from Far Rockaway, the German company's landing place, and directed it to Coney Island, the French company's landing place, and asked and obtained the consent of the American government to grant them the privileges which had been enjoyed by the German cable company, although American cable companies lodged a protest with the State Department. The cable remained idle during the war, was not equipped by the French until March, 1919.²

During the war the belligerent powers, Great Britain, France and Japan, had justified their cutting of cables as an "absolute necessity," under Article 54 of the Hague Convention. At the Peace Conference these powers refused restoration and compensation as envisaged in such article of such convention. The United States urged restoration, and Mr. Lansing even went so far as to say the cables should go back to their former owners, but that pending a decision they they might remain under existing operation; if regarded as

¹ *Hearings, C. L. L.*, pp. 87, 275.

² *Ibid.*, pp. 271-272.

spoils of war however, the United States would assert its right to a one-fifth interest.¹

At the Peace Conference also, the status of cables in the Pacific was an important subject of debate, complicated by the awarding of the Pacific islands north of the equator to Japan as mandatory. Yap, an island of the Caroline group, sold by Spain to Germany after the Spanish-American war, is the crux of Pacific cable to communication. President Wilson at Paris entered a reserve on Yap as a Japanese mandate until the cable situation should be adjusted. Secretary Lansing proposed the internationalizing of cable rights on the island under an international commission. At the conference on electrical communications at Washington, 1920, the United States insisted that the Far Eastern lines be internationalized. On April 5, 1920, Secretary Hughes sent a note to Japan asserting American interest in Yap as a place of cable relay, but asking "no exclusive interest."²

On February 11, 1922, the United States and Japan, in a bipartite agreement³ settled the status of Yap as a Japanese mandate, and as an American cable landing station, the United States to have free access on entire equality with Japan (Art. 3), with no censorship over cables (Art. 4), and American nationals to have the same rights in radio-telegraph as in cables (Art. 2).

After the Peace conference, and because of the continuing unsatisfactory situation, the United States interested itself in the legal status of cables in war time, and made some effort to reach a solution in the preliminary conferences on electrical communications, Washington, 1920, Paris, 1921.

¹ Baker, *op. cit.*, vol. ii, pp. 475, 479.

² Charles Noble Gregory, "The Mandate over Yap," *A. J. I. L.*, vol. xv, p. 419.

³ Malloy, *Treaties*, vol. iii, p. 2723.

Definite recommendations were made, to be presented to the governments, that they should

consider the desirability, or otherwise, of establishing an international code defining the status of submarine cables in war time; that the Principal Allied and Associated Powers exchange views upon the subject, and that a special conference be called of the Powers interested . . . to consider the matter further if the Powers should agree in principle to establish such a code.¹

A draft agreement regarding the use of islands and other points as relay stations contained the provision:

that certain points and islands shall be especially designated as available on equal terms to the nationals of all the states signatory to this protocol, which give reciprocal facilities for the landing of cables for automatic relay purposes or for manual retransmissions.²

These drafts remain in the archives of the Powers who conferred, and certain of their provisions may be brought forward in the Madrid conference.³

What may be regarded as the probable American attitude toward the status of cables in war time, and desirable treatment in peace treaties, is set forth by Professor Hyde in his work, *International Law chiefly as interpreted and applied by the United States*.⁴ The advanced position taken by the

¹ *Mimeographed Material*, Department of State.

² *Ibid.*

³ It is understood that the material is being reviewed for publication in the forth-coming volume of *Foreign Relations of the U. S., 1920*. Something of the American attitude may be discovered in the article by Walter S. Rogers, a delegate to the Washington and Paris conferences, "International Electrical Communications," *Foreign Affairs*, December, 1922, p. 144. An exposition of the American attitude, as set forth by Elihu Root, Jr. may be found in *Proceedings*, American Society of International Law, 1921, p. 70.

⁴ *Op. cit.*, vol. ii, pp. 432-433.

Institute of International Law at Oxford is maintained, except that the necessity of cutting cables on the high seas as well as in the territorial waters of an enemy or within the limits of a blockade, is envisaged. Emphasis is placed on cables as agencies for the transmission of intelligence throughout the world, which agencies are therefore of concern to more than the warring nations. There is suggested the idea of a commission of neutrals with which should be associated "representatives of every belligerent concerned," to control and censor the use of cables.

It may be recalled that Austria has made this suggestion in 1871, advising a "sequestration" of cables during the war time, under a commission, either neutral or bi-belligerent.⁴ Renault had later criticized the plan, believing that impartial administration by a commission would be impossible at such a time.⁵ Since the United States does not easily become a member of an international union, it may be believed that American membership in such a commission would be reluctant.

The protection of submarine cables in war time is one of the unfinished subjects of international law, and the subject is difficult. The private companies of the 1880's, in asking for international protection, excluded protection in war time from their petition, and declared that that must be "postponed to an indefinite time."⁶ Apparently that time is not yet definite, a half-century after. Ocean cables and their messages are private property, and private property at sea in war time is not yet immune. Perhaps cables will not ac-

⁴ This attitude of Austria was expressed in a reply to a questionnaire sent out by the Italian government, as requested by the international conference of the Telegraph Union, Rome, 1871. *Documents du Congrès*. Dr. Fischer in *Die Telegraph und das Völkerrecht*, p. 40, suggests a similar solution.

⁵ Renault, *op. cit.*, *R. D. I.*, 1882, vol. xii, p. 274.

⁶ *Journal Télégraphique*, 1882, p. 9.

quire that status of neutralization, deemed so desirable by neutrals, until they acquire it through an international union, placed under the care of a disinterested international commission.

AMERICAN DELEGATIONS TO CONFERENCES ¹

| | |
|------------------------|---------------------------------|
| 1882-1883, Paris | Levi P. Morton Henry Vignaud |
| 1884, Paris | Robert McLean Henry Vignaud |

¹ The United States was not represented at the London conference of 1913.

CHAPTER IV

INTERNATIONAL RADIO UNION

CONVENTIONS: 1906, BERLIN ¹
1912, LONDON ²
1927, WASHINGTON ³

History

IN contrast to wire telegraphy, international control over wireless has moved rapidly to conclusions through frequent conference. However definite frontier lines may be, it is recognizable that air cannot be walled off or marked with monuments, that freedom of the air is as important as freedom of the sea, that regulation of air activities is even more essential than regulation of sea activities.

In 1873, through experiments in electric currents, Clerk Maxwell came to the conclusion that high-frequency alternating currents, flowing in a circuit, would result in electric waves through the surrounding space. In 1887, Heinrich Hertz detected the radiation of such waves and experimented with them. In 1895, Marconi made experiments in long distance radio communication. The first practical use was in ship-to-shore communication. In 1901, trans-oceanic communication was intimated with the passing of the letter S, to be followed by the full flow of messages known today.

¹ Malloy, *Treaties*, vol. iii, 2889; *U. S. T. S.*, No. 568; *For. Rel.*, 1912, p. 444; *U. S. Statutes*, vol. 37, pt. 2, p. 1565.

² Malloy, *Treaties*, vol. iii, 3048; *U. S. T. S.*, No. 581; *For. Rel.*, 1913, p. 1375; *U. S. Statutes*, vol. 38, pt. 2, p. 1672.

³ *U. S. T. S.*, No. 767; *U. S. Statutes*, 1928-1929, pt. 2, p. 358.

Not until 1921 did broadcasting become a program art.⁴ As a source of wonder radio is not yet plumbed.

A legislative problem at once presented itself: how could radio waves started by a machine and therefore under national control, received by a machine and therefore under national control, be kept within national jurisdictions, since the waves themselves do not respect national boundaries? Governments were forced to act quickly and in common, to internationalize the practice, since the Marconi Company backed by the governments of Great Britain and Italy was aiming for a monopoly.⁵

Conference of 1903

There have been four conferences of the nations out of which there have issued three conventions on radio. These have been conferences of experts, with the same delegate representing his country repeatedly; in the case of the United States there has been continuity in representation. Other related conferences, on telegraphy, sea laws, safety at sea, regional and technical meetings, have furthered the development and control of wireless.⁶

Germany called the nations together for their first meeting in 1903, August 4-13. The conference constituted, as is often and advisedly the case, a small group for the exchange of expert opinion. It was attended by delegates

⁴ Laurens E. Whittenore, "The Development of Radio", *Annals of the Academy of Political and Social Sciences, Radio*, ed., Irvin Stewart, March, 1929.

⁵ Reinsch, *op. cit.*, p. 19. See also *Hearings on the International Wireless Convention*, Berlin, 1906, before the Senate Committee on Foreign Relations, 1912, Congress 62; Feb. 21, 1912.

⁶ Conventions with provisions relating to the use of radio, will be found noted in John Bassett Moore, *International Law and Some Current Illusions*, Appendix, p. 210 *et seq.* See also Stephen Davis, *The Law of Radio Communications* (New York, 1927), ch. xi.

from only eight of the eighteen nations which had been invited.¹ All but one were European states, an indication of the regional aspect of the problem; but, the exception being the United States, an indication of the importance of traffic between the European and American continents, where wireless was of primary use in ship-to-shore communication.

The nations discovered that already the development of wireless had moved so rapidly that they must let the science develop further; there was no treaty, but only resolutions.

Conference of 1906

The German government, no doubt mindful of the fact that the government which is host is the "directing" government between conferences, had in 1903 reserved the right to propose the following conference. Public opinion and the clutch of circumstances were forcing the nations to an agreement. They met again in 1906, and again in Berlin. Where eight European states had foregathered in 1903, thirty states from four continents joined to discuss, twenty-seven to conclude,² in 1906; the world of wireless had become world-large.

The conference has been proposed for June 28, to follow immediately the international postal conference at Rome, in April; "so that the delegates to that conference who may also have to attend the Berlin conference will have ample time to travel the intermediate distance"; so said the German foreign office in issuing the invitations.³ But, since both

¹ *Arch. Dip.*, 3 ser., vol. lxxxviii, 1903, pp. 265-240. The group was Germany, the United States, Austria-Hungary, France, Great Britain, Italy, Russia, Spain.

² Germany, the United States, Argentina, Austria, Hungary, Belgium, Brazil, Bulgaria, Chile, Denmark, Spain, France, Great Britain, Greece, Italy, Japan, Mexico, Monaco, Norway, the Netherlands, Persia, Portugal, Rumania, Russia, Sweden, Turkey, Uruguay.

³ *For. Rel.*, 1906, vol. ii, p. 1513.

conferences were meetings of experts in particular fields, as conferences on communications of necessity are, it was not found expedient to utilize the same delegates to both. Therefore the radio experts met October 3-November 30.

The German Secretary of State for the Imperial Government Postal Department was president of the conference. The Berne Postal Convention of 1874 had been suggested as a model by the German government, and it will be remembered that that treaty was also German modeled. The original text was, however, subjected to one hundred and one amendments. There then resulted a Convention of 23 Articles setting forth the fundamental law, Service Regulations of 42 Articles, a Supplementary Agreement to cover a point on which there was substantial but not complete agreement, and a Final Protocol. Twenty-seven of the thirty conferring nations, fifteen with reservations, signed the treaty, after air had proved itself a subject of grave debate, debate which promised at times to result in failure, which was punctuated at times by threats of withdrawal.

The agreements of 1906 were affected by the existence of certain contracts already entered into, by bilateral arrangements, by national aspirations, and by general uncertainty as to what this new and miraculous means of communication might ultimately bring forth; nor did the conference wish to hamper the art through too early crystallizations. The treaty did, however, prove a basis for subsequent conventions, in 1912, and in 1927; in the main the legislation was sound.

Convention of Berlin

The contracting states obligated themselves to the transmission of wireless telegrams through their "coastal stations and stations on shipboard" (Art. 1). That is, the conventional law related entirely to messages between ships at sea and the land; it carried no suggestion of ship-to-ship com-

munication, of land-to-land communication; there was in the article on charges the only reference to intercoastal possibilities (Art. 10). "Absolute priority to calls of distress from ships" was made obligatory, but only "wireless telegraph stations" were thus obligated (Art. 9), and these were defined as "coastal stations" (Art. 2). In a Supplementary Agreement twenty-one of the twenty-seven contractants¹ agreed that "each station on shipboard referred to in Article I of the Convention shall be bound to correspond with any other station on shipboard without distinction of the wireless telegraph system adopted by such stations respectively."

The member states bound themselves to make the provisions of the treaty obligatory upon private enterprises (Art. 1), "without distinction as to the system of radio telegraphy adopted by their stations" (Art. 3), but a signatory state which provided certain coastal stations in accord with the provisions of the convention, might exempt other coastal stations from the convention (Art. 4). Military and naval stations were exempt, except as to interference and to calls of distress (Art. 21). Scientific experiment was assured freedom, special devices being permitted which could not communicate with established systems. Assurance of transmission inland by special wires, "or other measures which will assure a rapid exchange" (Art. 5) was obtained, and the forwarding of wireless telegrams received by coastal stations from shipboard stations was agreed to, with a right to refuse transmission to a shipboard station when the country of the ship's flag was not a signatory (Art. 14). Certain general and fundamental provisions governing telegraphic correspondence of the International Telegraph Convention of 1875 were incorporated into this treaty (Art. 17), since certain states in the conference had not accepted that treaty.

¹ Malloy, *Treaties*, vol. iii, p. 2896. The missing six were Great Britain, Italy, Japan, Mexico, Persia, Portugal.

Organs

Legislative and administrative machinery was provided. Conferences of plenipotentiaries to reconsider the convention, or of experts to modify the regulations, were to be set up, "to take place from time to time," each conference to fix the time and place of the next meeting (Art. 11). An International Bureau as a medium of exchange of information, to examine suggested amendments, and to promulgate amendments, was authorized, the expenses to be borne by all the member states (Conv., Art. 13; Regs., Arts. iv, xxxvi, xxxviii). Disputes were to be settled by arbitration (Art. 18).

Conference of 1912

The fact that peace has its perils no less than war, that those who go down in great ships to do business in great waters may even in a modern day of safe construction and safety devices suffer such hazards as overtook the *Titanic*, April 15, 1912, brought the nations to a sober realization of their common needs. A conference had been called by the British government, in accordance with the decision of the Berlin Conference. The nations met in London in June, a convention was signed July 5, 1912. The shock of the unparalleled sea disaster compelled agreements which had been resisted six years before. There were forty-three governments represented, "colonies" being freely admitted,¹ and the conference found the United States and Great Britain weaving together, not tearing asunder, the international fabric.

¹ The signatories were Germany, the United States, Argentina, Austria, Hungary, Bosnia-Herzegovina, Belgium, Congo, Brazil, Bulgaria, Chile, Denmark, Egypt, Spain, France, French West Africa, French Equatorial Africa, Indo-China, Madagascar, Tunis, Great Britain, South Africa, Australia, Canada, India, New Zealand, Greece, Italy, Japan and Chosen, Morocco, Monaco, Norway, the Netherlands, Dutch India, Persia, Portugal, Rumania, Russia, San Marino, Siam, Sweden, Turkey, Uruguay.

Conference of London

There resulted a Convention of 23 Articles, Service Regulations of 59 Articles and a Final Protocol. Preceding provisions were repeated, often article for article, with some change in the nomenclature; wireless became "radio-telegraphy"; wireless telegrams became "radiograms." The convention was to apply to "all radio stations" established or worked by the contracting parties, and open to public services between the coast and vessels at sea (Art. 1). It provided for an exchange of correspondence for "fixed stations . . . between land and land," with entire liberty to each country for the organization of correspondence between fixed points in its own territory (Art. 21, # 4). That is, the Supplementary Agreement of Berlin became a part of the Convention of London, accepted by all the signatories. The same articles were borrowed from the St. Petersburg Convention (Art. 17). Priority to calls of distress was again pledged, (Art. 9) but since there had been some doubt as to whether the calls of the *Titanic* had been answered with that humanitarian concern which should be universal at sea, such uncertainty was resolved into obligation. "Every station on shipboard shall be bound to exchange radiograms without distinction of the radio systems adopted by such stations" (Art. 3).

The Conference as the legislative organ was retained (Art. 12). The Bureau as the administrative organ, which in 1906 was merely an international bureau, was now designated to be the International Bureau of the Telegraph Union (Art. 13). That Bureau at Berne, established for nearly a half-century, was charged with the administration of the affairs of the International Radio-Telegraph Union. The expenses of the organ were limited not to exceed 80,000 francs a year, the countries being divided into six classes, (Regs., Art. 43) each country choosing itself which class it

would enter, and paying expense units of graduated numbers.

Conference of 1913 on Safety of Life at Sea

In the meantime of the Berlin and London radio conferences, and issuing out of the shock caused by the *Titanic* disaster, invitations to a conference on safety of life at sea were issued at London, the delegates meeting, however, a year after the Radio Conference of 1912; that is, in December, 1913.¹ Seventeen powers, including three of the self-governing dominions, and including Japan as an observer, met together. The conference created several committees, one on wireless.

The convention, signed January 20, 1914, by sixteen of the states,² to come into effect July 1, 1915, ratified by a few, was never in force because of the war.³ It provided that ships carrying fifty or more persons were required to carry radio-telegraph apparatus, and on receiving a call of distress, to go to the rescue.⁴ Several of the states made this conventional provision effective through their own statutory provisions.⁵

¹ *Bulletin No. 40*, International Maritime Committee (Antwerp, 1913).

² See *Hearings* before the Senate Committee on Foreign Relations, on International Maritime Conference for Safety at Sea, 1913, Congress 63: 2. See also *Sen. Doc., Ex. B.*, Congress 63: 2.

³ Great Britain did not ratify. The United States Senate consented to ratification with the reservation of "the right . . . to impose upon all vessels in the waters of the United States such higher standards of safety and such provisions for the health, protection, and comfort of the passengers, seamen, and navigators, as the United States shall exact from the vessels of the United States." *Ibid.*

⁴ The convention granted to the government of the ship's flag the right to issue certificates guaranteeing the competence and efficacy of its inspection, which contracting states were bound to accept.

⁵ Congress accepted the standards of the convention, Art. 31, which required radio installations whenever a steamship had on board fifty or more persons. See "Report" of American Delegates, in *Sen. Doc., Ex. B.*, Congress 63: 2, p. 77.

Conference of 1927

It had been expected that developments in radio would move rapidly, and a fourth conference would be called in 1917; the war prevented this. In order to control wireless communications for war purposes there was created an Inter-allied Wireless Commission, through which, as in many other war relations, the nations learned the art of cooperation, and thought to apply such lesson to peace relations.¹ At the Paris Conference, the Principal Allied and Associated Powers discussed the communications situation, the opportune possibilities for a common solution,² and issued a draft of revised international regulations to bridge the gap between law and practice; these were put into effect.³

A preliminary conference of these five powers was held in Washington, in October, 1920, under Congressional Resolution,⁴ which meeting considered the disposition of the German cables, cable landing rights, cable monopolies, general communications, and developed a draft treaty creating an electrical communications union. A technical committee at Paris, 1921, revised the Washington draft, but the full conference was never called.⁵

In the meantime, the Commission of Jurists, created by the Washington Conference on the Limitation of Arma-

¹ W. S. Culbertson, *International Economic Policies* (New York, 1925), p. 540.

² Ray Stannard Baker, *Woodrow Wilson and World Settlement* (New York, 1922), Memorandum prepared by Walter S. Rogers, Feb. 12, 1919, vol. iii, Doc. 63, p. 427.

³ Published by the Navy Department, as *Radio Protocol*, Aug. 25, 1919.

⁴ Dec. 17, 1919. 41 *Stat.*, vol. 1, p. 367.

⁵ *Universal Electrical Communications Union*, Revised Draft of Convention and Regulations, originally prepared at Washington, D. C., 1920, and amended in accordance with the recommendations of the technical committee on radio communications, Paris, 1921. June, 1922.

ments,¹ met at The Hague, December 11, 1922-February 19, 1923, representing six nations,² to consider the laws of aerial warfare, and the use of radio in wartime. The American delegation presented a draft on radio communication based on American experiences and observations during the war, and governed by persistent American regard for humane warfare, which served as the basis of the discussion, and of the twelve articles which were formulated as a war-code for radio. These relate to strategy and tactics. Therein it is forbidden as a violation of neutrality on the part of the belligerent and of the neutral, to erect or operate radio stations in neutral jurisdiction (Art. 3); neutral vessels are forbidden to transmit military intelligence (Art. 6); a "zone of silence" is permitted around an actual naval war area (Art. 7); neutral states are forbidden to keep a record of belligerent messages (Art. 8); there is provision for the safe transmission of news as in peace times so far as possible (Art. 1); there is continued emphasis on radio as a service for humanity, and the status of distress signals is preserved with the utmost solicitude (Arts. 9, 10); protection for radio personnel is assured (Art. 12); and severe penalties are prescribed for the infraction of the rules (Arts. 6, 8).³

The field had therefore been well considered, and the problems to an extent isolated, when the International Radio-Telegraph Conference was called for Washington, October 4, 1927; it sat until November 25. The delegations of eighty governments⁴ had before them a "Book of Pro-

¹ *Conference on the Limitation of Armaments* (Washington, 1922), pp. 356, 810.

² The Netherlands, as the inviting country, was included.

³ The "General Report" may be found in Moore, *International Law and some Current Illusions*, pp. 210-225, and in "International Law Topics," *Naval War College*, 1924, pp. 96-108.

⁴ Union of South Africa, French Equatorial Africa and other colonies,

posals" which the International Telegraph Bureau at Berne had compiled from the replies received from member states as to the proposed modifications of the London Convention. There were 1768 proposals to which were added later supplementary proposals circulated before and during the conference, bringing the total up to 1951.

Radio had had an experience nothing short of miraculous during and since the war, and the nations now met to consider these experiences, to weigh the experiments, to codify the new attitudes. They were in need of the virtues suggested by President Coolidge in his opening address, "candid discussion, generous conciliation, and wide co-operation."¹ Secretary Hoover was named the presiding officer. There were nine plenary sessions; there were almost innumerable meetings of the ten committees. The Director of the Bureau of the Telegraph Union served as a secretary, through whom the different delegations made known their inclinations, such as their particular preference for committee work. The conference was therefore "able to reach a unanimous

French West Africa, Portuguese West Africa, Portuguese East Africa and the Portuguese Asiatic Possessions, Germany, Argentina, Australia, Austria, Belgium, Bolivia, Brazil, Bulgaria, Canada, Chile, China, Colombia, Spanish Colony of the Gulf of Guinea, Belgian Congo, Costa Rica, Cuba, Curaçao, Cyrenaica, Denmark, Dominican Republic, Egypt, El Salvador, Eritrea, Spain, Estonia, United States of America, Finland, France, Great Britain, Greece, Guatemala, Haiti, Honduras, Hungary, British India, Dutch East Indies, French Indo-China, Irish Free State, Italy, Japan, Chosen, Taiwan, Japanese Sakhalin, the Leased Territory of Kwantung and the South Sea Islands under Japanese Mandate, Liberia, Madagascar, Norway, New Zealand, Panama, Paraguay, the Netherlands, Persia, Peru, Poland, Portugal, Romania, Yugoslavia, Siam, Italian Somaliland, Sweden, Switzerland, Surinam, Territories of Syria and The Lebanon, San Marino, Czechoslovakia, Tripolitania, Tunis, Turkey, Uruguay, Venezuela. It should be noted that of these, Estonia and Persia did not sign the convention.

¹ *Sen. Doc., Executive B*, Congress 70:1; hereinafter referred to as *Ex. B*, p. 91.

conclusion upon . . . so difficult a problem involving a technical knowledge of electro physics," such technical knowledge as no preceding international conference had ever required. Out of the 150 committee reports there was crystallized a convention expressed in 26,000 words.

The Convention of Washington

The Convention, signed by seventy-eight units, consists of 24 Articles; is completed by General Regulations of 34 Articles with 8 Appendices, also signed by seventy-eight representatives, " which have the same force and become effective at the same time as the Convention " (Art. 13); is supplemented by Supplementary Regulations of six Articles and one Appendix, signed by seventy-five governments, " which bind only the governments which have signed them " (Art. 13). These latter governments are all of the seventy-eight signatories to the convention, except the United States, Canada, Honduras. The fundamental provisions of the preceding convention are retained, certain articles being set over completely from the London Convention. In the changes in the General Regulations may be found the evidence of the progress of the art.¹

The convention of Washington, while often borrowing the very phraseology of the Berlin and London agreements, differs in many particulars from these preceding conventions, and in general provides an enlargement of the area supervised. The scope is now broadened to include radio communication between land and land, between people and people, by means of mobile and of fixed stations—a comprehensive treaty which nevertheless regards radio as still in the process of development. There is an allocation of wave

¹ The Supplementary Regulations, Art. 7, include provisions of the International Telegraph Convention and its Regulations. The United States reserved on these Regulations as not binding it. *Ex. B.*, pp. 240, 274.

lengths, based on "services" which are better defined than before; there are provisions against interference; as in the other communications unions, a permanent technical committee is now set up to consider developments between conferences.

The first Articles of the Convention and of the General Regulations, are short lexicons of definition; especially significant being the application of the term "radio communication" to cover "the transmission by radio of writing, signs, signals, pictures, and sounds of all kinds by means of Herzian waves," so that the future is safeguarded whatever the extension of radio by scientific expansion. For "wave length" the term "kilocycles," (that is ky/s) is substituted, as being more accurate (Gen. Regs., Art. 4, # 5).

There is again the pledge to apply the provisions of the convention to all stations opened to international service, to secure national legislation covering this, and to provide mechanisms which will operate "under the best conditions known . . . so far as practicable" (Arts. 2, 10). The right to suspend the provisions of the convention, thereby closing a country from other countries for an indefinite period, for all or for only certain connections, is permitted on immediately advising other member states through the International Bureau (Art. 15). Once again the exchange of radio telegrams is assured "without regard to the radio system" (Art. 3 # 2), but also again there is permitted a radio system incapable through its peculiar activity of connecting with other systems, as well as the use of special devices (Art. 9). Military and naval freedom is continued (Art. 22).

Secrecy is assured to correspondence (Art. 5) depending of necessity on the national legislation and the official integrity of the country or countries through which the communication passes. Although several European delegations

wished the receiving sets to be licensed in order to enforce a control, the United States with its interest in the amateur and its solicitude that a developing art should be as free as possible to receive new stimuli and to make new adventures, succeeded in preventing such inhibiting restraint. Certain provisions do hedge about correspondence through air, such as unauthorized divulging or publishing of the substance or the existence of correspondence which may have been intercepted, with penalty for false alarms (Art. 5).

Priority to calls of distress is again pledged, the "heart" of all conventions on wireless, but with altered phrasing. "Stations participating in the mobile service shall be obligated to give absolute priority to distress calls, regardless of their origin, to answer such calls, and to take such action with regard thereto as may be required" (Art. 11); the mobile service is defined as the service of a station "capable of moving and which ordinarily does move" (Art. 1). This then is the final achievement of assistance, after a quarter of a century of debate.

Allocation

"Peace in the air", as M. Strnad, delegate from Czechoslovakia, said at the Prague Conference, through some division of the common empire, became necessary as the use of radio approximated the universal. The pre-war theory, that the air like the sea is international territory, remains true to the extent that Herzian waves sent out in any one country can penetrate the air area of any other country, except by the most extraordinary use of wave traps. Hence the imperative need of allocation, of a distribution of wave lengths, in a world of many countries where the air channels are surcharged with messages, and where further developments of the art and further enlargement of commerce are certain to bring increasing use and increasing conflict.

In the Service Regulations of the Berlin Conference two wave lengths were authorized, those of 300 and of 600 meters, for general public service (Art. 2). Governments were permitted to authorize other wave lengths for other purposes, provided these did "not exceed 600 meters" or did "exceed 1600 meters" (Regs. II). The wave length of 300 meters was fixed as the normal length for shipboard stations (Art. 3), with permissive use of other wave lengths not exceeding 600 meters.

The London Convention did not change these allocations, except that for shipboard stations, which was now declared to be 600 meters, with 300 permitted (Regs., Art. 3). The pre-war channels were not yet crowded.

The Washington Conference faced an allocation problem. "All frequencies now belong to the available class," said Secretary Hoover.¹ The General Regulations carry an article on allocation (Art. 5); the controlling principle is that of an allocation of frequencies to services and not to countries; that is, the governments of the member states accept a definite limitation of their right to control radio in their own territory. The world has become one area with common interests in communications.

There was no attempt to allocate to countries, an impossible task. As Colonel Manton Davis said, "it became immediately apparent that if there had been any effort to allocate as between nations, specific bands, and so forth, that there would have been chaos confounded; national aspirations would have been so great that the spectrum would not have been one-hundredth part broad enough."²

The member states "may assign any frequency and any type of wave to any radio station within their jurisdiction,"

¹ *Ex. B.*, p. 96.

² *Hearings* before the Senate Committee on Interstate Commerce, on radio communication, Congress 70: 2, February, 1929, p. 82.

provided no interference with any service of another country will result therefrom. Each member state must assign to stations which may cause international interference, frequencies according to an extensive table incorporated into Article 5 of the General Regulations; arbitration is provided according to Article 20 of the Convention.

It was declared in Senate Committee Hearings that prior occupation of a frequency band would unquestionably be considered by the arbitrators, whereupon Senator Wheeler asked if it would not be well to allocate all international frequencies immediately.¹ General Harbord has also foreseen a race between countries as to who "can plant its flag first upon those radio channels by actual appropriation and use."² While the old theory of territorial rights by "discovery and settlement" may remain in the minds of those who would "annex" air channels, there is the restraining certainty that chaos would result, and that the next international conference on radio would be forced to adjust the matter. Such adjustment is still a possible necessity at Madrid in 1932. Allocation by international agreement, even though the nations may not rush to occupy the channels granted them, is a possibility which is being recognized in both Europe and America.

The use of certain frequencies is particularly reserved, and new assignments must be made with care. Beginning on other frequencies in the band of 10-100 kilocycles, frequencies are allocated up to 60,000 kilocycles, with three bands not reserved in the higher frequencies. As was said in Committee Hearings, the range of frequencies above 25,000 is "still in a laboratory or experimental state of use."³

¹ *Ibid.*, p. 83.

² *U. S. Daily*, Dec. 14, 1929, Report of *Hearings*, as above.

³ *Hearings, C. on C.*, Senate Committee on Interstate Commerce, *U. S. Daily*, Dec. 14, 1929.

The allocation is done on the basis of services, which are designated as "fixed," "fixed or mobile," "mobile," "broadcasting," "air mobile," "air fixed," "amateur," "radio beacon"; certain of these allocations being exclusive, certain others being shared.

The wave of 600 meters, 500 kilocycles, remains as it was designated in the Berlin and London Conventions, the international calling and distress wave, but may be used for other purposes on condition that such use will not interfere with call and distress signals. For meteorological purposes in Europe two frequencies are reserved, to be made by regional arrangements, 37.5 and 100 kilocycles (8,000 and 3,000 meters), and out of the same bands a frequency under regional arrangement for police use. Provision is made for progressive abolition of damped or non-continuous waves, by January 1, 1940.

The Prague Conference of European states and the conferences of North America states, each made a regional arrangement of allocations adjusted to area rather than to service, under the provision of the Washington Conventions. A review of these arrangements, and further consideration of national needs in the international situation, will be made at the Madrid Conference; the Technical Committee further studying the problem in the meantime.

Interference

The possibilities of interference, of one station blocking and confusing the emissions of another station, are of course increasing as stations multiply; allocation of wave lengths, while it can go far, cannot completely control the difficulty. Single countries have had to take action in their area and neighboring countries have had to make adjustments. The problem is acute in the United States where for the extensive use of radio in a single extended area there

has been an adjustment for broadcasting by zones, and where the long international land boundaries present a large problem. The problem is acute in Europe, where many states of small areas with new boundaries again discover that Herzian waves obey no provisions of peace treaties.

The earlier attitude toward interference is evident in this quotation from the *Electric World* in 1908, when national legislation was being considered. "It would be far better to let the situation stand as it is and give inventors an opportunity to overcome the present difficulties."¹ More than twenty years after, inventors with a free hand have been unable to cope with the problem; only international law can clear air communication.

The Convention of Berlin had declared that "the workings of the stations shall be organized as far as possible as not to disturb the services of other wireless stations" (Art. 8). The London Convention repeated these provisions. The Convention of Washington expressed the prohibition more positively:

All stations, whatever their purpose, must so far as practicable, be established and operated so as not to interfere with the radio communications or services of other contracting governments, and of individuals, or of private enterprises authorized by these contracting governments to carry on public radio communication service (Art. 10).

The liberty of any administration of the contracting governments to assign any frequency or any type of wave to any radio station within its jurisdiction, is limited by the condition that it must not result in "interference with any service of another country" (Gen. Regs., Art. 5, # 1). Notification of possible international interference must be

¹ *Electrical World*, March 21, 1908, vol. li, p. 609.

made to the International Bureau, if the employment of such new frequency is contemplated, four months before the construction of the station, in order that concerned administrations of other countries may be notified (*Ibid.*, # 17).

The liberty therefore of any administration of a member state to authorize the operation and even the erection of a new station, is definitely limited. If interference is international, the two member states must resort to arbitration. The decisions of arbitral courts will work out a judicial rule for the situation, and together with regional conferences making agreements among administrations for precise allocation of frequencies, such delimitations must grow more and more numerous, and also more and more efficacious. In radio control the nations are facing a situation where justice and efficiency require international legislation and international judicial decisions.

Amateurs

The recognition in the Convention of Washington, a convention between governments, of the status of the amateur, an individual, is one of the most interesting achievements in international legislation. It was however just; to the development of no other art, in the experimentations of no other science, has the amateur contributed so much.

The American Radio Relay League of amateurs had been organized in the United States on the eve of the war, as a result of the Federal Radio Law of 1912. The law provided for a call-book containing the names of all licensed transmitters. The book revealed the existence of several thousand amateurs in the United States, who were engaged in a common adventure with a common purpose of getting out of their scientific sport all its possibilities; this meant development and discovery. The amateurs united in an association. Suspended during the war, the amateurs them-

selves generally active during the war, reassociated after the war, these now expert amateurs took upon themselves deliberately the development of transcontinental radio telegraphy. Achieving this bridging of wide land space on 200 meter waves in 1919,¹ the American Radio Relay League sent one of its members to Scotland in 1924, to experiment in inter-continental uses. Again on a 200-meter wave length signals were exchanged between Europe and America. In 1923, after experiments on 100 meters, America and France talked to each other. Amateurs had proved the value of the short wave length, and soon were experimenting with wave lengths as low as 20 meters, finally achieving communication not only with Europe, but with Australia, South America, South Africa, and Asia. It is the amateur who has spanned the seas and connected remote continents.

In 1925, at Paris, there was organized the International Amateur Radio Union, containing experimentalists from thirty countries.² Among these countries having such an organization of amateurs are, China which has several such societies, and Russia, to which society every amateur must belong, and, can belong only after a committee examination by experts of the society declares him eligible, otherwise he cannot operate.³ These international amateurs led in the campaign to secure recognition in the Convention of Washington.

The amateur is recognized in the latest international legislation on the subject under the term "private experimental station," to be "a duly authorized person interested in radio technique solely with a personal aim and without pecuniary

¹ *Annals of the American Academy*, "Radio," Hiram Percy Maxim, "The Amateur in Radio," p. 32.

² *Ibid.*

³ *Documents de la Conférence radio électrique Européenne*, Prague, 1929, published by the Bureau of the International Telegraph Union, Berne, 1929.

interest" (Gen. Regs., Art. 1). All the general rules of the convention and the regulations apply to the amateur (Gen. Regs., Art. 5, # 18, cl. 3). The administration of a member state assigns frequencies to amateur stations out of the international allocation chart (Gen. Regs., Art. 5 # 18), but the amateurs of two members states may be denied the right of corresponding with each other if the Administration of one of these states so decides (Gen. Regs., Art. 6, # 1). There was objection to large liberties for amateurs on the part of certain states, so this power of control was granted in the agreement.

An amateur can operate only when he has proved his ability to use the International Morse code (Gen. Regs., Art. 6 # 3); amateurs must be licensed by their governments (Gen. Regs., Art. 2), and are pledged to secrecy in regard to intercepted correspondence. What form an international license shall take is still under debate, and is an especial concern of the United States, which regards the amateur as the discoverer in the radio realm.

In the large interests of the amateur the United States and Canada have entered into special arrangements,¹ and the United States as "directing" government of the International Radio-Telegraph Union is especially watchful of the situation of the amateur, sending observers even to such regional conferences as that of Prague.² A model license for the amateur, developed by the Dutch government, was circulated to the governments as part of the agenda for the Prague conference.³ The delegates discussed the question, but did not develop an amateur license. They expressed

¹ See *infra*.

² Department of State, *Press Release*, March 30, 1929.

³ *Ibid.* See also *Documents de la Conférence*, pp. 49-52, and particularly the remarks of Dr. Alois Burda, Czechoslovak delegate, comparing the provisions of the model license with the provisions of the Convention of Washington.

the wish that copies of the rules governing amateurs issued by each administration be sent to the International Bureau, which would send these to interested administrations; that a list of amateur stations be sent by each administration to other administrations; that "irregularities" caused by amateur stations be communicated to the administration interested, and to the International Bureau.¹

The developments of the future as of the past, the United States believes, will be accomplished through the adventurous spirit of the amateur, through the spirit of youth, by those President Hoover denominates "boys". "To have given to the boys of the world a status in international life by treaty is a fine recognition not only of the right of all boys, but a tribute to their service in developing the art."²

Membership

Membership in this union is open to any government unit on its own request to the "directing" government (Art. 19); this has been the provision in all three of the conventions. The increase in membership has been steady, from the eight states attending the Berlin Conference, to the seventy-eight units accepting—out of the eighty attending—the Washington treaty of union. Wireless is one of the most binding forces in international relations.

An interesting development, however, has come in the matter of the parent state and its substates. The Berlin Convention provided that membership of the parent did not carry membership of the dependency, unless so declared (Final Protocol, V). Great Britain claimed in debate in

¹ *Documents de la Conférence*, p. 64.

² *U. S. Daily*, November 28, 1927. It may be observed that Great Britain does not grant recognition to "boys", a licensed radio operator must have attained the age of 21. Boys may experiment with wireless, but an older person must carry the responsibility to the state. See statement of Mr. F. W. Phillips, British delegate, *Documents de la Conférence*, p. 104.

the conference that the separate declaration implied a separate vote, and announced that at the next conference it would be entitled to plural voting, "which would represent not only Great Britain herself but also her colonies and possessions,"¹ This would mean that the Empire could control the international air, at that time not definitely national over each area.

Against this the United States verbally declared

that in view of our widely extended interest in connection with radio-telegraphy, we should also make a claim for plural votes, based upon an extensive territory, if the equilibrium of the present conference were disturbed and any one of the countries represented at the conference should be given more than one vote.²

Here was Anglo-Saxon jealousy to be resolved. The conference granted each state one vote (Art. 12). The procedure for obtaining votes for substates was set forth in the Final Protocol (1). The parent state might make the application, but the conference would make the decision; application was to be made to the International Bureau six months in advance, the Bureau notifying all member states, and for two months these states might also make similar application in the interests of their sub-states.

The number of votes at the disposal of one government, including its colonies, possessions or protectorates, shall in no case exceed six (Art. 12).

Pursuant to these provisions, before the London Conference met, Great Britain and France asked for six votes, Germany for four, the Netherlands and Holland for three, Belgium and Japan for two. The conference granted these. In neglect of these provisions, the United States, Russia, Italy, and Turkey asked for additional votes on the floor of

¹ "Report of Charlemagne Tower," *For. Rel.*, 1906, vol. ii, pp. 1515-1519.

² *Ibid.*

the conference. They were refused.¹ A debate then ensued, and the conference finally designated in the convention the specific substates eligible to membership and to votes, the number again being limited to six for Germany, the United States, France, Great Britain, and Russia, to three for Italy, the Netherlands, and Portugal, to two for Belgium, Spain, and Japan (Art. 12).

It is significant that although the convention had specified the substates, the signatures recorded Great Britain and France as signing separately for each of its six members but grouping these, whereas Germany, the United States, Japan, and Russia simply signed for the group.

Such arrangements for signature had consequences at the Washington Conference. As a member of the preceding radio conferences, and as a nation now in good standing because of her League membership, Germany was invited to Washington. But in the Conference of 1912, Germany was an Empire, with "possessions" and six votes. In the Conference of 1927, Germany was a republic, and she lost her great "possessions." She had no intention of losing her six votes. She demanded her old imperial weight in the conference, and declared the device of 1906 was merely meant to give influence to the Great Powers—which it was. On the suggestion of Secretary Hoover, the conference accorded six votes to Germany, "only for the duration of the conference . . . not to form a precedent." The conference met the decision "with applause."²

Russia did not fare so well. She had not been recognized by the United States; in spite of the fact that she had been a member of the preceding conferences with a weight of six votes, no invitation was sent to the Union of Soviet

¹ Irvin Stewart, "International Radio Convention," *A. J. I. L.* (January, 1928), p. 41.

² *Ex. B.*, p. 136.

Socialist Republics. Russia then lodged a protest in the International Bureau at Berne against her exclusion on "purely political" grounds. The protest was read before the Washington Conference; it was "received in silence."¹ It is worth noting that Russia was present in full capacity at the European Prague conference on broadcasting, where she criticized the results of the Washington Convention,² and also that Russia and the United States were coequals in the Committee of Technical Experts at The Hague.

Seven British units attended the Conference of Washington. The British plan there introduced provided for modification of Article 12, and would have granted one vote to every government unit with a separate communication service;³ a very large conference would then have resulted with the number of British votes greater than that of any other country. The Chinese delegation suggested plural votes based on the number of radio messages in the international service originating in the territory of the unit in a specified time. This would have given preponderance to the United States. Several days were given over to debate, decision was postponed, informal conference took place, and the solution finally arrived at was that of suppressing Article 12, leaving the question to be settled by an exchange of notes among the foreign offices, or by the next conference.⁴

However, since the London Convention had granted the six-vote basis of participation, the Washington Conference felt itself bound by that treaty as fundamental law until changed, and the diverse units were all allowed to sign the convention, but without prejudicing future action.⁵ The

¹ *New York Times*, Oct. 26, 1927. *Ex. B.*, p. 135.

² *Documents de la Conférence, Prague. Proposals*, Nos. 100, 101, 138-140.

³ *Ex. B.*, p. 235.

⁴ Article 19 of the Convention permits governments to adhere on request,

Convention of Washington was signed by seven British units, not grouped as they were in the Convention of London but scattered through the alphabetical list. French and Dutch units were similarly scattered. Germany and the United States merely signed as "Germany", as "the United States of America".¹

Status of Private Companies

The radio Convention does not provide as does the telegraph convention, for membership of private companies in the union, but it does provide for their participation in the work of the union. The situation is, that in seventy-five of the member states electrical communication is government-owned and controlled, in three states is privately owned and government-regulated. But, these three countries are the United States, Canada, and Honduras.

The United States and Canada increasingly in international affairs see eye to eye; the necessities of their geography, the essentials of their democracy, make for such unanimity. Canada frequently forms the link between British and American interests; therefore Canada pulls more than its weight in international settlements; therefore also the United States secures for its positions more backing than the co-operation with one country would indicate.

The situation is, however, further complicated, and the position of the private company further strengthened, through the fact that electrical communication so far as radio is concerned is not merely public correspondence, which to date has exclusively influenced the international situation,

and dependent states with administrations of radio communications to adhere separately. See Irvin Stewart, *op. cit.*, *A. J. I. L.* (January, 1928), p. 38, for an analysis of the situation.

¹ China, on the last day of the conference declared "that nothing in the Convention... nor even the reference to... leased territories... may be considered in any way... as affecting or changing the position of the Chinese government." *Ex. B.*, p. 272.

but is a wider idea, involving especially broadcasting, and broadcasting is carried on generally by private enterprise even though it may be rigidly supervised.¹ The number of representatives in the Washington Conference from private companies covers five pages in the Senate Document, Executive B; forty-one companies from eleven countries were thus represented, but in several cases from three to ten companies were associated in one representation.² In the Prague Conference, eight companies from eight countries were represented.³

Again, the situation is complicated by a new factor which may have to be considered by the Madrid Radio and Telegraph Conferences in 1932, consolidations proposed or completed, of radio and cable services in Great Britain, Germany, France, Italy, and Japan. The British Imperial Communications service merger in private hands has involved the surrender of long-distance telegraphy by the British post-office.

Private companies send representatives to the International radio conferences to act in an advisory capacity; in truth it would be impossible to develop an intelligent convention without the aid of experts, and these are most often found in private employment. As Mr. White declared before the House Committee on Merchant Marine and Fisheries, speaking of the many American and foreign companies represented at Washington, "they went to committee meetings and we even called on them for their opinions."⁴ Or, as Mr. Castle said, "The private companies practically wrote it."⁵ Representatives of the private companies were

¹ *Hearings, C. on C.*, pt. 9, p. 993.

² *Ex. B.*, pp. 87-91.

³ *Documents de la Conférence, Prague*, pp. 9-15.

⁴ *Hearings before the Senate Committee on Foreign Relations, on International Radio Convention, March 14, 1928, Congress 70: 1.*

⁵ *Ibid.*, p. 15.

admitted to the Washington Conference "upon authority given by the Chairman," and "at the discretion of the Chairman were permitted to speak on any pertinent topic which might concern them."¹

The Washington Conference solved the difficulty as between public and private ownership, after the alert attention of the American delegation had prevented any confusion between the two, largely through the separation of the regulations into two sets. As Mr. Castle said:

The American delegation was up against one particular problem. . . . It has always been our custom in this country to have communications run by private companies. In most countries the telegraph and telephone and radio systems are run by the governments. We had to meet that problem, and I must admit that at the beginning of the conference we thought we should have a very difficult time to persuade the other countries to recognize our system. . . . Our business was to get the other nations to divide those regulations into two parts, one of which we could assent to as a Government; the other dealing with such matters as tariffs, for example, which are always regulated in this country by the companies rather than by the Government.²

After "a good deal of discussion," these regulations were divided, the "General Regulations" being an essential part of the treaty, all signatory governments agreeing, the "Supplementary Regulations" being assented to by all the governments which control their radio service. But "if our [those of the United States] private companies want to accept them, consider it more convenient to accept them, they could do so." The signature of a government binds only so far as the national legislation covers the case. The Convention of London provided for the transformation of radio-

¹ *Ex. B.* "Rules of the Conference," art. 4, p. 125.

² *Hearings*, before the Senate Committee on Foreign Relations, on the International Radio Convention, March 14, 1928, Congress 70: 1, p. 2.

grams into telegrams (Art. 5); the Convention of Washington provides only that radiograms shall be transmitted by "the general communication service" (Art. 7).

Under the provisions for regional arrangements, it would be possible for "private companies, duly authorized," to make special arrangements among themselves if in conformity with the general terms of the convention (Art. 14).¹ Such an arrangement had been made for South America in 1921, where companies of Great Britain, France, Germany and the United States have entered into an "A. E. F. G." Consortium, each company nominating two trustees for the pool, with the chairman always an American but not connected with the American company, thus "carrying the principles of the Monroe Doctrine into the field of communications in the Western Hemisphere."²

A Universal Electrical Communications Union

Out of the chaos of the war an attempt was made to evoke a universal union. The powers at Paris had the situation intelligently before them, since they had operated communications in common through an Interallied Wireless Commission;³ they believed "the time had come for a world-wide survey of communications in all aspects of the problem."⁴ A resolution was passed authorizing the President of the United States to call a conference "to consider all international aspects of communications by land telegraph, cables, or wireless telegraph, with a view by providing the entire

¹ The American delegation to the Washington conference offered an explanation that since private enterprises in the United States exist as a rule by virtue of their power under state laws, it would be understood that such enterprises were thereby "duly authorized" within the meaning of Article 14. *Ex. B.*, p. 182.

² Letter from Owen D. Young, to James R. Sheffield, Dec. 7, 1921, printed in *Radio Industry*, p. 61.

³ Culbertson, *International Economic Policies*, p. 541.

⁴ Mr. Rogers in *Hearings, C. L. L.*, p. 361.

world with adequate facilities on a fair and equitable basis."¹

The conference met in Washington, 1920, and a continuation meeting of its technical committee on radio in Paris, 1921. A draft treaty was enunciated, and the machinery of the union in detail worked out.² But confronted with the situation, the United States and Great Britain maneuvering for position,³ the United States being handicapped for international action through lack of national ownership, and the League of Nations not then being able to realize the supervision of international unions envisaged in Article 23 of the Covenant, there came an end to the proposed union. The Pan-American states did succeed in drafting a charter for an electrical communications union, in the presence of delegates from the United States appointed by President Collidge, but those delegates failed to sign the convention.⁴ The proposition may be revived at Madrid in 1932.⁵

International Bureau

In the Convention of Berlin (Art. 13) a Bureau was authorized; in the Convention of London (Art. 13) the International Telegraph Bureau was named as official. The Convention of Washington (Art 16) makes the work explicit:

The International Bureau of the Telegraph Union shall be charged with collecting, coordinating and publishing information of all kinds relative to radio service, with examining the requests for changes in the Convention, and the Regulations annexed thereto, with promulgating the amendments adopted, and generally with performing all administrative tasks with which it shall have been charged in the interests of international radio services.

¹ Baker, *op. cit.*, vol. ii, p. 467.

² See *supra*, p. 177, n. 5.

³ *Ibid.*, p. 483.

⁴ See *infra*, p. 237.

⁵ See *infra*.

The members are to communicate with one another through the Bureau, notifying each other of stations open to the international service, and are to exchange their national laws, and regulations relative to the operation of the Convention (Art. 8). The member states contribute to the expenses of the Bureau a sum for ordinary expenses not to exceed 200,000 francs annually, but the limit may be changed by unanimous consent of the states, apparently without a conference (Regs. Art. 34). The classification of the Telegraph Union is accepted, six classes are recognized, those of the first paying 25 units, those of the sixth three units, each member state choosing for itself which class it shall enter.

The value of this International Bureau to various departments of the government of the United States, is vouched for by Mr. W. J. Carr, in his remarks in committee *Hearings*, when the appropriation asked for by the Department of State for the upkeep of this organ was under consideration:

The Secretaries of Commerce, Navy and War who are much interested in radio-telegraphy, were unanimous in expressing the opinion that the United States ought to contribute the increased amount and that the benefit which is derived from the amount contributed would be many times what it could obtain by its own independent work for that amount of money, and to do all that the bureau does would cost in the United States a very great deal if indeed it could do the work at all. It is essentially an international undertaking. . . . The work of this radio-telegraphic department of the International Bureau of the Telegraph Union is tremendously valuable. . . . From this Bureau there is obtained for a few thousand dollars a vast amount of information which is essential in the operation of the government business, as well as for commercial work, but which could not be obtained for many times the present outlay if it

were to be gathered independently of this organization. Two or three years ago Gen. Squier testified before this committee that the work of this bureau was absolutely indispensable to the work of the War Department, and other departments of government. The benefit derived by the United States, its citizens, shipping and commercial enterprises, are thus acquired through the application of uniform rules or regulations for the government of all radio stations both coastal and on shipboard.¹

Consulting Committee

Each of the international unions for communication has since the war created an expert committee to consider technical developments between conferences. The International Radio Union commissioned such an organ in the Washington Conference. But not without protest.

Great Britain and the United States objected to the creation of such a committee, on the ground that the committee would be studying changes in the regulations which ought to remain fixed for a period. Germany led the favorable opinion which would approve the study of provisions of practical import between conferences. The vote establishing the technical committee—the "C. C. I. R." as it has come to be known—and approving Article 17 of the Convention, recorded 30 to 26, with 11 not voting.² It may be remarked that therefore the six votes which had been accorded Germany swung the conference on this proposition.

The conference apparently became afraid that such super-intelligence of experts might lead the body into the position of a super-committee which would seek to control radio development, and hamper the freedom of the art which

¹ Remarks by Mr. W. J. Carr in *Hearings* before the House Committee on appropriations on an appropriation for the Department of State for 1927, Congress 69: 1, Jan. 12, 1926. It may be noted that the United States contributes to the International Union of Scientific Radio-Telegraphy. See *U. S. Stat.*, 1929-1930, pt. 2, p. 182.

² *Ex. B.*, p. 219. This is the only roll call of the conference.

has in every conference been emphasized as precious. Therefore it was decided that the committee should be limited in scope to advise. It is charged with studying technical and related questions pertaining to these communications, submitted to the committee through the Bureau from the administrations and from private companies (Conv., Art. 17; Gen. Reg., Art. 33).

The government of the Netherlands was charged in the convention with the initial organizing of the committee, with drawing up the agenda, with calling the first session. The committee itself thereafter is to designate which administration shall call and organize the following meeting, meetings to take place every two years.

The Netherlands, therefore, invited the Technical Committee to meet at The Hague in September, 1929. The Dutch government issued a circular letter, July 6, 1929,¹ suggesting an organization scheme based on the Consultative Committee for Long Distance Telephone Communication as set up in Article 71 of the International Telegraph Regulations of 1925—the "C. C. I. Telephone"—a committee of experts which establishes its own regulations and methods, and is therefore capable of a permanent set-up. But since the Washington Conference had decided that its Technical Committee be "newly constituted for each meeting," the Dutch government was compelled to abandon the hope of permanence, and to copy the method of the International Telegraph Union in creating its Technical Committee—the "C. C. I. Telegraph"—as set up in Article 87 of the Regulations of 1925.

The Technical Committee, which sat at The Hague, September 18-October 2, 1929, was made up of 160 technicians, representing 42 governments, together with representatives of private companies, and from the international organiza-

¹ MSS, Dept. of State.

tions of radio-telephony and broadcasting. The committee is of course a committee representing governments. But in order to permit governments not operating their radio service to participate, such as the United States and Canada, it had been provided that the committee should be composed of experts of the administrations, and of authorized companies which wish to share in the work. The private companies may be there in a consultative capacity. However, a country not represented by an administration may authorize a company or companies to represent it, these then having a right to cast one vote in all the deliberations. This is a device which permits the United States to be adequately represented in the meetings; at The Hague the American government was represented by three delegates with four technical assistants and a technical advisor, and with representatives from eleven wire and wireless and other corporations; the group worked together as one. To quote from General Saltzman's "Statement":

It has been quite generally the custom and practice of nations to limit their representation at international communication conferences to government officials. The United States departed from this custom at The Hague, and considered representatives of our operating companies as a part of the delegation.

The experts representing the operating radio companies of the United States therefore greatly strengthened the delegation and were enabled to make valuable contributions in the technical discussions. Experts from United States operating companies were thus enabled to even act as chairman of subcommittees, secretaries, and to perform other important functions.¹

Such an achievement is revolutionary. But these international unions have from time to time accomplished revolution, with the greatest quiet.

The International Bureau did not issue the agenda for the

¹ *Statement, U. S. Daily, Oct. 28, 1929.*

Hague Conference until May 14, 1929; but important documents had been circularized and committees worked on the items of the agenda in various countries, particularly in the United States, which as the "directing" governments between the Washington and Madrid Conferences must concern itself with all international radio activities. The American studies served as the basis of the work of the Technical Committee.

Eight points were on the agenda: ¹ organization, definition, interference, special studies on such phenomena as fading, directional effect, skip-distance, static, etc., licenses for amateurs, recommendations for studies from the Prague Conference, recommendations from the 5th Committee of Reporters of the International Advisory Committee on Long-Distance Telephone Communication.

Dr. Reymer, Minister of Land and Waterways, in his opening address, linked the Washington and Hague Conferences, the first seeking uniformity of working methods, the latter making research into the sources of troubles, each seeking to eliminate disturbances. The conference divided into four sections to consider: a generally acceptable definition of sending power; a definition of the borders between ultra-short, short, semi-short and long waves; formulation of rules for sending-stations in order to prevent mutual disturbances; establishment of uniform rules for amateur sending stations.

The committee that met at The Hague reported to the governments,² covering so far as may be the points on the agenda: on methods now technically available for maintaining the wave emissions of a station as exactly as possible at

¹ *International Technical Consulting Committee on Radio Communications*, "Report of the Delegation of the United States of America," Washington, 1930.

² State Department Publication, No. 105.

the authorized frequency; on the fixing of the allowable variation between the mean frequency of emissions and the recorded frequency; on the width of the frequency band occupied by the emission of a station for each type of transmission, telegraph, telephone, television, etc.; on the allocation of ultra-short wave lengths, and the maximum allowable to national services.

The work of the "C. C. I. R." will be carried on by national committees in each of a number of countries volunteering at The Hague to take the initiative in the study of a certain problem in radio, and to formulate proposals to be presented to the meeting of the Technical Committee at Copenhagen. Germany, with the cooperation of the United States and other countries, took for its study ship-to-shore telephony; the United States with the collaboration of others, took the coordinating of frequency assignments in the mobile service bands; France undertook to study the measuring of voice and voice levels in radio-telephone links between wire net works; Austria the studying of side band transmissions.¹ As the formulated national proposals are then discussed at Copenhagen, 1931, it will be determined whether a problem is sufficiently worked out so that recommendations may be made to the international conference at Madrid, 1932.

The work of the Technical Committee is therefore limited, as its charter indicates, to "advice." Its work must be considered as in all respects consultative to the international conferences immediately following. That is, this art and its practice are developing too rapidly for crystallizations; the nations are considering the subject with persistent attention, with successive action, first in national groups, then in international technical groups, finally in international diplomatic conferences.

¹ Lloyd Espenschied, "The International Radio Technical Conference at The Hague," *Bell Telephone Quarterly*, January, 1930, p. 52.

Settlement of Disputes

The three radio treaties have successively provided for the international licensing of operators, presentation of complaints, breaking off of communication relations, and for appeal to arbitration. The latest convention pledges the member states to give mutual aid in the prosecution of individual offenders against the law of the convention.

In the Berlin and London agreements it was determined that licenses would be granted by the management of the radio service in each member state (Berlin, Regs., VI; London, Regs. IX). These licenses were to be honored by all member states. The management of the radio service in any contracting state could demand the production of the license of a suspected offender, and could complain to the management of the licensing state if the shipboard station was not fulfilling the requirements of the convention. The management of the service in the licensing country had the case before it to be acted upon. If said management did not act, the complainant management could authorize its coastal stations to refuse communication with the offender, and in case of disagreement between the two governments, could proceed to arbitration as provided in the convention (Berlin, Reg. VII; London, Reg. XII).

The Convention of Washington also provides for licenses (Gen. Regs., Art. 2) to be issued by the member states, and for certificates for operators (Gen. Regs., Art. 7), elaborately worked out with classifications according to the ability of the operators. It is provided that "infractions of the mobile service rules must be reported by the station detecting them to the administration to which they are subject" (Gen. Regs., Art. 12), and an elaborate form is worked out for such report (Appendix 2). "In case of repeated infractions on the part of the same station," the convention declares, the "representation must be made to the adminis-

tration of the country to which the station is subject" (Art. 12, # 3) : it does not specifically provide for the breaking off of communication, but does provide for submission of the dispute to arbitration (Art. 20).

However, the Washington Convention itself contains provisions for a large measure of mutual aid in case of infractions: "The contracting governments undertake to aid each other by supplying information concerning violations of the present Convention and the Regulations annexed thereto, as well as, if necessary, in the prosecution of persons violating these provisions" (Art. 6). This is recognition of mutual legal needs covering the cases of individuals, as yet not liberally recorded in treaties. Something similar may be found in the legislation protecting submarine cables; no such cooperation in securing evidence or in prosecution is to be found in international postal or telegraphic regulations; law spreads wider in order to follow a wider-spreading medium of communication.

Arbitration is the preferred means of settling disputes in all three conventions; it has become compulsory in the Washington Convention; "must" is substituted for "may." The International Bureau is given none of the authority for an advisory opinion, as in the Universal Postal Union, nor is the new Technical Committee given a power of judicial decision. But a question in dispute must on request of one of the governments—formerly mutual agreement was required—be submitted to arbitration.

Not without difficulty did international arbitration win this advanced position in 1927. An Anglo-Japanese alliance in the conference led an appeal for optional arbitration, as against "coercion," in international radio affairs, but it failed to win much support. Certain modifications were, however, obtained. The original drafting provided for an appeal to arbitration "between two or more contracting

governments" which in conference was limited to two "in order to assure the perfect equality of the persons interested in the presence of the arbitrators." The original draft also declared "the question at issue must be submitted to arbitration," but in order "to soften the impression of force," and in order to present "an obligation of a legal and moral character," since "in international relations at present . . . there are no definite sanctions," a provision was inserted that appeal must be "at the request of one of these [two contracting] governments."¹ A motion to eliminate the compulsory "must" was debated, 43 to 7. Article 20 of the Convention of Washington was finally carried, 38 to 10:

In case of disagreement between two contracting Governments regarding the interpretation or execution of the present Convention or of the Regulations provided for in Article 11, the question must, at the request of one of these governments, be submitted to arbitration. For that purpose each of the Governments involved shall choose another Government not interested in the question at issue.

If agreements between the two arbitrators cannot be reached, the latter shall appoint another contracting Government equally disinterested in the question at issue. If the two arbitrators cannot agree upon the choice of this third Government, each arbitrator shall propose a contracting Government not interested in the dispute; and lots shall be drawn between the Governments proposed. The drawing shall devolve upon the Government within whose territory the International Bureau mentioned in Article 13 operates. The decision of the arbitrators shall be by majority vote.

That is, having accepted arbitration by governments associated through the treaty, the member states, including the United States, agree to accept the decision of their associ-

¹ *Ex. B.*, pp 236-238. The French delegation declared that if two governments refused to arbitrate "no authority" can make them. *Ibid.*

ates which decision need not be unanimous, but by simple majority.

Special Conferences

The International Radio Union, seeking control of international wireless communication, has now achieved an inclusive convention, covering ship-to-shore, ship-to-ship, shore-to-shore, land-to-sky rules, and applicable to extensions of these services. The Washington Convention seeks only to give fundamental law which governs the use of radio. It was expected that special conventions or arrangements would be made for special purposes, or for specific regions, or for specified groupings of states, arrangements which would round out the permissions of international legislation (Art. 14).

Conference on Safety of Life at Sea, 1929

Continuing the frustrated work of 1913-1914—between the call and the conference came the shock of the *Vestris* disaster as had come the shock of the *Titanic*, sixteen years before—the maritime states met at London, January 22, 1929, to consider again the safety of life at sea. Such safety must of necessity concern itself with radio appliances to ensure the calling of help. The International Radio Conference had considered this, and had declared that the provisions concerning inspection of stations “do not affect in any way the provisions which, coming within the scope of the Convention for the Safety of Life at Sea, are not covered by the present Regulations” (Washington Convention, Gen. Regs., Art. 15), and that “the Convention for the Safety of Life at Sea, determines which ships must be provided with emergency installations, and defines the conditions to be fulfilled by installations of this class” (Art. 18).

The British government had circularized a memorandum

from the Board of Trade, suggesting points for revision of the Convention of 1914, as early as 1927. Conferences held since the war have been prefaced by exhaustive studies; possibly more especially those outside the province of the League of Nations since the admirable and continuous work of the Secretariat must be approximated by prolonged and intensive preliminary studies; this has been particularly the case in radio and sea-safety. The United States, accepting the British suggestion, organized committees, both technical and governmental, to study the subject; one of these, Committee 2, was specifically charged with the study of wireless telegraphy.

The Conference sat at London, April 16–May 31, 1929, and produced a Convention on Safety of Life at Sea.¹ The Third Committee, on radio telegraphy, with a German delegate as chairman, developed chapter IV of the Convention dealing with the use of wireless, supplemented by regulations. All passenger and cargo ships of gross tonnage of 1,600 or over, on international voyages, must have radio installations. The convention authorizes automatic alarm

¹ *International Conference on Safety of Life at Sea, 1929, Convention and Final Act*, U. S. Govt. Printing Office, 1929. The governments represented were Germany, Australia, Belgium, Canada, Denmark, Spain, Irish Free State, United States, Finland, France, Great Britain, India, Italy, Japan, Norway, the Netherlands, Sweden, U. S. S. R. It may be remarked that Russia had sought admission to the third radio conference at Washington, having been a member of the preceding radio conference, and was denied; see *supra*, p. 192. It was admitted to the London Conference on Safety of Life at Sea; it had been a member of the preceding London Conference, 1913. The United States declared that its signature did not mean recognition of any régime not recognized by the United States government. Russia declared that not being a member of the Washington Conference, it did not consider itself bound by any undertaking in the Washington Convention, but on ratifying the London Convention, would observe the radio provisions therein recognized. *Ibid.*, p. 104. It may be noted that the United States has not, in certain recent treaties, made the declaration above referred to. For the effect of such omission, see John Bassett Moore, *N. Y. Times*, Dec. 5, 1932.

receivers, which provide for continuous watch. The Final Act recommends radio aids to navigation and synchronized radio and under-water signals. Certificates are issued to ships only if they meet these requirements; the right of inspection of a foreign ship within the jurisdiction of a contracting government is preserved.

The conference declared for concurrent jurisdiction with conferences on radio; not without some anxious discussions at London. The provisions of the Washington Convention were recognized in several points both concerning watches to be kept and competency of operators (Conv., Art. 29, # 3, 4, 5); and in regard to technical requirements, frequency and type of waves, distress signals and wireless beacons (Art. 31), and to meteorological services (Art. 35). It was declared that "the matters governed by the International Radio Convention, Washington, 1927, and the Regulations," were to continue subject to the provisions of that convention or of future conventions substituted therefor, and also to be governed by the London Convention of Safety of Life at Sea "in regard to all the points in which it supplements the aforementioned documents" (Art. 32).

A critical attitude may be detected in an amendment suggested to the Radio Convention, concerning the requirements as to efficiency of the radio operators,¹ and in certain recommendations suggested by the London Conference to the Madrid Conference, such as "the alarm signal call as a general rule should precede the distress signal," and that effort should be made to "emphasize the importance . . . of avoiding the use of radio telegraph emissions in the neighborhood of the distress wave except in case of emergency."²

¹ This suggestion is embodied in a note, *Safety Operation*, "at the moment of signing the convention . . . concluded this day". *Ibid.*, p. 103.

² Recommendations 6, 7, 8, *ibid.*, p. 106.

Regional Arrangements

The practically universal radio treaties grew out of regional or group discussion, as have all treaties on communication.

In the beginning, in 1903, as has been noted, the conference which attempted to organize radio internationally was regional. Discussions at Berlin were carried on from the European point of view. The Conference of 1906 enlarged itself to include South American and Asiatic countries, long before direct communication was accomplished between continents. The presence of Argentina and of Japan must be regarded as having political rather than practical bearing. The Convention of Berlin hints at regional arrangements in that it borrows Article 17 from the International Telegraph Convention of 1875, where the contracting parties "reserve respectively the right to enter among themselves into special arrangements of any kind with regard to points of service which do not interest the states generally." The Conference of 1912, a world conference of states, retained the articles borrowed from international telegraph legislation, providing however that no country could divide itself into a grouping of zones, but that in each member state there should be one rate. Exception was made of those semi-Asiatic areas, Russia and Turkey (Regs., Art. xvi, # 2).

The Convention of 1927 omits any articles from the St. Petersburg Convention. It is, however, stated that two member states may organize radio communication as between themselves (Art. 2, no. 3), and that groups of member states may make special arrangements "on matters of service which do not interest the Governments generally" (Art. 14), provided each such arrangement is made in conformity with the general principles of the fundamental law as laid down in the Convention of Washington. Groups of states may also under certain conditions make special arrangements

in regard to the allocation of wave lengths and exemptions of stations from the general rules, for the pursuit of criminals, and for meteorological purposes (Gen. Regs., Art. 5, Secs. 13, 14, 15).

These provisions do not cover such arrangements as the "Supplementary Regulations," since these were signed by seventy-five out of the seventy-eight contractants. The provisions generally relate to countries having common boundaries, and are one of the indications in many recent treaties that for specified purposes frontiers are disappearing because of some specific mutual interest of peoples on the two sides of these frontiers.

European Radio Conference

During the Conference of Washington, in the discussion of allocation of wave lengths based on different services rather than different areas, Czechoslovakia indicated that certain European states were not represented in the conference, that there was scarce a European station which did not have "international" effect, that allocation was a difficult matter in Europe.¹

To consider such regional needs, Czechoslovakia invited the European nations to meet, under the permission of Article 14, at Prague, in 1929, April 4-13. Twenty-six countries,² with representatives from four more countries to "observe," sent together 123 delegates. The United States was the only government of the Americas represented at Prague, as it was at Berlin in 1903. There were moreover representatives from eight radio corporations, and from the

¹ *Documents de la Conférence, Prague.*

² Germany, Austria, Belgium, Bulgaria, Denmark, Spain, Estonia, Finland, France, Great Britain, Greece, Hungary, Ireland, Iceland, Italy, Lettonia, Norway, the Netherlands, Poland, Rumania, Yugoslavia, Sweden, Switzerland, Czechoslovakia, Turkey, U. S. S. R. The four who observed were the United States, Egypt, Dutch East Indies, Palestine.

International Telegraph Bureau, the International Commission for Aerial Navigation, the International Radio Telephone Union and the League of Nations.

Dr. Fatka, Director General of Posts and Telegraph, in opening the conference, referred to the Washington Convention as international law, but added, "There remain a number of questions which do not interest all the administrations forming the International Radio-Telegraph Union, but only a certain part of the Union, especially the allocation of wave lengths."¹ There was some difference of opinion as to whether the Prague Conference was "regional," or was "consultative" to the Madrid Conference, but the decisions there taken indicate the regional aspect.

The agenda carried nine points, those of chief interest being allocation of frequencies for European broadcasting, for European telegraphing, of special frequencies for police and weather reports, and the control of amateurs. The "Plans" of Geneva and of Brussels were before the conference, plans covering allocation worked out by the International Radiophone Union, an unofficial organization of European broadcasting concerns. Three commissions were appointed to carry on the technical discussions of the conference, on radio telegraph, radio telephony, and administrative propositions.

The conference embodied its conclusions in a Final Protocol, and in a chart of allocation of wave lengths to some one hundred and fifty stations of European countries including Russia, to be known as the "Plan of Prague."² The Protocol, recommended to the governments, indicates the signatories as a regional union of twenty-six states, utilizing the International Telegraph Bureau as the intermediary,

¹ *Documents de la Conférence, Prague.*

² This "Plan" is printed in *Hearings, C. on C.*, pt. 8, p. 845.

and the International Radio Union as an expert body, provided representatives of the member states were admitted to its meetings as observers. Future conferences of the regional group are to be called, to consider questions of collective importance or to remedy serious faults in the Plan, on the request of an administration through the Telegraph Bureau, if a majority of the administrations favors such a conference.

It was determined that stations must maintain stability of waves with the greatest exactitude their technical means would permit, and the Belgian government was charged with measuring wave lengths sent out and with communicating these to all administrations through the Bureau. Beside the distribution in the Plan, the wave length of 267 kilocycles (1124 meters) was reserved to the German police service, and those of 89.5 kilocycles (3,350 meters), and 45 kilocycles (6,660 meters), as set forth in the Convention of Washington, for synoptic meteorological service. There was little discussion of amateur status, and no decision.

Seven questions were submitted to the Technical Committee to meet at The Hague, covering allocations, intervals, limitations, control, and the study of a permanent international service for the control of frequencies. Other questions were recommended to the Conference of Madrid, particularly relating to allocation and to emission.

This conference also hesitated to set down too rigidly the regulations of the art, lest it be hampered. In the final séance, General Ferrié, Inspector General of Transmissions for the French Ministry of War, gave a glimpse into a future where it might be possible to make combinations of wave lengths and increase tremendously the number of channels; he foresaw also the utilization of wave lengths shorter or longer than those in use at present, and the pene-

tration of the mystery of high altitudes of the ether, forty kilometers high, by short wave lengths and weak power.¹

Juridical Congresses

The "Juridical Congresses"² on radio were begun before the permission set forth in Article 14 of the Washington Convention, but of course under the permission borrowed from the St. Petersburg Convention on Telegraph (Art. 17). The third Congress, held in Rome, October 1-6, 1928, attended by thirty-six government representatives and by delegates from economic and professional organizations, again reaffirmed its initial declaration that "the air is free" but should not fall into a state of anarchy, and that each state should assure the free passage of waves.³

International Telephony

The development of international telephony is being rapidly extended, and apparently is rivaling telegraphy. European countries are being linked together in a vast network as complete as that of the United States. Telegraphy in Great Britain, which was taken over by the government in 1870, has not operated at a profit since 1883, and annual deficits since 1920 have been in excess of \$6,000,000. Similar decline in telegraphic traffic is reported for Germany, Switzerland, Esthonia, with similar increase in telephony especially in Spain, Russia, and South American countries.⁴

¹ *Ibid.*, p. 159. See also *Hearings* before the Senate Committee on Interstate Commerce, quoted in the *Chicago Daily News*, Feb. 18, 1926, where reference is made to "hitherto unsuspected fundamentals in the propagation of radio waves...making two waves grow where one had grown before". See also article by Marconi, "Where is Radio Going," *Sat. Eve. Post*, Dec. 9, 1927.

² Paris, 1925; Geneva, 1927; Rome, 1928.

³ *L'Europe Nouvelle*, Nov. 10, 1928, p. 1549, no. 561. The United States Congress appropriated \$12,550, on May 26, 1928, to cover the expenses of delegates to this conference.

⁴ *Hearings, C. on C.*, pt. 8, p. 1035; pt. 9, pp. 990, 1051.

In the United States the use of telephony is on the increase, with 19,000,000 telephones.¹ But the use of telegraphy has not declined, although Mr. Behn declared before the Senate Committee on Interstate Commerce, that it "is rather stagnant in this country. . . . Very few big improvements have been made in the last twenty years."² Radio telephony is increasing, between the United States and Great Britain especially, a combination of land wires and sea wireless providing the circuit, with a special submarine telephone cable in contemplation. Radio is more and more becoming connected with the use of wires, both telegraphy and telephony. It is becoming apparent that the four services, telegraphy, telephony, cable, and radio, supplement instead of rivaling each other; there is no danger of one gaining complete control.

Radio in the telephone field particularly, and to a certain extent in the telegraph field, [is] a scout going out creating the roads of communication, but when the volume is there . . . the cable is the one that responds the better to the service. . . . A communication service must have all of the facilities at its disposal.³

CONFERENCES

| | |
|-----------------------|-----------------------------------|
| Berlin | 1903, International |
| Berlin | 1906, International |
| London | 1912, International |
| London | 1913, Safety at Sea |
| Washington | 1920, Electrical Communications |
| Paris | 1921, Electrical Communications |
| Mexico City | 1924, Pan American Communications |
| Paris | 1925, Juridical |
| Geneva | 1927, Juridical |

¹ *Ibid.*, pt. 9, p. 992, remarks by Mr. Shoup.

² *Ibid.*, pt. 9, *passim*, especially pp. 1022, 1048, 992, 1006, 996, 1032.

³ Remarks by Mr. Behn, *ibid.*, p. 1032.

| | |
|------------------|---------------------|
| Washington | 1927, International |
| Rome | 1928, Juridical |
| Prague | 1929, Regional |
| The Hague | 1929, Technical |
| Ottawa | 1929, Regional |
| London | 1929, Safety at Sea |
| New York | 1930, Regional |
| Copenhagen | 1931, Technical |
| Madrid | 1932, International |

THE AMERICAN ATTITUDE¹*History*

The ready decision of the United States to cooperate in international control of wireless, the dominant influence exercised by the American delegations in international radio conferences, the conventional partnership of the United States in the International Bureau of the Telegraph Union from which it had stood apart, constitute one of the most interesting and suggestive chapters which can be written of the American attitude toward international affairs.² Sig-

¹ *Convention of Berlin:*

Signed, Nov. 3, 1906.
Senate consent, April 3, 1912.
President's ratification, April 22, 1912.
Proclaimed May 25, 1912.

Convention of London:

Signed, July 5, 1912.
Senate consent, Jan. 22, 1913.
President's ratification, Feb. 5, 1913.
Proclaimed July 8, 1913.

Convention of Washington:

Signed, Nov. 18, 1927.
Senate consent, March 21, 1928.
President's ratification, Oct. 8, 1928.
Proclaimed Jan. 1, 1929.

² The United States has been so constantly interested in and associated

nificantly, in the United States there are owned more than one-half of the twenty million receiving sets in the world, an investment amounting to over three billion dollars.¹

The United States sent representatives to the Berlin Conference of 1903. The point of view of the United States, but not of it alone, was set forth in an address at the opening of the second session, by General Greeley:

Recognizing the inchoate state of the science of wireless telegraphy, it is our firm conviction that detailed regulations are impracticable . . . that general resolutions . . . ensure the greatest advantage to the trade and commerce of the world. [Since interchange of ship signals was not internationally obligatory, he believed it] inadvisable to insist, for the present at least, on interchange between ships on the high seas, especially in view of the impracticability of efficaciously enforcing any such regulations.²

It will be noted that the first position is the persisting American point of view, that the art was, and is, still developing, and that nothing should interfere with it. As to the second position, it may be remarked that while sea laws of safety and their enforcement have only just become codified, successive radio conferences have brought the nations to some agreement and to some common practice.

In relation to the questioned power of the United States to control wireless, Mr. Waterbury, in 1903, took a positive stand, declaring that

when the invitation was received from the German government, the subject matter was carefully considered by our government,

with the development of radio legislation, that much of the American attitude as indicated by American participation has perforce been recorded in the preceding general study; the present section therefore covers only the extreme positions taken, or the essentially American activity.

¹ *U. S. Daily*, Nov. 11, 1929, Commissioner H. A. Lafount.

² *Arch. Dip.*, 3 ser., vol. 88 (1903), 2nd séance, p. 176.

[and out of such consideration came the conclusion that] the power of the United States to impose conditions on any wireless telegraph system which conveys messages to and from the United States, is absolute. Such transmission has been repeatedly held by the Supreme Court of the United States to be constitutional, and . . . within the plenary and paramount authority of the Federal Government to regulate.¹

According to the records in the *Archives Diplomatiques*, the secrecy as to the proceedings of this conference which puzzled contemporaries was agreed to on account of the distance of the United States from the conference; secrecy was to be maintained until the American delegation returned home, September 1.² This is particularly interesting since the conference was then considering the swiftest means of communication.

The United States came to the Conference of 1906 desiring the fullest discussion, but still only discussion; the delegation was not restricted by "detailed instructions," but also had no plenary powers; everything was to be *ad referendum*.³

The United States, however, had everything to gain and nothing to lose in freedom of the air. At great distance from Europe, and with continental radio as yet not seen, only foreseen, the United States required the freest development of the art in order that the widest spaces might be spanned. It was not hampered by government contracts, and private companies were not sufficiently powerful to prevent international cooperation. "The United States was distinctly in support of unrestricted interchange of communication between all stations without regard to the system of radio-telegraphy used by either." Commercial contracts

¹ *Arch. Dip.*, *op. cit.*, p. 200.

² *Ibid.*, p. 235.

³ "Report of the American Delegates," *For. Rel.*, 1906, p. 1514 *et seq.*

entered into previously, such as the British-Italian arrangement, seemed something like "secret agreements" to the unfettered Americans.

The American delegation demanded the acceptance of Article 3 of the proposed convention, which was being delayed in consideration; this concerned obligatory ship-to-shore communication.

Coastal stations and the stations on shipboard shall be bound to exchange wireless telegrams reciprocally without distinction of the wireless telegraph system adopted by such stations.

The British delegation filibustered. The American delegation, supported by the German, finally declared:

The proceedings of this conference have reached a point at which the delegates representing the United States find themselves obliged to make the following declarations: The acceptance of Article 3 in the terms proposed to the conference is, in their opinion, indispensable to the due consideration of the convention submitted to our deliberation. Its incorporation into the convention without modification is necessary in order that the Article may serve as the basis of an international agreement.

The American delegation explained that different systems of radio-telegraphy could intercommunicate, that the American navy for three years had been actually interchanging through eight different systems on its coastal and shipboard stations, "with entirely satisfactory results."

The nations finally agreed to a ship-to-shore obligatory communication. Article 3 was unanimously adopted, with a reservation by nine countries of certain coastal stations from its operation (General Protocol II.)

Next, the United States attempted to secure obligatory exchange, ship-to-ship. Great Britain again led the forces of the opposition, and there followed one of those duels

between these Anglo-Saxon peoples who are most frequently in accord on international matters, but most bitterly opposed when they do clash, especially where the difference may have some economic consequence. The United States had few traditions, no prejudices, and comparatively few ships which would be imperiled by half-and-half measures, but more citizens at sea on the crowded lanes of the North Atlantic whose lives would be imperiled if ship did not speak to ship in the universal language of S.O.S.; the United States seemed to realize this in advance of the worst of sea disasters. Great Britain protested against the obligation. Her ships upon the seas were myriad, so numerous that no doubt they could answer any "national" call for help.

At first the United States stood alone, Great Britain had all the following. As the American delegation reported, the British delegate, H. Babington Smith, declared that they would "never allow us [the United States] to carry that point," and would "fight us tooth and nail." The United States would make no concessions, it "preferred to be defeated," it stood for "the principle that communication must be obligatory between ship and ship."

Gradually the United States won support. The principal maritime powers whose citizens and property, it became apparent, would also suffer if ship sovereignty were carried to extreme—Germany, France, Austro-Hungary, Belgium, the Netherlands and Russia—saw the situation; the combined force of humanity, the combined force of the powers, compelled Great Britain to make concession. She made it with reluctance. She would accept obligation "in so far as the message would relate to the saving of life and property at sea."

This was what the Americans wanted. But they were not content. "Having once put itself on record as the champion of the principle of freedom of exchange, the American dele-

gation declined to accept any modification or make any concession." There the battle hung. Neither would yield further. Each left the field feeling that it had won. Great Britain had not conceded the obligation of free exchange between ships.

[The United States] had the satisfaction at the end of a spirited and somewhat heated contest to find that it was victorious and carried its principle by an almost unanimous vote of the conference. . . . The delegation of the United States has been the recipient of expressions of thanks and congratulations upon the part of all the countries of the world, for the benefit which it has secured through the establishment of this principle to communication and civilization and to humanity at large.

The United States delayed ratification of the Convention of Berlin. Submitted by President Roosevelt to the Senate for its advice and consent, the treaty was referred to the Committee on Foreign Relations, which proceeded to hold *Hearings* on the resolution providing for approval.¹ The records of the discussion indicate that at no time was the convention in prospect of recommendation by the Committee, although the Navy Department was distinctly in favor of the treaty. There was introduced into the *Hearings*, evidence that certain ships carrying certain wireless installations had refused to transmit important messages in time of stress. The monopoly enjoyed by the companies owning the installations was considered by the United States to constitute a danger not countered in any provisions of the convention. Senator Lodge declared that the "principal purpose" of this international agreement as urged by Germany was to "break up the Marconi monopoly." It had not succeeded; Great Britain had brought back from Berlin

¹ *Hearings* before the Foreign Relations Committee, on "International Wireless Telegraph Convention, Berlin, 1906," March, 1908, no. 3, Congress 60: 1.

for the Marconi people a treaty re-assuring the Marconi control; one international company had determined the international convention.

And, on the other hand, there was fear that the convention might open the way to a government monopoly. Private companies — who spoke freely in the *Hearings* — indicated such a future, and based their argument before the Committee on the possibility of a stultification of the free inventive American spirit as it evoked new wonders from the radio art. The convention did not correspond with the continuous policy of the United States of refusing to accept international fixation of rates,—except, it should be noted, that fixed in the Postal Convention. It was left for a later conference, at the urge of the American delegation, to separate regulations into two groups in order to carry out this American position.

It was remarked that certain regulations, Articles 2, 5, 6, 26, 33, being cited, “are of the academic kind and are such as would satisfy the subjects of an imperial government but are un-American in the extreme.”¹ These provisions, making minute specifications for the address of telegrams, position of ships when calling, and the response of coastal stations, possibly were “academic,” but it is difficult to see how they were “imperialistic,” how they could hamper the transmission of radiograms or hamper the development of the art. A comparison of those articles with Article 22 of the Washington Convention indicates the temporary quality of the objection. Finally, the Senate Foreign Relations Committee declared that the provisions of the convention were unjust, impracticable, hampering, premature, academic, unconstitutional. The Committee did not recommend the convention to the Senate.

It had been decided in the Convention of Berlin that

¹ *Ibid.*

"conferences of plenipotentiaries . . . shall be composed of the governments of the contracting countries" (Art. 12). It followed that only member states could be invited to the next conference, to be held in London, 1912. The International Radio-Telegraph Union was now established with its roster of members. Therefore the United States, in company with a number of other states, made haste in 1912 to enter the Union; many pulsations had passed over Herzian waves during the preceding six years. The Senate agreed to the convention, after the American delegation had sailed for London.

The Convention of Berlin was again submitted to the Senate by President Taft. The Senate Committee on Foreign Affairs again held *Hearings*.¹ The Navy Department again supported the bill; as Admiral Edwards declared:

Our policy might even be regarded in some quarters as bordering on a breach of faith. There were certain articles in the convention adopted at our initiative which might not have been incorporated into the convention if there had been even a possibility of belief that the United States would be reluctant to agree to ratification.²

The private companies were again heard. But their voices while definitely audible indicated no fear either of a government monopoly or of a single international monopolistic company. The Committee recommended the convention, the

¹ *Hearings* before the Foreign Relations Committee, of the Senate, on International Wireless Convention, Berlin, 1906, Feb. 21, 1912, Congress 62.

² *Ibid.*, p. 32. The United States had been invited by Great Britain to attend the London Conference, when, the provisions of the Convention of Berlin being noted, "the invitation (was) recalled because we had no right to go at all." Maj. Geo. P. Squier, *Hearings* before the House Committee on Merchant Marine and Fisheries, H. F. 15357, Congress 62: 2, January 18, 1912, p. 61.

Senate advised and consented, the convention became law, May 25, 1912.

The United States therefore became a member state of the International Radio-Telegraph Union, and came to the Conference of London, in June 1912, with the largest delegation, twelve in all, all of these from continental America. Great Britain, host to the conference, with its quota of sub-states filled, sent eleven delegates, only four of these representing Great Britain herself.

One of the Anglo-American battles in the Conference of 1906 had been that of representation for colonies or dependencies. The United States now came bringing her quota of permitted sub-states, American units, six in all. The Senate's consent to the Convention of 1906, done on April 22, 1912, "covered Alaska, Hawaii, and other American possessions in Polynesia, the Philippine Islands, Porto Rico and the American West Indian possessions, and the Panama Canal Zone, as countries within the meaning of Article 12."¹

The United States was not permitted to bring representatives of these states into the conference hall. The procedure for such admission had been definitely set forth in Article 12; application had to be made six months in advance through the International Bureau, which then circularized a notification to the other states. The United States, with others, had failed to observe the procedure. This was on account of the late ratification, one month before the Conference of 1912.

The London Conference was held under the brooding memory of the disaster of the *Titanic*, April 15, 1912. Almost at once there was agreement as to obligatory exchange of message, ship-to-ship, with prescribed installations on certain ships, the number of operators, the maintenance of wireless communication. The firm attitude of the Amer-

¹ Malloy, *Treaties*, vol. iii, p. 3048, n. 1.

ican delegation at Berlin in 1906 won the swift approval of all nations at London in 1912.¹

The United States Senate consented to the treaty on January 22, 1913, making one reservation relating to her inspection laws for vessels clearing or entering her ports;

Nothing in the Ninth Article of the Regulations affixed to the Convention shall be deemed to exclude the United States from the executing of her inspection laws upon vessels entering in or clearing from her ports.²

In signing the convention the United States agreed to partial membership in the International Telegraph Bureau at Berne, and agreed to contribute to the expenses of that Bureau.³

It had been expected that the third conference would be held in 1917, at the end of a five-year period. The war delayed this until 1927. The conference was welcomed by the President of the United States, in an address which as an embodiment of the American attitude is worthy of remembrance:

Communication is one of the most important supports of civilization. . . . Radio holds great promise of reaching into the dark places of the earth because the cost of its installation and maintenance will represent almost nothing in comparison with the cost of other means of communication. To use it does not even require an elementary education in reading and writing. An instrument of such magnitude, fraught with so

¹ *For. Rel.*, 1913, p. 1412.

² The United States also declared itself "under the necessity of abstaining from all action in regard to rates because the transmission of radiograms as well as of all telegrams in the United States is carried on wholly or in part by commercial or private companies." *Final Protocol*, II.

³ The United States pays as its share in supporting the Bureau, \$7,527, according to the appropriation for the year, 1931. *U. S. Statutes*, 1929-1930, Congress 71:2, p. 181.

great a power for good to humanity, naturally requires national and international regulation and control, to the end that there may be the most perfect order and the largest possible uniformity in its use and enjoyment. . . . In many fields our country claims the right to be master of its own independent development. It cordially concedes the same right to others. But in the radio field the most complete success both at home and abroad lies in mutual concession and cooperation.¹

It had been recognized that the preceding convention was obsolete, and that American legislation based on that convention was obsolete. Congress therefore acted, in the very year of the approaching international conference, in what proved so intelligent and comprehensive a piece of national law that it served as the model for international law. The Radio Act, of February 23, 1927,² declared its intention of regulating "all forms of interstate and foreign radio transmissions and communications within the United States, its territories and possessions," but not applying to the Philippines and the Canal Zone; yet it recognized that "the situation is not ready to be frozen."³

To the international decision of the juridical congress on radio, in Paris, 1925, that "the air is free,"⁴ the Act of 1927, repeating the language of preceding Acts, makes a counter statement, "reaffirming the use of ether for radio communication or otherwise to be an inalienable possession of the people of the United States and their government."⁵

¹ *Address of President Coolidge*, Government Printing Office, Washington, 1927.

² Public No. 632, 69th Congress.

³ *Hearings*, House Committee on Merchant Marine, 1928, on Radio Act, Congress 70: 1, p. 7.

⁴ International Committee, Radio Telegraphy, quoted in *Hearings*, House Committee, Merchant Marine, Jan., 1926, 69: 1, pp. 88-90.

⁵ For a general survey of the situation in the United States and the relation to the international situation, see *Report of the 4th Radio Com-*

The word "ether" gave rise to discussion in Committee *Hearings*, where Judge Davis quoted Secretary Hoover to the effect that ether is that "which is left in a vacuum tube after everything else has been pumped out."¹ Judge Davis declared that Congress had the power under the Constitution to deal with the subject not because the ether is a part of the national domain, but because the traffic is interstate and foreign commerce.²

The Act (Section 15) sets up a Federal Radio Commission of five members to which is given broad power to control radio in its various aspects.³ It was expected that the Commission after one year would surrender administrative duties to the Secretary of Commerce and would itself continue as an appellate body. The Commission has, however, been continued by various supplementary acts, and finally, Dec. 20, 1929, indefinitely, until Congress clarifies its mind as to radio and develops a Federal Commission on Electrical Communications.⁴ The Radio Commission has

ference, Washington, Nov., 1926. See also U. S. Federal Trade Commission, *Report on the Radio Industry*, 1926. Hereinafter cited as *Radio Industry*.

¹ *Hearings*, House Committee on Merchant Marine and Fisheries, Congress 69: 1, Jan., 1926, p. 21.

² *Hearings*, Senate Committee on Interstate Commerce, on Radio Act, Congress 69: 1, p. 283.

³ Jurisdiction over telegraph and telephone rates is granted to the Interstate Commerce Commission, in an amended Act, June 18, 1920, 36 *Stat.* 539, 544-5, providing that rates shall be "just and reasonable", but a jurisdiction which has not been exercised on account of absorption in other means of communication. Supervision of radio in preceding legislation was placed in the Bureau of Navigation in the Department of Commerce, since international and national legislation on the subject was marine. The national law however was cast on broad lines, and supervision could therefore be extended to cover new means.

⁴ *Hearings*, Senate Committee on Interstate Commerce, relative to the establishment of a commission on communications, with Senator Couzens as chairman, in 1929 and in 1930, have developed this subject exhaustively.

"one of the most difficult and one of the hardest jobs that anybody or any organization has ever been confronted with in the history of the government."¹

The United States, having invited the nations to the delayed international conference, began to prepare the way two years before the date set; radio in the United States, from the international, national, and amateur points of view, was organized for the effort. Experts studied and experimental committees met to discuss and to consider. Amateurs further explored, and demanded safeguards for their freedom. Committees were created in the Departments of War, Navy and Commerce, which worked on the questions to be codified. The results were submitted in proposals to the International Bureau which then circularized the member states of the Union. The technical experts of the American delegation came to Washington in June before the convening of the conference in October and through six committees continued work.

There was during that preliminary work, and during the conference, the most active cooperation from private companies interested. To quote Mr. Castle again, "The radio companies practically wrote it." The United States recognized, and the companies agreed, that what they must have was international legislation on wireless communication of a definite kind.

The Federal Act of 1927 prepared the way with deliberation. Through the watchfulness and the diplomacy of the American delegation, the convention as developed dovetails skilfully into the provisions of the Radio Act. The convention was, as Professor Chamberlain says, the international expression of the national law.

¹ Col. Davis of the Radio Corporation of America, in *Hearings on Radio Act*, before the Senate Committee on Interstate Commerce, Congress 70:2, February, 1929, p. 73.

On the basis of the Radio Act this country can enter into the necessary international engagements to protect the American share in what is necessarily a world method of the distribution of ideas. . . . If the air is to be used successfully by radio, it must be on the basis of a world utility, regulated by a world public service commission through agreement of the governments.¹

So carefully did the American government work through its delegation that when the treaty was before the Senate for advice and consent, the State Department could say that everyone was for it, that the United States Chamber of Commerce and the telegraph companies had endorsed it, and Senator Borah, Chairman of the Committee on Foreign Affairs, could state that the Committee had not received a single protest against the convention. "Our own Radio Act was considered in this conference a model of good legislation and this [treaty] does not involve further legislation."²

The Convention of 1927 may, then, be regarded as the international codification of the American attitude, which is that of the largest liberty to radio; with due consideration for the amateur as the American pioneer on the frontiers of a new world; with prime consideration for safety at sea; with adequate consideration for commercial use and for communication needs; with ample consideration for imagination and invention.

American Regional Arrangements

The United States under the general liberty of action preserved for the American Republics, and within the per-

¹ Joseph P. Chamberlain, "Radio Act of 1927," *American Bar Association Journal*, June, 1927, p. 342 *et seq.*

² *Hearings before the Senate Committee on Foreign Affairs, on International Radio Convention, March 14, 1928, Congress 70: 1, p. 15.*

missive liberty of action granted in Article 14 of the Radio treaty, has entered into a number of arrangements providing regulations for electrical communications on the American continent. As Mr. Castle said in discussing the convention:

It was distinctly recognized that there might be questions arising between the United States and Canada on the one hand, or the United States and Mexico on the other, that had some peculiar significance to us, but did not concern the rest of the world very much, and there was a special provision in the treaty that we could work out these arrangements with other nations so long as we did not violate the general principles of the treaty.¹

A control of interference, caused by ships' radio activity off the coasts, was effected in 1925 by the reciprocal arrangements through an exchange of notes, each country concerned prohibiting to its ships the use of waves of 300 and 450 meters within 250 miles of the coasts of the other countries; the arrangement was made first between Great Britain and the United States, and was extended by notes between Canada and the United States, and Newfoundland and the United States.²

In the rapid acceleration of radio use, the United States and Canada, with a three-thousand-mile land boundary, much of it an imaginary line, found that wave lengths did not recognize the 49th parallel, and that the problem of the two countries was that of a land communications area. Therefore the two countries entered into an informal agreement, which broke down when the Department of Commerce lost control of the situation.³

¹ *Hearings*, before the Senate Committee on Foreign Affairs, Congress 70: 2, on International Radio Convention, March 14, 1928.

² *U. S. T. S.*, No. 724-A, 1925.

³ Commissioner Sykes, *Hearings* before the House Committee on Merchant Marine and Fisheries on H. F. 8670, Congress 70: 1, p. 2, Jan. and Feb., 1928.

In 1929, an arrangement covering radio communication between private experimental stations (amateurs) was made. Canada asked that it be extended to the Philippines; the United States declared that it desired the arrangement to apply to all its territories and possessions, Alaska, Hawaii, Porto Rico, Virgin Islands, Panama Canal Zone, and the Philippines. This arrangement, it will be noted, was in contrast to the national legislation which had exempted the latter two areas.¹ The arrangement covers an exchange of communication by amateur stations, messages which could not normally be sent by other means, or from isolated points, or in emergencies. It may be noted that Cuba and Mexico have made similar mutual agreements.² The value of such amateur service in undeveloped regions is great, often constituting "a wholly independent system of communication" which can be used in time of emergency, and has been used, as in the Vermont floods and the West Indian hurricane of 1929.³ The War Department has asked the Radio Commission to allocate to amateur use an additional band of frequencies, since amateurs are the source of operators for the army.

A more difficult adjustment was encountered in the allocation of channels for broadcasting between the United States and Canada. The United States had developed the interest earlier, had established many stations and taken many wave lengths. Then when Canada developed an interest, it found that practically all the channels had been taken by the United States. The situation came to an

¹ *U. S. T. S.*, No. 767-A, 1929.

² *P. A. U. Bulletin*, Oct., 1928, p. 1046.

³ *Statement*, Dept. of War, Sept. 11, 1928. Since 1925 the Signal Corps has been developing a nation-wide organization of amateurs, now covering all states and geographical subdivisions, to be relied on in cases of emergency. *U. S. Daily*, Nov. 11, 1929.

impasse. After consultation the Federal Radio Commission issued an order, August 30, 1928, to cover the situation.¹ As a result, Canada has six exclusive broadcasting wave lengths out of a total of ninety-six, but sharing eleven others with the United States, leaving the United States seventy-nine broadcasting wave lengths.

A further conference between American and Canadian representatives was held in New York City, April 10 and 11, 1930, the governments later accepting the recommendations.² Since the airways of the two countries are being joined, it was found necessary to co-ordinate the radio communication systems and radio aids to air-navigation. These recommendations included: not requiring regionally the International Air Calling Frequency 333 kc. for aircraft or aeronautical stations in Canada or the United States (1); a frequency separation of 6 kc. as being ordinarily sufficient between stations operating radio range beacon and radio telephone services (2); a minimum distance of 750 miles between radio beacon stations operating on the same frequency (3); definite frequencies, out of the band of 194-284, to be reserved regionally for air service (4); certain frequencies both in Canada and in the United States to remain free from assignment within 750 miles of the international boundary (5, 6); reservation of the frequency of 278 kc. for low power airport use (7); reservation of the frequency 237 kc. for emergency messages from ground stations to aircraft (8); reserved frequencies for Canadian stations along the air ways from Halifax to Vancouver, and an adjustment of frequencies making for closer coordination in the interest of Canadian planes flying from Winnipeg to St. Paul and Minneapolis (9); the national calling frequency of Canada to remain at 5630 kc., of the United States at 3106 kc. (10).

¹ General Order No. 40, *Annual Report*, 1928.

² *Press Releases*, Department of State, April 9, July 3, 1930.

A Short Wave Radio Conference, covering North America and the West Indies, was proposed by the United States, in order to discuss control and allocation of continental communications channels—possible of agreement because the United States had not preëmpted the short waves. The conference met, with representatives from Canada, Cuba, Newfoundland and the United States, but without representation from Mexico. After several sessions, in Ottawa and Washington, during January and February, 1929, they entered into a "gentlemen's agreement," covering the problem; the arrangement to be effective March 1, 1929, to remain in force until January 1, 1932, and thereafter indefinitely until one year from the day of denunciation by any one of the contracting powers.¹

There was admitted, in principle, "the sovereign right of all nations to use every radio channel," but special administrative arrangements were accepted in order to minimize interference. "The Governments agree not to assign to stations within their respective jurisdictions any of the general communication channels allocated to other governments, unless it can be accomplished without causing interference." Transmitters must be tuned with an accuracy of 0.025 per cent or better, and maintain their frequency with an accuracy of 0.05 per cent or better at all times, with a separation of 0.2 per cent between frequency channels. The governments agree to compare at least once every six months the actual radio frequency measuring standards.

The 639 separate channels were allocated, together with a possible extension to 704 under the provisions of the agreement. Certain bands were set aside: 190 for mobile service, 134 for amateurs, 84 for television, 3 for experimental

¹ U. S. T. S., No. 777-A. *Press Release*, Dept. of State, Feb. 28, 1929. See also Irvin Stewart, "Recent Radio Legislation", *Am. Pol. Sci. Rev.*, May, 1929, p. 421.

work. Of the 228 general communication channels, 146 were given to the United States, 112 exclusively, 34 to be shared with Canada and Newfoundland. Canada was given 38 exclusively, but to be shared with Newfoundland, 48 to be shared with others. Newfoundland was given 17 which it shares with the United States. Cuba was given 25 exclusively, 15 to be shared with Canada. "Other nations" (Mexico) were given eight exclusively, 16 to be shared with Canada.¹ A marine calling frequency, 5525 kilocycles, and bands for experiments, 1604 and 2398 and 4596 kilocycles, were determined.

Senator Dill, disturbed over this extra-constitutional activity, challenged the power of the Department of State so to act.

I have not seen any provision [in the Washington treaty] that I understood would permit our Government to make an agreement that would not be submitted to the Senate, any more than any other agreements. That is the reason why I am particularly interested to know about this matter. I take it from your interpretation that when it says "the Government", it simply means a department of the Government may make agreements that will be binding even though they are not submitted to the Senate.²

Assistant Secretary of State Castle answered simply, "Yes."

Later on in these *Hearings*, the matter came up again. Mr. Vallance, Assistant Solicitor in the State Department, explained:

It is considered an agreement so far as the executive branch of the government is concerned; that they will carry out this agreement in assigning frequencies in Canada, so far as we

¹ The Mexican government in a note to the Canadian government has asked for a reopening of the allocations. *U. S. Daily*, Oct. 14, 1929.

² *Hearings, C. on C.*, pt. 8, p. 339.

are concerned. It is just a working agreement between the executive officers of the two countries.¹

Asked by Senator Pittman if the agreement, made in conformity with the treaty, had not become a part of the treaty, the Assistant Solicitor answered simply, "Yes."

The control is in the hands of the Federal Radio Commission, which assigns wave lengths for international as well as domestic use, the Commission agreeing not to assign certain wave lengths in the United States because they would conflict with similar assignments in Canada.

Inter-American Union

The Fifth Pan-American Conference at Santiago, 1923, discussed the subject of electrical communications, and in two resolutions declared the principles which should govern: that since national electrical communications are "intrinsicly a public utility," they should be "under the supervision of the government concerned;" and, that when a part of international communications, they should be "under government supervision."²

The conference, on the initiative of the United States, adopted a recommendation that there be established an Inter-American Commission on Electrical Communications, a technical committee, to examine the application of the principles, to draft conventions providing for "uniformity in the rules of inter-American electrical communications, including a reciprocal reduction of cable tolls and telegraph franks,"³ the conventions to be presented to the Pan-American Bureau, and by this to the governments.

¹ *Ibid.*, p. 697.

² *Report of the Delegates of the United States of America to the Fifth International Conference of American States, Santiago, 1923, Washington, 1924, pp. 15, 172.*

³ The United States filed reservations on these latter points.

The United States appropriated \$33,000 for the expenses of its delegates, these being appointed with the advice and consent of the Senate, but the technical experts by the Secretary of State. The conference, representing fourteen of the American Republics,¹ met in Mexico City, May 27-July 22, 1924. Five committees of the Commission were set up: legislation and conventions; telegraph communications and cable; radio; tariffs; improvements.

The subcommittee on legislation submitted in one of the earlier sessions a recommendation providing for one convention covering electrical communications, instead of the two or more which had been contemplated according to the Santiago Resolution. The Commission accepted the report of the committee by a vote of eleven to two, Argentina and the United States opposing. Against this decision the American delegation protested, as being contrary to the terms of reference, contrary to their instructions, and something they could not recommend to their government.² The United States delegation thereupon attended only the plenary sessions, and Ambassador Warren, chief of the delegation, absented himself from the conference.

The Convention, embodying "the essence of the entire labor of the conference,"³ declares as its objective "the establishment of uniform rules in the exchange of messages by electrical transmission between signatories" (Art. 1), and envisages "a single area," with an international bureau (Art. 27), and with arbitration provided for the judicial settlement of disputes (Art. 28). "The administration and the operation of the public services of electrical communications in each state shall be entrusted as far as possible to a

¹ Those absent were Bolivia, Chile, Ecuador, Haiti, Honduras, Venezuela.

² *Report of the American Delegation*, p. 134.

³ *P. A. U. Bulletin*, Sept., 1924, Text of Convention, p. 869 et seq. Text also in *Report of American Delegation*, p. 140 et seq.

single administrative entity which shall be of a similar organization in each of the signatory countries" (Art. 4). Each state is pledged to "coordinate such of its electrical communications services as form part of the inter-American system" (Art. 11). Certain provisions govern the rates (Arts. 22-24).

The convention, which according to the delegation of the United States, was "adapted largely to the regulation of government-owned systems of communication, dealt arbitrarily with questions of rates, and provided for the establishment of an Inter-American Communications Union similar to the Postal Union, with extensive powers of control and regulation over communications." A conference at Rio de Janeiro in 1925 approved the regulations which the government of Mexico had developed. The convention, which was signed by all the states represented at Mexico City except the United States, is being gradually ratified by South American governments.¹

Private Companies and Public Ownership

There has been no active discussion in the United States of private ownership of the postal service; the Constitution implicitly inhibits that. Because of the practical success and the political influence of private companies in possession of the telegraph and cable services, discussion relating to government ownership of these utilities has remained largely academic. The development of radio, in a newer era of socialization, has brought increasing discussion of government control, even of government ownership of all mediums of communication.

The first private radio company in the United States was the Marconi company of America, organized in 1899, with a large proportion of shares owned by the British Marconi

¹ See *A. J. I. L.*, "Current Events," of various dates.

company, and with an exclusive right to certain indispensable patents. The United Fruit Company in the Caribbean, and the Federal Telegraph company in the Pacific, later operated wireless services. A number of American concerns engaged in manufacturing and in research. The British-American Marconi company completed a high-powered station at New Brunswick, which, with a German high-powered station at Sayville and a French high-powered station at Tuckerton intimated a world war in radio communications to be staged in the United States if the World War had not changed the map.

There may be found in the history of war experiences and post-war adjustments, and in the current history of congressional search for proper supervision of radio through a commission or a cabinet secretary, indication of an increasing interest in government control, even in government ownership, of an agency not concentrated in private hands beyond recall. Other members of the President's cabinet than Postmaster General Burleson (who it will be recalled was asking permission to add telegraph to postal service), were led to endorse public ownership of electrical means of communication—and even the President himself.

A determined effort was made in the early war days to capture the South American radio field, if need be through government ownership. Secretary Lansing, on October 13, 1915, circularized the representatives of Latin American countries at Washington; he suggested that the government of the United States was concerned with the fact that radio stations in South America were not American-owned, he opposed ownership in "European or Asiatic hands," and expressed a desire for ownership "in sympathetic and disinterested hands, thus realizing another conception of a broad and beneficent Pan-Americanism."¹

¹ *For. Rel.*, 1915, p. 24.

Working toward such end, an informal conference of the thirty Latin-American diplomats was held at half after four on Friday, January 7, 1916, in the Department of State, upon invitation from the Secretary. He was not present. The conference was opened formally by Mr. Frank L. Polk, counsellor of the department, who then surrendered the chair to Secretary of the Navy Daniels. According to the minutes of the conference,¹ Secretary Daniels "strongly advocated government control of radio communication." Admiral Benson and Captain (later Admiral) Bullard of the Navy Department were present, and the latter defined the attitude of the department as favorable toward government ownership and control. Resolutions were presented covering this position, but "the temper of the conference was against such action until the matter had received further examination and study."

A full memorandum of the position taken by the Navy Department was circularized to the representatives of the United States in American capitals, by Secretary Lansing.

The economic development and prosperity of a country in time of peace may perhaps best be prompted by a system of communication and intercourse both at home and abroad which is reasonable in cost and rapid in operation. It is believed that these advantages may be most surely secured under government ownership or control. . . . In advocating government ownership and control of all radio stations, it is desired to point out that the extended experience of the Navy Department . . . has shown most emphatically the need that radio service be owned, operated and administered by the governments themselves, rather than that such ownership, operation and control be vested in commercial corporations. The difficulty attending non-government ownership has been brought to the attention of the Navy Department recently and with such force as to compel it to present to the governments interested (Pan Ameri-

¹ *For. Rel.*, 1916, p. 976 *et seq.*

can) the grave importance of having all radio stations under strict government ownership, administration, and operation, and prompt it to urge upon other governments the consideration thereof before any extensive private system of stations is established within their territorial jurisdiction.²

Among the "basic principles" listed were:

b, efficient radio communication requires effective control, effective control of radio requires a monopoly, and the government should exercise such control.

The United States entering the war April 6, 1917, a joint resolution of Congress, July 16, 1918, authorized the President

to supervise or take possession and assume control of any telegraph, telephone, marine cable or radio system or systems or any part thereof, and to operate the same . . . for the duration of the war.³

The advantages of such public control continued to appeal to President Wilson, also to Secretary Daniels, perhaps less to Secretary Lansing, when these officials were in Paris, where it was discovered that "the United States was among the weakest and most dependent of the great powers . . . in facilities of communication."⁴ In letters, memoranda, cable messages, and finally through messengers, the President sought his objective, not hesitating at government ownership.

The situation viewed from that distance seemed particu-

¹ Recommendations and Observations submitted by the Navy and State Departments, Conference of Latin American Representatives, at the Department of State, Jan. 7, 1916, "Government Ownership and Control of Radio Stations," *For. Rel.*, 1916, p. 6.

² *Government Control and Operation of the Telegraph, Telephone and Marine Cable Systems*, August 1, 1918 to July 31, 1919, U. S. Post-office Dept., Washington, 1921.

³ Baker, *op. cit.*, vol. II, p. 466.

larly serious for the United States, since there was uncovered evidence of a determined British effort to command a world-monopoly in electrical communications. When Dr. Alexander had perfected his high-frequency alternator, in 1915, for the General Electrical Company, the alert British Marconi company sent Signor Marconi at once to New York to negotiate for exclusive rights in this instrument, and to buy ten such instruments for \$127,000 each.¹ A tentative contract was entered into, unexecuted when Signor Marconi was forced to return to Italy. In 1919, the British company was attempting to revive the contract. To counter such British monopoly the United States proposed internationalization. Mr. Walter Rogers, expert with the American delegation, suggested "that each of the nations should nationalize its radio facilities, and that the nations of the world acting together develop a truly world-wide radio service." As Mr. Ray Stannard Baker comments, "this was a drastic proposal, the arguments for which apply with equal force to cable and overland telegraph."²

Under instruction from President Wilson in Paris,³ the Navy Department then had the opportunity it had been waiting for since 1916. It carried on negotiations which all but resulted in a set-up of control of electrical communications amounting to government ownership. Rear Admiral Wm. H. G. Bullard and Commander S. C. Hooper, on April 5, 1919, visited the office of the General Electric Company

¹ Owen D. Young, "Freedom of the Air," *Saturday Evening Post*, Nov. 16, 1929.

² Baker, *op. cit.*, vol. ii, p. 487; vol. iii, p. 432.

³ See *Hearings* before the Senate Committee on Interstate Commerce, Dec. 10, 1929, where Admiral Grayson recalled that President Wilson sent a message by Admiral Bullard to Mr. Young, and where Mr. Young produced a letter from President Wilson recommending that Admiral Bullard sit with the board of the Radio Corporation of America. *New York Times*, Dec. 11, 1929. See also *Radio Industry*, p. 26.

in New York.¹ The Admiral stated to Mr. Young that he had "come from Paris to make an appeal to the General Electric Company not to part with its right to the Alexanderson alternator and other patents to Great Britain."² He advised the Company that if they should carry out the pending negotiations and sell to the British Marconi Company an exclusive right in the alternator, "foreign interests could maintain a monopoly of world-wide communications for an indefinite period."³

Following this interview, the Department and the Company worked out a contract. Secretary Daniels, returning home, favored the government control expressed therein.⁴ But, Congress did not act to grant the permission necessary to carry out the contract; it was never executed.

There then resulted, out of these discussions between officials of the Government and of the company, and because of the failure of Congress to act, the formation of a private company. The General Electric Company "after due notice to the Secretary of the Navy" of its intentions, proceeded on October 17, 1919—"as the result of an appeal by our government"⁵—"its organization inspired by patriotism"⁶—to the formation of the Radio Corporation of

¹ Owen D. Young, *op. cit.*, *Sat. Eve. Post*.

² *Hearings before the Senate Committee on Interstate Commerce, U. S. Daily, Dec. 10, 1929.*

³ *Radio Industry, p. 15.*

⁴ Senator Dill in the *Hearings before the Senate Committee on Interstate Commerce (U. S. Daily, Dec. 10, 1929)*, declared Secretary Daniels did not know of the letter signed by Acting Secretary of the Navy, Thos. D. Washington, which had authorized the interview, and which instructions Admiral Bullard carried out. However it is on record that Secretary Daniels on his return from Paris, sanctioned the proceedings and the project of government ownership. *Radio Industry, p. 16.*

⁵ Owen D. Young, *Radio Industry, p. 62.*

⁶ General Harbord, *Hearings before the Senate Committee on Interstate Commerce, Dec. 14, 1929, U. S. Daily, Dec. 15, 1929.*

America, the "R. C. A.," which would serve the purpose, suggested by the President, of retaining American control of radio communications in the United States. The certificate of incorporation provides:

No person shall be eligible for election as a director or officer of the corporation who is not at the time of [such] election a citizen of the United States.

The corporation may by contract or otherwise permit such participation in the administration of its affairs by the Government of the United States as the board of directors may deem advisable.¹

The Secretary of the Navy is given the power to challenge ownership of shares and the voting power based thereon.

In Hearings before the Senate Committee on Interstate Commerce, in December, 1929, the "R. C. A." had to defend itself historically. Senator Wheeler accused it of being guilty of putting forth false propaganda as to its origin; Senator Couzens complained that all the "R. C. A." witnesses were trying to influence the committee by psychological means to show that the corporation was organized at the behest of President Wilson; Mr. Green, counsel for the Senate Committee, declared that the corporation "wrongfully held it was organized at the behest of the United States;" Senator Dill announced that Secretary Daniels would testify before the committee as to his lack of knowledge of the letter from the Acting Secretary of the Navy, authorizing the interview in the office of the General Electric.²

Secretary Daniels did not appear, and the evidence as produced seems to bear out the assertion of the "R. C. A." as to its origins.

¹ *Radio Industry*, p. 3.

² *Hearings before the Senate Committee on Interstate Commerce (U. S. Daily, Dec. 15, 1929)*.

In Hearings before committees of Congress can be found certain hints, perhaps of the future. As early as 1912 when the House Committee on Merchant Marine and Fisheries was discussing legislation to complete the then current radio treaty, Mr. Ayres suggested the possibility of

The government taking over the private wireless telegraph companies at the present stage of the business (Laughter). I am quite serious about the matter. . . . If the government is ever going to take over the ownership of public utilities, this is one place where you would not interfere with states' rights.¹

In 1919, when the House Committee on Foreign Affairs was holding Hearings on the resolution authorizing the call for an international conference on communications, Mr. Walter Rogers declared such control should approximate that of the Universal Postal Union:

At part of America's international development we have got to develop a great communication system, both telegraph, cable and radio. . . . It is enormously advantageous to American business to have the telegraph, cable and radio throughout the world so coordinated and so worked out that they will give the American business man every legal opportunity for their use and development. Now the only way that can be brought about is to get the nations of the world together, and try to put the communications system on some basis similar to the International Postal Union, and let it work itself out over a period of time.²

Even the Senate Committee on Foreign Relations, considering the Washington convention was confronted with the idea. Mr. Castle, Assistant Secretary of State, was defending the treaty, and alleged in support that the American delegation had succeeded in separating from the main treaty

¹ *Hearings on H. F. 15,357, Congress 62: 2, Jan. 18, 1912, p. 13.*

² *Hearings, Congress 66: 1, October, 1919.*

the provisions which would handicap private companies. Senator Robinson (democrat, Arkansas) remarked:

I attach significance to Mr. Castle's statement . . . that one of the great difficulties encountered during the negotiation of this convention was the fact that in European countries radio communication is under government operation, in this country it is under private operation. I do not know, but it looks to me as if in the early future, legislation will be required on this subject.

Senator McLean (republican, Connecticut) remarked quietly:

The government may have to take it over.¹

In 1929-1930 in *Hearings* on a Commission on Communications before the Senate Committee on Interstate Commerce fellow senators had not yet arrived at Senator McLean's attitude, but Mr. Young of the Radio Corporation, foresaw government ownership. Not that he suffered it gladly. Not that he was not willing to postpone such an eventuality. Not that he did not consider "government ownership opposed to American policy." But he found

No reason in principle why the communications services should not be owned and operated by the government if that be the best way in which to get the most satisfactory communication service at the lowest cost. . . . In the field of international telegraph . . . from the standpoint of national interests a unification is necessary, a monopoly either regulated by the government or owned by the government is a necessity and a necessity now.²

¹ *Hearings* before the Senate Committee on Foreign Relations, on the International Radio Convention, Congress 70: 1, March 14, 1928.

² *Hearings* as reported in the *New York Times*, Dec. 10, 1929. See also *ibid.*, pt. 9, *passim*.

The Radio Corporation had come into contact with the British imperial merger of radio and cable, developed as the binding cord, politically and economically, of the British Commonwealth. It saw such mergers contemplated in Germany, France, Japan, Italy.¹ The "R. C. A." having come into being on the suggestion of the United States government to maintain independent American communications, now asked for an extension of its power in order to further serve independent American communications. It asked for the repeal of *Section 17* of the Radio Act of 1927, which specifically prevents joint operation of wire and wireless, for an "enabling act" such as the Webb-Pomerene Act, to permit it to meet foreign competition. As Mr. Young said:

If you have any hesitation about unifying our external communications in the hands of a private company under government control, then I beg of you in the national interests to unify them under government ownership in order that America may not be left in the external communications field to the dictatorship and control of foreign companies or governments.²

In 1932, the United States will be confronted by a definite effort of the nations, assembled in dual conference at Madrid, to unify wire and wireless communications in one organization, through one convention, most feasible if the domestic controls or ownerships are national.

The Conference on electrical communications, Washington, 1920, recommended:

in the interests of telegraphic communication between the Allied

¹ *U. S. Daily*, Dec. 14, 1929. See also *Hearings, ibid.*, pt. 8, p. 689 *et seq.* (Washington, 1929). See also G. Stanley Shoup, "Wireless Communication in the British Empire," *Trade Information Bulletin*, U. S. Dept. of Commerce, No. 551.

² *Hearings before the Senate Committee on Interstate Commerce, New York Times*, Dec. 17, 1929.

and Associated Powers and in the interests of the telegraphic communications of the world, that the private companies which do not now adhere to the International Telegraphic Convention be pressed to do so. ¹

The International Telegraph Conference, Paris, 1925, expressed the wish:

That after the Radio Conference at Washington, the contracting governments should consider the best way of modifying the St. Petersburg Convention, and of introducing into it the provisions of the Radio-Telegraph Convention, by a Congress possessing the necessary powers. It expresses the hope that the Washington Conference may be able to make a similar recommendation. ²

The International Radio Conference, Washington, 1927, agreed to this wish, and expressed the desire:

that the contracting governments shall examine the possibility of combining the International Radio Convention with the International Telegraph Convention, and that, where necessary, they shall take the necessary steps for this purpose. ³

President Hoover, in his opening address before the Washington radio conference, had said:

The amalgamation of these conventions has been frequently suggested and has been under discussion for many years. There is a variance of opinion regarding it, and some divergence of judgment. ⁴

In any event the governments of the world meeting at

¹ *Report of the Subcommittee on the improvement of communication facilities* (Washington, 1921), p. 4.

² *International Telegraph Convention and Regulations, Revisions of Paris*, p. 136.

³ *Ex. B.*, p. 271.

⁴ *Ibid.*, p. 98.

Madrid in 1932, will have this problem before them; in fact through these two expressed "wishes" the problem is even now before them. It is of necessity before the United States. That problem, of the amalgamation of wire and wireless conventions—possibly leading in a short long run to the inclusion of submarine cables—can be solved in two ways. A new treaty can be developed, according to the model provided in the Washington Radio Convention, 1927, in which provision for government supervision and the fixing of rates is set apart from the main treaty and regulations, into supplementary regulations. Or, a treaty according to the model of the Pan-American Convention, 1924, applicable to a situation where electrical utilities are owned and operated by governments.

It should be remembered that the supplementary regulations of the Washington convention were signed by seventy five of the seventy eight signatories to the main treaty. It should be remembered that the Pan-American convention was signed by all the Pan-American states present at Mexico City, except the United States. It may be concluded that the great majority of the governments will be in favor of amalgamation.¹ It may be concluded that the United

¹ Two such amalgamating draft treaties have been developed. One issued out of the Washington preliminary conference on world communications, 1920, which taking as a basis the St. Petersburg International Telegraph treaty, 1875, enlarged that convention by inserting provisions to cover radio, and added an elaborate system of regulations in 114 articles. See *supra*, p. 177, n. 5.

Concerning this convention, the American delegation made a reserve, that "the United States could adhere, if at all, through a separate protocol. It is the understanding of the American delegation that such conditional adherence made necessary by private ownership of communication facilities would be agreeable to other governments provided the terms of the protocol are satisfactory."

A second draft treaty has been developed by the International Telegraph Bureau, at the suggestion of the Italian administration, and with the approval of the Spanish administration, as a preliminary study for

States will maintain its historic position, that of favoring "private ownership and management (and the fixing of rates), subject to just and reasonable governmental supervision."¹

But, there would be at least nothing unconstitutional in the legislation, if the United States should, in 1932, or subsequently, determine to conform its national situation to the general international situation, by assimilating the status of wire and wireless to that of the post.²

AMERICAN DELEGATIONS TO CONFERENCES

| | |
|-----------------|--------------------------------|
| 1903, Berlin | General A. W. Greeley |
| (International) | Commander F. M. Barber |
| | John I. Waterbury |
| 1906, Berlin | Charlemagne Tower |
| (International) | Rear Admiral Henry M. Manney |
| | General James Allen |
| | John I. Waterbury |
| 1912, London | John R. Edwards |
| (International) | John Q. Walton |
| | Willis L. Moore |
| | Louis W. Austin |
| | George Owen Squier |
| | Edgar Russell |
| | Major General C. McK. Saltzman |
| | Davis Wooster Todd |
| | John Hayes Hammond, Jr. |
| | Webster |

the Madrid conferences, 1932. It unites in one somewhat closely woven fabric the Washington Convention, 1927, the St. Petersburg Convention, 1875, and the Brussels Service Regulations, 1928. (*Journal Télégraphique*, June, 1930).

¹ *Report of the Delegation of the United States, Inter-American conference on electrical communications*, p. 134.

² See Lindsay Rogers, *The Postal Power of Congress* (New York, 1916), especially ch. 11.

- W. D. Terrell
John I. Waterbury
- 1913, London J. W. Alexander
(Safety at Sea) T. E. Burton
J. Hamilton Lewis
E. T. Chamberlain
Captain E. P. Bertholf
Rear Admiral Washington Lee Capps
Captain George F. Cooper
Homer L. Ferguson
Alfred G. Smith
Captain W. H. G. Bullard
George Uhler
- 1920, 1921,
Washington,
Paris Rear Admiral Benson
Postmaster-General Burlison
Walter S. Rogers
Norman H. Davis
- 1924, Mexico City Charles B. Warren
(Regional) Wallace H. White, Jr.
A. H. Babcock
- 1927, Washington Herbert Hoover
(International) Stephen Davis
James E. Watson
E. D. Smith
Wallace H. White, Jr.
Wm. R. Castle, Jr.
William Roy Vallance
C. McK. Saltzman
Thomas T. Craven
W. D. Terrell
Owen D. Young
Samuel Reber
J. Beaver White
Arthur E. Kennelly

- 1929, Prague W. D. Terrell
 (Regional) Hugh P. Leclair
 Laurens E. Whittemore
 Gerald C. Gross
 Wm. G. Lush
- 1929, Ottawa Eugene Sykes
 (Regional) Orestes H. Caldwell
 W. D. Terrell
 F. L. Mayer
 Dr. J. H. Dellinger
 Commander T. A. M. Craven
- 1929, London Wallace H. White, Jr.
 (Safety at Sea) Arthur J. Tyrer
 Charles N. Barnes
 Rear Admiral Geo. H. Rock
 Captain Clarence S. Kempff
 Dickeson N. Hoover
 W. D. Terrell
 Rear Admiral J. C. Tawresey
 Herbert B. Walker
 Henry H. Smith
 Captain Charles A. McAllister
- 1929, The Hague Major General C. McK. Saltzman
 (Technical) Major General Geo. S. Gibbs
 Captain S. C. Hooper
 Dr. J. H. Dellinger
 Dr. C. B. Jolliffe
 Commander T. A. M. Craven
 Gerald G. Gross
 Captain Kenneth B. Warner
 R. H. Norweb
- 1930, New York W. D. L. Starbuck
 (Aviation) Dr. C. B. Jolliffe
 Gerald C. Gross
 Colonel Clarence M. Young
 F. C. Hingsburg
 H. J. Walls

INDEX

- A
- Abyssinia, 40
 Adams, Charles Francis, 113, 139
 Afghanistan, 33
 Africa, Union of S., 33, 36, 40, 174, 178, 186
 Air, Rights in, 184, 215, 227
 Albania, 33, 40
 Alaska, 112, 148, 225, 232
 Alaouites, States of, 25, 33
 Alexander, John W., 251
 Alexander, Csar, 113
 Alexanderson, Dr., 242
 Algeria, 33, 40
 All America Cable Co., 152, 155
 Allen, Gen. James, 250
 Allin, Prof. C. D., 14
 Allocations of wave lengths, 180-185
 Amateurs, 187-190, 214, 231
 American Radio Relay League, 187, 188
 Amiens, Post Provision in Peace of, 50
 Andorra, 35
 Anglo-Japanese alliance in radio, 206
 Arbitration, 25, 40, 44, 47, 71, 74, 108, 174, 187, 205, 237; between postal administrations, 44-47; Rumania v. Hungary, Yugoslavia, Italy and Switzerland, 47-49; Japan v. Switzerland, 49-50; United States v. Norway, 74-77; in radio affairs, 206-208
 Articles forbidden the mails, 41
 Argentina, post, 33, 40, 53, 70; cables, 129, 130, 150, 152; radio, 174, 178, 221, 237
 Arthur, President, 144
 Attorneys General, Opinions, 56, 85-86, 122, 155
 Attorney General, P. O. Dept. opinion, 85
- Asser, 129
 Austin, Louis W., 250
 Australia, post, 33, 36, 40; telegraph, 103; radio, 174, 188, 209
 Austria, post, 16, 18, 20, 22, 32, 33, 40; telegraph, 91, 92, 92; cable, 129, 130, 167; radio, 174, 179, 212, 221
 Ayres, Congressman, 245
 Azores, 149, 150
- B
- Babcock, A. H., 251
 Baden, 91, 93
 Baker, Ray Stannard, 177, 198, 241, 242
 Balestrini, 125
 Balkan languages, 99
 Balfour, Lord, 150
 Barber, Commander F. M., 250
 Barnes, Charles N., 252
 Batcheller, Gen. George S., 88
 Bavaria, 92, 93
 Bayard, Secretary, 147
 Beelenkamp, C. J., 20
 Behn, Sothenes, 216
 Belgium, post, 18, 22, 24, 33, 40, 41, 43, 44, 58; telegraph, 92, 93, 94, 98, 102; cables, 129, 132, 161; radio, 174, 179, 191, 192, 202, 212, 221
 Bennett, James Gordon, 150
 Benson, Admiral, 240, 251
 Berlin, telegraph conference, 1885, 110; radio conference, 1903, 216, 218, 250; radio conference, 1906, 169, 171, 175, 180, 183, 186, 198, 205, 209, 219, 223, 224, 250
 Bernae, Congress of, 1874, 29, 35, 40, 63; Convention of, 1874, 22, 26, 32, 82, 172
 Bertholf, Captain E. P., 251
 Bibles, 34
 Blackfan, Joseph H., 20, 63, 64, 88, 253

- Blaine, Secretary, 158
 Blair, Postmaster-General, 59, 61, 88
 Board of Trade, British, 128, 150, 200
 Bolivia, post, 33, 40, 53, 70; radio, 170, 237
 Borah, Senator, 230
 Borel, Eugène, 22, 25, 63
 Bosnia Herzegovina, 174
 Brazil, post, 33, 40, 53, 70; telegraph, 103; cables, 125, 129, 131, 151, 152, 155; radio, 174, 179
 British Commonwealth, 36, 72
 British Telegraph Act, 1868, 95
 British cable and radio merger, 195, 247
 Brooks, Captain N. M., 88
 Brussels, telegraph conference, 1928, 101, 102, 110, 118
 Brussels Plan for allocations, 213
 Burleson, Postmaster General, 121, 239, 251
 Brulattour, 65, 88
 Bryan, Charles Page, 122
 Bulgaria, post, 32, 33, 40; radio, 174, 179, 212
 Bullard, Admiral, W. H. G., 240, 242, 243, 251
 Burda, Dr. Alois, 189
 Burton, Senator, T. E., 251
- C
- Cable and Radio Consolidations, 195, 247
 Cable Landing License Act, 156-157
 Cairo, postal Congress, 1934, 144
 Caldwell, Commissioner O. H., 252
 Canada, post, 26, 33, 36, 40, 58, 72; telegraph, 103, 110; cables, 130; radio, 174, 179, 180, 182, 194, 202, 209, 231, 232, 233, 235
 Capps, Rear Admiral Washington Lee, 251
 Carlton, Newcomb, 119, 154, 155
 Carnegie Endowment for International Peace, American Professors as guests, 27
 Carr, W. J., 199-200
 Castle, William R., 195, 196, 229, 231, 235, 245, 246, 251
 Certificates to ships as to radio installations, 210
 Chamberlain, E. T., 251
 Chamberlain, Professor J. P., 14, 229-230
- Chile, post, 33, 40, 70; radio, 174, 179, 237
 China, post, 33, 40; cables, 129, 132, 158; radio, 179, 188, 193, 194
 Chinese language, 99
 Clay, Minister to Russia, 114
 Code language, conference, 1928, 100-102
 Collins line, 58, 77, 78, 149
 Collins, P. McDonough, 113-116
 Colombia, post, 32, 32, 33; radio, 129, 152, 179
 Colonies, 27, 34, 35, 36, 37, 40, 70, 56, 103, 130, 135, 174, 190-194, 225
 Commercial Cables Co., 150, 154
 Commission of Jurists, at the Hague, 177-178
 Committees of the Postal Union, 38
 Communications and Transit, Committee of the League, 109
 Congo, Belgian, 40, 174, 179
 Consortium, radio in South America, 159
 Consulting Committees, postal, 23-24; telegraph, 107-108; radio, 181, 100-206; telephone, 201
 Continental Congress, 12, 56, 121
 Coolidge, President, 179, 226-227
 Cooper, Captain George F., 251
 Copenhagen, Technical Committee, radio, 1931, 204, 217
 Cortelyou, Postmaster General, 121
 Costa Rica, post, 18, 19, 33, 40, 53, 58, 63, 70; cables, 129; radio, 179
Coltshausen v. Nasro, 86
 Couzens, Senator, 244
 Crandall, S. B., 85
 Craven, Commander T. Q. M., 252
 Craven, Thos. T., 251-252
 Crawford, James S.,
 Creswell, Postmaster General, 28, 64, 78, 121
 Cuba, post, 33, 40, 53, 70; telegraph, 103; cables, 161; radio, 179, 232, 234, 235
 Culbertson, W. S., 178, 197
 Cullom, Senator, 120
 Cunard line, 58, 77
 Curaçao, 179
 Czechoslovakia, 33, 40, 179, 212
- D
- Dambach, 129
 Daniels, Secretary, 240, 242, 243, 244
 Dantzig, 33, 40

- Davis, Col. Manton, 183, 229
 Davis, Norman H., 154, 251
 Davis, Judge Stephen, 164, 170, 228, 251
 Dayton, Minister to France, 60
 Dellinger, Dr. J. H., 252
 Denmark, post, 18, 22, 33, 40, 76; telegraph, 94; cables, 125, 129, 132; radio, 174, 179, 209, 212
 Danish Great Northern Telegraph Company, 115, 154, 154, 158
 Demis, Roland R., 122
 Devens, Attorney General, 85
 Dewey, Admiral, 162
 Dickenson, Postmaster General, 78, 121
 Dickinson, Judge, District Court, Pennsylvania, 86
 Dill, Senator, 235, 243, 244
 Directing governments, 101, 108, 171, 180, 203
 Dominican Republic, 33, 40, 53, 70, 129, 152, 179
 Drouyn de Lhuys, 60
- E
- Ecuador, 33, 40, 52, 53, 63, 70, 152, 237
 Edmunds, Senator, 120
 Edwards, Admiral, 224
 Edwards, John R., 250
 Egypt, post, 22, 23, 24, 33, 40; telegraph, 95, 103; radio, 174, 179, 212
 Ems telegram, 98
 English language, 99
 Espenschied, Lloyd, 204
 Esperanto, 99, 100
 Estonia, post, 33, 40; radio, 179, 212, 215
 Everts, Secretary, 15
 Expenses, post, 72-74; telegraph, 201, 107; radio, 175-176, 199, 215, 226
 Experts, 22, 25, 38, 66, 102, 127, 129, 144, 170, 185, 193, 200, 201, 228, 229
- F
- Fanning island, 153
 Far Rockaway, 104
 Fatka, Dr., 212
 Federal Radio Commission, 228-229, 232, 233
 Federal Telegraph Co., 239
- Ferguson, Homer L., 251
 Ferrié, General, 214
 Field, code, 134
 Field, Cyrus, 127, 158
 Finland, post, 32, 33, 40; radio, 179, 209, 212
 Fish, Secretary, 116, 117, 140, 144
 Franc, as international monetary unit, 32, 33, 42, 49-50, 72, 75, 76, 94
 France, post, 11, 16, 18, 21, 22, 25, 33, 35, 40, 43, 44, 59, 58, 63, 72, 76; telegraph, 91, 92, 93, 94, 98, 102, 118; cable, 124, 125, 127, 129, 131, 132, 141, 144, 159, 163, 164; radio, 179, 188, 191, 192, 195, 197, 204, 209, 212, 221; French language, 99
 Frankhauser, H. S., 89
 Franklin, Benjamin, 56, 72
 Frelinghuysen, Secretary, 145, 146, 155
 Friendly islands, 33
- G
- Garland, Attorney General, 85
 Garbini, M., 27, 39
 General Electric Co., 242
 Geneva, 91
 Gary, Postmaster-General, 60
 Germany, post, 17, 18, 20, 21, 22, 24, 33, 34, 36, 40, 43, 44, 54, 76; telegraph, 97, 102; cable, 130, 132, 144, 144, 160, 164; radio, 170, 171, 174, 192, 194, 195, 197, 209, 215, 221; German cables, 163, 164, 177; German language, 98, 99, 100
 Gibbs, Maj. General, George S., 252
 Glover, W. Irving, 73, 77, 81, 82, 89
 Gortschakov, 115
 Gould, Jay, 149
 Grant, President, 64, 83, 117, 121, 141, 142-143, 154, 156
 Government Ownership, 111, 112, 117, 120; of telegraph, U. S., 111; of radio, 241-247
 Grayson, Admiral, 242
 Great Britain, post, 18, 21, 22, 33, 34, 35, 40, 43, 44, 58, 76; telegraph, 94, 95, 101, 102, 113; cable, 125, 129, 131, 132, 135, 139, 140, 141, 144, 145, 157, 159, 163, 164; radio, 170, 173, 174, 176, 179, 190, 191, 192, 195, 197, 200, 209, 212, 215, 220, 221, 222, 224
 Great Eastern, 125

- Greece, post, 22, 33, 40; telegraph, 94; cable, 129, 132; radio, 174, 179, 212
- Greeley, General, 122, 250
- Greenland, 35
- Gregory, Charles Noble, 165
- Gresham, Postmaster-General, 121
- Gross, Gerald C., 252
- Guatemala, post, 33, 40, 53, 70; cable, 129, 130; radio, 179
- H**
- Hague Convention, 1907, 51, 162, 164
- Haiti, post, 33, 40; cable, 125, 152; radio, 179, 237
- Haldeman, Minister at Stockholm, 60, 114
- Hanover, 92, 94
- Hammond, John J., Jr., 250
- Hanseatic Towns, 58
- Harbord, General, 184, 243
- Hatcher, Robert, S., 88
- Hawaii, 19, 153, 225, 232
- Hayes, President, 121, 153
- Hazen, A. D., 88
- Herodotus, 15
- Hertz, Heinrich, 169
- Hertzian waves, 181, 182, 186, 224
- Hingsbury, F. C., 252
- Hispanic American bloc, postal union, 69-70
- Hitchcock, Postmaster-General, 121
- Holstein, Baron de Stael, 53
- Honduras, 33, 40, 53, 70, 179, 180, 194, 237
- Hooper, Commander S. C., 242, 252
- Hoover, Dickeson, 252
- Hoover, Herbert (Secretary and President), 73, 179, 183, 190, 192, 248, 251
- Howe, Postmaster-General, 121
- Hudson, Professor Manley, 14, 74, 77
- Hughes, Secretary, 165
- Hungary, 22, 33, 40, 44, 47, 179, 212
- Hyde, Professor Charles Cheney, 14, 156, 166-167
- I**
- Iceland, 40, 212
- Identification Cards, 27, 68
- Immunity, postal, 51, 52-53, 69
- Imperial Cable Co., 150
- India, post, 36; telegraph, 95; cable, 129, 130, 135; radio, 174, 179, 209
- Indo-China, 33
- Institute of International Law, 52, 127, 128, 162, 167
- Insured Letters, Convention, 27, 36, 38, 68
- Inter-allied Wireless Commission, 177
- International calling wave length, 185
- International Maritime Committee, 176
- Iraq, 33, 36
- Irish Free State, 33, 36, 40, 179, 209, 212
- Italy, post, 18, 22, 24, 36, 40, 43, 44, 47; telegraph, 94, 102; cable, 125, 129, 131; radio, 170, 173, 174, 179, 191, 192, 195, 209, 212; Italian language, 98, 99, 100
- J**
- James, Lieut. Commander Jules, 122
- Japan, post, 33, 36, 40, 49; telegraph, 103, 113; cable, 129, 163, 164, 165; radio, 173, 174, 176, 179, 191, 192, 195, 209, 211; Japanese language, 99
- Jessup, Professor Phillip C., 14
- Johnson, Postmaster General, 121
- Johnson, President, 62
- Jolliffe, Dr. C. B., 252
- Jones, Grosvenor M., 78
- Juridical Congresses, 227
- Jurists, Commission of, 177-178
- K**
- Kasson, John M., 19, 61, 62, 64, 88
- Kelly, H. H., 122
- Kempff, Captain Charles S., 252
- Kenman, George, 144
- Kennelly, Arthur E., 251
- Koran, 34
- Korea, 33, 40, 61
- L**
- Laccadive islands, 33
- Lafount, Commissioner H. D., 218
- Laniell, John E., 89
- Lansing, Robert, 152, 164, 239, 240, 241
- Latin, 99, 100
- Latvia, 40

- eague of Nations, 22, 53, 109, 198,
 209, 213
 eague, American Radio Relay,
 189, 188
 Leclair, Hugh P., 252
 Lettonia, 33, 212
 Leviathan, S. S., 82
 Lewis, J. Hamilton, 251
 Liberia, 33, 40, 179
 Licenses for radio operations, 205-
 206; sets, 182
 Lisbon, telegraph conference, 1908,
 150, 110, 122
 Lithuania, 33, 40
 Litman, S., 77, 79
 Lodge, Senator, 222
 London, postal congress, 1929, 44,
 54, 89
 London, radio conference, 1912, 109,
 174, 176, 191, 192, 198, 209, 216,
 225, 230
 London, radio convention, 1912, 169,
 172, 180, 186, 205
 London conference on safety of life
 at sea, 1913; 176-216
 London conference on safety of
 life at sea, 1929, 208-210, 216, 252
 London conference on submarine
 cables, 1913, 134, 137, 139, 168
 London telegraph conference, 1879,
 103, 110
 Long, Col. Charles Child, 88
 Lush, William G., 252
 Luxembourg, 22, 33, 40, 95, 96
 Lyons, Lord, 161
- M
- McAdoo, Secretary, 155
 McAllister, Captain Charles A., 252
 McBain, Dean Howard Lee, 14
 Mackay, Clarence H., 119, 120
 Mackay, John W., 159
 Mackay system, 90
 McKinley, President, 121, 153
 McLane, Minister to France, 147,
 168
 McLean, Senator, 246
 McNair, Professor Andrew, 88
 Madden, Congressman, 85
 Madrid, postal congress, 1920, 27,
 32, 36, 43, 51, 52, 67, 69, 89
 Madrid, convention, 47, 74, 85
 Madrid, radio and telegraph con-
 ferences, 1932, 96, 110, 166, 184,
 185, 195, 198, 203, 204, 209, 210,
 213, 214, 217, 247, 249, 250
- Maladive islands, 33
 Malay states, 33
 Majestic, S.S., 82
 Manton, Judge (Dt. Ct. S. N. Y.),
 87
 Manney, Rear Admiral, H. M., 250
 Marconi, G., 169, 215, 241, 242
 Marconi, American Co., 230, 239
 Marconi, British Co., 170, 222, 223,
 243
 Mauseborgne, Commander Joseph C.,
 122
 Maxim, Hiram, Percy, 188
 Maxwell, Clerk, 169
 Mayer, F. L., 252
 Maynard, Postmaster-General, 121
 Meeker, Royal, 22, 77
 Membership, post, 33-37; telegraph,
 102-103; cable, 132; radio, 190-194
 Merchant Marine Act, 1920, 79
 Merchant Marine Act, 1928, 79
 Mexico, post, 33, 36, 40, 53, 58, 70;
 telegraph, 103; cable, 129, 145,
 151; radio, 173, 232, 234, 238
 Miller, Hunter, 83
 Monaco, 35, 36
 Money Orders, convention, 27, 37, 38
 Monetary unit, 29, 32, 33
 Monopolies, 113, 141, 142-143, 150,
 151, 155, 158, 177, 222
 Moon, Professor Parker Thomas,
 14
 Moore, Judge John Bassett, 108,
 126, 133, 161, 170, 178, 209
 Moore, Willis L., 250
 Morocco, 33, 49, 174
 Morse characters, 100
 Morse Code, International, 189
 Morse, Samuel B., 158
 Morton, Levi P., 144, 145, 169
 Moyrier, Gustave, 44, 99, 103, 107,
 109
- N
- Nagle, P. E. D., 99, 120
 Napoleon I., 32, 50
 Napoleon III., 18, 21, 32, 61, 93, 94,
 106, 112, 125, 126
 Netherlands, post, 16, 18, 22, 24,
 33, 36, 40, 41, 48, 50; telegraph,
 92, 94; cable, 125, 129, 132, 144,
 157; radio, 174, 178, 179, 189, 191,
 192, 200, 203, 212, 221
 Neutralization of cables, 125, 126,
 127, 128, 157-168
 Neutrality of radio, 178

- New, Postmaster-General, 65
 Newfoundland, 231, 234, 235
 Newspaper subscriptions, convention, 27, 38, 68
 New Zealand, post, 33, 36, 40; telegraph, 103; radio, 174, 179
 Nicaragua, 33, 40, 53, 129
 Nigeria, 33, 35
 North German Confederation, 18, 20
 Norway, post, 22, 33, 40, 74, 77; telegraph, 94; cable, 127, 129, 132; radio, 174, 179, 209, 121
 Norweb, R. H., 252
 Noyes, Minister to France, 65
- O
- "Observers," 11, 117, 212
 Oppenheim, L., 87
 Otto, William T., 88
 Orban, M., 137
 Oxford Manual, 52, 162
- P
- Pacific cables, 152-153, 165
 Pacific cable, American, 90, 154
 Pacific cable, British, 153
 Palestine, 212
 Panama, 33, 40, 53, 70, 179
 Panama Canal Zone, 232
 Pan-American electrical communications conference, 198, 236, 249
 Pan-American parcel post convention, 72
 Pan-American postal convention, 70
 Pan-American Union, 26, 68, 71
 Papal States, 32
 Paraguay, 33, 40, 53, 70, 103, 179
 Parcel Post convention (universal), 27, 37, 68
 Parcel post conventions, U. S., 68
 Paris, postal congress, 1880, 65
 Paris submarine cable conference, 1864, 125, 139; 1882, 129, 139, 144, 159, 161, 168; 1884, 130, 139, 168; 1886, 130, 139; 1887, 130
 Paris telegraph conference, 865, 110, 113
 Paris telegraph conference, 1925, 96, 99, 100, 104, 122, 137, 138, 248
 Payment on delivery, convention, 37
 Payne, Postmaster-General, 121
 Peace conference, 1919, 130, 164, 165, 177
 Peace treaties, 1919, 51, 108, 138
 Pearce Higgins, A., 161, 162
- Peru, 33, 40, 70, 103, 152, 179
 Persia, 33, 34, 40, 95, 103, 113, 130, 173, 174, 179
 Persian language, 99
 Pike, Minister at The Hague, 60
 Piracy, 133, 134, 140
 Pittman, Senator, 235
 Phereidyke, M., 136
 Philippines, 33, 40, 103, 148, 152, 162, 225, 232
 Phillips, F. W., 190
 Plural votes, 190, 194, 233-234, 225
 Poinsard, Leon, 92, 93, 94
 Poland, 40, 179, 212
 Polk, President, 57
 Polk, Frank L., 240
 Portugal, 18, 23, 24, 33, 36, 40, 44, 94, 125, 120, 132, 173, 174, 179, 192
 Portuguese language, 99, 100
 Postal cheques, convention, 37
 Postal Telegraph Co., 119, 150
 Potter, William, 88
 Praeger, Otto, 68, 70, 88
 Prague conference, 1929, 182, 185, 188, 189, 193, 203, 211, 281-215, 217, 252
 Prague "Plan," 213-214
 Prisoners of War, 27
 Puerto Rico, 103, 225
- R
- Radio Act, 1912, 187
 Radio Act, 1927, 227-229, 247
 Radio and cable consolidations, 195, 247
 Radio Corporation of America, 242, 243, 244, 246, 247
 Ramsbusch, G., 64, 88
 Ramsay, Senator Alexander, 63
 Randall, Postmaster-General, 121
 Rates, post, 19, 24, 26, 29, 57, 71, 73, 79; two-cent rate, 26; telegraph, 94, 97, 105, 118, 119
 cable, 143; radio, 228, 236, 238
 Reber, Samuel, 251
 Recognition of Russia, 209
 Redmon, R. H., 122
 Reinsch, Paul S., 126, 170
 Renault, Louis, 90, 125, 126, 137, 146, 158, 167
 Reminger, Warren D., 78
 Regional arrangements, 25, 6
 91-93, 94, 98, 99, 211;
 American postal union,
 European conference on

- 212; Inter-American Commission on electrical communications, 236-238, 249; United States and Canada, wave lengths for ships, 231; amateurs, 232; broadcasting, 232-233; airways, 233; North American conference on short waves, 234-235
- Reymer, Dr., 203
- Rhodesia, 33
- Rock, Rear Admiral George H., 252
- Rogers, Lindsay, 14, 250
- Rogers, Walter S., 150, 166, 177, 197, 241, 242, 245, 251
- Rome, postal congress, 1906, 27, 34, 171; postal convention, 50, 51, 74, 75, 76; telegraph conference, 1872, 95, 104, 110, 158, 167
- Romuldez, 89
- Roosevelt, President, 90, 121, 153, 222
- Root, Elihu, Jr., 151
- Rosewater, Edward, 88
- Ruiz, Juan, 89
- Rumana, 22, 32, 33, 40, 47, 48, 95, 138, 136, 174, 179
- Russell, Edgar, 250
- Russia (U. S. S. R.), post, 21, 22, 24, 33, 36, 40, 44, 51, 54; telegraph, 94, 98, 115, 116; cable, 129; radio, 174, 179, 211, 215, 209, 212; Russian language, 99
- S
- Saar, 40
- St. Petersburg, conference, 1875, telegraph, 95, 99, 104, 116, 117, 119, 122, 158
- St. Petersburg, convention, 1875; telegraph, 90, 95, 96, 98, 99, 101, 104, 105, 107, 110, 117, 173, 180, 211
- Salvador, 33, 40, 53, 70, 120, 179
- Saltzman, Maj. Gen. Charles McK., 122, 202, 250, 251, 252
- Sands, Edwin, 89
- San Marino, 33, 40, 179
- Sardinia, 92
- Saxony, 92
- Schreiner, George A., 90, 150
- Scott, James Brown, 128
- Serymsier, James A., 151, 152
- Schuyler, Eugene, 100, 117, 118, 122
- Serbia, 22, 95, 129
- Seward, Secretary, 59, 112, 114, 139, 152
- Shallenberger, W. S., 88
- Sharp, Eugene Webster, 125, 150
- Shaugnessy, E. H., 73
- Sheffield, James R., 197
- Ship-to-Shore, radio, 171, 204, 208, 220
- Ship-to-Ship, radio, 172, 173, 175, 182, 208, 220-222, 225
- Shoup, G. Stanley, 124, 216, 247
- Siam, 33, 40, 174, 179
- Sibley, Hiram, 113-115
- Siberia, 113, 115
- Skelton, Oscar D., 72
- Slemp, C. Bascom, 74
- Sly, John F., 21
- Smith, Alfred G., 251
- Smith, E. D., 251
- Smith, H. Babington, 221
- Smith, Henry H., 252
- Somaliland, 179
- Spanish-American war, cables, 161-162
- Spitzbergen, 35
- Spain, post, 16, 18, 25, 26, 33, 37, 40, 43, 44, 70; telegraph, 93, 90; cable, 125, 129, 130, 132; radio, 171, 174, 179, 192, 209, 212, 215, 249; Spanish language, 99
- Squier, Gen. George, 200, 224, 250
- Starbuck, W. D. L., 252
- Stephan, Dr., 20, 21
- Stewart, Irvin, 170, 192, 194, 234
- Stewart, Joseph, 89
- Stockholm, conference, 1924, 27, 28, 32, 36, 37, 43, 54
- Stockholm, convention, 1924, 29, 32, 33, 35, 52, 74
- Strnad, M., 182
- Subscriptions to Newspapers, convention, 37
- Subsidies, postal, 57, 58, 78, 77-83; cable, 125
- Sweden, post, 22, 24, 32, 33, 40, 44, 47, 50, 76; telegraph, 94, 115; cables, 129, 132; radio, 174, 179, 209, 212
- Switzerland, post, 18, 21, 24, 33, 36, 39, 40, 41, 43, 44, 47, 49, 52; telegraph, 93, 94, 115; cables, 129, 130; radio, 179, 212, 215
- Syria, 179

T

Taft, W. H., Acting Attorney General, 85, 121, 122
 Taft, President, 224
 Tawresey, Rear Admiral J. C., 252
 Telephony, International, 201, 215-216
 Terrell, W. D., 122, 251, 251
 Thun and Taxis, Count Frances von, 16
 Titanic, SS., 174, 175, 208, 225
 Todd, Davis Wooster, 250
 Topacio, Josec, 89
 Tower, Charlemagne, 192, 250
 Trans-Andine telegraph Co., 151
 Trans-Jordania, 33
 Transit, rates, 21, 27, 29, 30, 31, 32, 33, 63; right, 29-30; free, 71
 Tripoli, 179
 Trevor, 129
 Tribolet, L. B., 151
 Trollope, Anthony, 62
 Tyner, James H., 88
 Tyrer, Arthur J., 252
 Tunis, 33, 36, 40, 174, 179
 Tupper, Sir Charles, 130
 Turkel, H. R., 69
 Turkey, 22, 33, 40, 94, 129, 174, 179, 191, 211, 212

U

L'Union Postale, 41, 44
 Union, International Amateur Radio, 188
 United States, postal, 12, 18, 19, 22, 32, 33, 34, 36, 37, 40, 43, 44, 63, 65, 68, 69, 70, 74; telegraph, 95, 95, 101, 103, 109, 110, 111, 116, 117, 120; cable, 125, 126, 129, 130, 131, 133, 140, 141, 144, 151, 152, 159, 160, 163, 164, 167, 168; radio, 170, 171, 174, 176, 179, 180, 181, 185, 187, 189, 190, 192, 194, 196, 200, 202, 208, 209, 212, 215, 216, 217, 219, 220, 223, 224, 225, 226, 229, 230, 232, 250; Constitution, 13, 18, 56, 83-88; Articles of Confederation, 56; Departments, Commerce, 199, 228, 229, 231; Navy, 153, 156, 199, 229, 240, 241, 242, 243; State, 59, 111, 118, 144, 146, 147, 149, 151, 165, 199, 203, 235-236, 240, 241; War, 199, 200, 229, 232; Laws, Cable Act, 1888, 147-148; Cable Act, 1921, 152,

156-157; Merchant Marine Act, 1920, 79; Merchant Marine Act, 1928, 79; U. S. Navigation Laws, 226; Postal Laws, 1792, 57, 83; 1844, 83; Postal Aid Act, 1891, 79; 1892, 84; 1902, 121, 122; 1922, 48, 84; Project of cable treaty, 1869, 157; Radio Act, 1912, 187; 1927, 227-229, 247; Telegraph Act, 1866, 117, 121; Senate, 55, 83, 84, 88, 102, 121, 170, 176, 183, 184, 195, 196, 215, 223, 224, 226, 228, 230, 237, 243, 244, 245, 246; Supreme Court, decision, 86; Federal Court, decisions, 86, 87; Supreme Court, Mr. Waterbury's remarks on, 218-219; Shipping Board, 80
 United Fruit Co., 239
 Uruguay, 33, 40, 53, 70, 129, 152, 174, 179
 Universal Electrical Communications Union, 177, 197-198
 Uhler, George, 251

V

Vallance, William Roy, 155, 235-236, 251
 Vandal, M., 19
 Vatican City, 33
 Velasco, M., 129
 Venezuela, 32, 40, 53, 152, 179, 237
 Vestris, SS., 208
 Victoria, Queen, 124
 Vienna, postal congress, 69; telegraph conference, 1868, 95, 110
 Vignaud, Henry, 144, 168
 Vilas, Postmaster-General, 78
 Virgin islands, 144, 168
 Vocabulary, universal, 99

W

Walker, Hubert B., 252
 Walls, H. J., 252
 Walton, John Q., 250
 Wanamaker, Postmaster-General, 79, 121
 Warner, Captain Kenneth B., 252
 Warren, Ambassador, C. B., 237, 251
 Washington, postal congress, 1897, 66
 Washington, radio conference, 1927, 118, 192, 193, 195, 248, 251
 Washington, radio convention, 1927,

INDEX

261

- 101, 172, 178, 180, 186, 187, 205,
206, 207, 209, 211, 217
Washington conference, electrical
communications, 216, 250
Washington, Thos. D., Acting Sec.
of Navy, 243
Waterbury, John I., 212, 218, 250
Watson, James E., 251
Webber, S. M., 88
Western Union, 109, 114, 119, 120,
138, 150, 155, 156
Wheeler, Senator, 184, 244
White, J. Beaver, 122, 251
White, Eugene R., 89
White, Wallace H., 121, 122, 195,
251, 252
Whittemore, Laurens E., 170, 252
Willis, H. D., 32
Wilson, George Grafton, 161
Wilson, President, 150, 155, 156,
239, 241, 242, 244
Woods, Elizabeth Lee, 89
Wurtemberg, 92, 94

Y
Yap, 165
Yemen, 33
Young, Clarence M., 252
Young, Owen D., 102, 197, 242, 243,
246, 247, 251
Yugoslavia, 33, 40, 48, 179, 212

VITA

KEITH CLARK was born in St. Peter, Minnesota, June 4, 1879; educated: Hamline (B.A. 1898), University of Minnesota (M.A., 1922)—major field, diplomatic history and international law; seminars, Professor Mason Whiting Tyler, "Anglo-German Relations;" Professor Cephas D. Allin, "British-Irish Politics;" Professor Quincy Wright, "Problems in International Law;" University of Chicago (summer quarter, 1925), seminar, Professor William E. Lingelbach, "Problems in European Diplomatic History," special thesis, "Franco-Italian Relations;" Institute of Politics, Williamstown, 1921, Round Table, Professor James W. Garner, "Treaties of Peace;" 1925, Round Table, Professor Arnold J. Toynbee, "Mediterranean Problems," special thesis, "The Tangier Situation."

Editorial writer, *St. Paul Pioneer Press-Dispatch*, 1905-1917, special field of foreign affairs. Director of publicity, Y. W. C. A. in France, 1918-1920; delegate to *Conseil national des femmes francaises*, Strassbourg, 1919. Assistant professor, history and political science, Carleton College, 1923-.

Publications, *The Spell of Spain*, 1914, *The Spell of Scotland*, 1916.

Member, American Society of International Law, American Political Science Association, American Historical Society, Minnesota Historical Society, American Association of University Women, American Association of University Professors, Theta Sigma Phi, Women's Over-Seas Service League. Member of group of American professors of international law visiting The Hague and Geneva, 1926, as guests of the Carnegie Endowment for International Peace; observer at the Institute of International Law, Briardcliff, 1919, as guest of the Carnegie Endowment.

ERRATA

- p. 18, n. 4, see *infra*, p. 59.
- p. 53, n. 2, read *R. D. I.*
- p. 74, 5th line, n. 2, should read n. 1.
- p. 83, n. 2, read *A. J. I. L.*
- p. 88, n. 1, read *B. Y. I. L.*
- p. 96, n. 3, see *infra*, p. 248.
- p. 110, n. 1, see *infra*, p. 144.
- p. 120, n. 2, see *infra*, p. 238.
- p. 175, 1st line, for *Conference*, read *Convention*.
- p. 189, n. 1, see *infra*, p. 232.
- p. 195, n. 4, *no 4* is printed.
- p. 198, n. 5, see *infra*, p. 249.