

# J. Reuben Clark, Jr., Law and International Order

Edwin Brown Firmage\*  
and  
Christopher L. Blakesley\*\*

## PROLOGUE

President J. Reuben Clark, Jr., spent his professional career, spanning some twenty-seven years, as an international lawyer.<sup>1</sup> From the time of his graduation from the Columbia Law School in 1906 and his appointment as assistant Solicitor (an assistant legal adviser in the Department of State) in

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\*Dr. Edwin Firmage is professor of law at the University of Utah College of Law. A magna cum laude graduate of BYU and a Hinckley Fellow, he was National Honors Scholar at the University of Chicago where he graduated with the J.D., LL.M. and J.S.D. degrees. Doctor Firmage has served as a White House Fellow on the staff of Vice-President Hubert H. Humphrey, and attended the arms control negotiations in Geneva, Switzerland in 1971 after having been appointed Visiting Scholar at the United Nations the preceding year. His writings on international law have been widely published in books and legal journals. His most recent publication, "The War of National Liberation and the Third World," in Moore, ed., *Law and Civil War in the Modern World* will be published by Johns Hopkins press later this year.

\*\*Christopher L. Blakesley received the M.A. degree in international relations from the Fletcher School of Law and Diplomacy and is presently a law student at the University of Utah College of Law, and research assistant to Professor Firmage.

<sup>1</sup>President Clark's service assignments under seven presidents:

THEODORE ROOSEVELT: Assistant Solicitor for the Department of State, 1906-1910.

WILLIAM HOWARD TAFT: Solicitor for the Department of State, 1910-1913; Member of Committee to Report on Assistance of Red Cross Societies in Civil Warfare, 1911; Counsel for the United States before Tribunal of Arbitration between the United States and Great Britain; Chairman of American Preparatory Committee for the Third Hague Conference and Member of the Conference, 1912.

WOODROW WILSON: Special Counsel for the United States before the British-American Claims Arbitration Tribunal, 1913; Counsel in Charge

the same year, to his appointment as second counselor in the First Presidency in 1933 following his resignation as Ambassador to Mexico, President Clark devoted himself almost exclusively to the problems of international law. His experience during these years developed in him a concern for particular issues which remain central to a determination of the nature of the international system.

Basic to the other major international issues upon which President Clark worked as an international lawyer was his conception of an optimum international system. He opposed any system which by alliance, intervention, balance of power, or particular international institution sought to accomplish big-power domination of smaller states, the enforcement of peace by the major powers, or the forcible perpetuation of the status quo. Upon this ground he opposed the techniques employed at earlier times in history by the "Grand Design" of Elizabeth I and Henry IV, the Congress of Vienna and the Holy Alliance, and the enforcement provisions of the Covenant of the League of Nations as well as those other provisions of the Versailles settlement which he thought maintained the position of France, and to a lesser extent those of Great Britain and Russia, at the expense of conquered Germany.

His views of the proper place for the United States in world affairs stemmed both from his perception of the ideal international system and from his understanding of the particular role this country had played and had yet to perform according to Mormon theology. He opposed interventionism,

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of the United States Agency of the British-American Claims Arbitration, 1914; Major, Judge Advocate General's Officers' Reserve Corps, 1917.

WARREN G. HARDING: Special Counsel for the State Department at the Conference on the Limitation of Armament, 1921.

CALVIN COOLIDGE: Consulting Counsel for the Federal Government in the Cayuga Indian Case, British-American Claims Commission, 1925; Agent of the United States in the Mexican-American General Claims Commission, 1926; Special Counsel to the Mixed Claims Commission of the United States and Mexico; Under Secretary of State, 1928-29.

HERBERT HOOVER: Attended Inauguration of Mexican President Pascual Ortiz Rubio, 1930; Ambassador Extraordinary and Plenipotentiary to Mexico, 1930-33.

FRANKLIN D. ROOSEVELT: Delegate to the Seventh International Conference of American States at Montevideo, Uruguay, 1933; Member, Foreign Bondholders Protective Council, Inc., 1934-1945; United States Representative on Committee for the Study of International Loan Contracts (League of Nations), 1936; Member, Committee of Experts on Codification of International Law (Pan-American Union), 1936. Extracted from the *Deseret News*, 7 October 1961.



colonialism, and imperialism, and had a strikingly current recognition of the limits of this country's ability to direct the course of world history by force of arms.

President Clark opposed war as a means of dispute resolution with a moral fervor that lasted throughout his life. He actively worked for the outlawry of war and for the development of techniques and institutions of peaceful settlement of disputes, particularly that of arbitration. He provided expert leadership for several disarmament conferences and was active in seeking development and reformation of the laws of war proscribing the use of certain weapons in war and the prohibition of military activity against civilian populations.

This essay will trace briefly the professional career of President J. Reuben Clark, Jr., as an international lawyer and will then treat, in more detail, those major international legal issues upon which he worked and wrote. Substantial quotations from his writings will be employed to permit the reader to determine for himself, apart from the interpretation and analysis which will also be offered, President Clark's position on the leading issues of his time.

#### PROFESSIONAL BIOGRAPHICAL HIGHLIGHTS

While a student at the Columbia Law School (1903-06), President Clark assisted Professor James Brown Scott in the compilation of a casebook on quasi-contracts. When Scott became Solicitor<sup>2</sup> in the Department of State, he employed President Clark as a research assistant in the preparation of two volumes on the law of equity.<sup>3</sup> President Clark's relationship with Scott led to his appointment as an assistant solicitor following graduation from law school. His first substantial assignment was to work under Secretary of State Elihu Root on the Citizenship Act of 1906.<sup>4</sup> President Clark prepared a monograph on citizenship which was incorporated into the final report of a special board constituted in accordance with a joint resolution of Congress to study citizenship, expatriation, and protection of citizens abroad. This report became the

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<sup>2</sup>The solicitor was technically an officer of the Department of Justice, ranking as Assistant Attorney General, but designated to work in the Department of State. In today's terminology, Legal Adviser—the chief legal officer of the Department of State.

<sup>3</sup>George D. Parkinson, "How a Utah Boy Won His Way," *Improvement Era* 17:557-559 (March 1914).

<sup>4</sup>*Proceedings, American Society of International Law* (1962), p. 70.

reference work for the Bureau of Naturalization.<sup>5</sup> Perhaps more typical of his routine during this early period was his work on the Russian extradition cases.<sup>6</sup>

President Taft, on the recommendation of Secretary of State Philander C. Knox,<sup>7</sup> appointed President Clark Solicitor for the Department of State in July 1910. He held this position for three years. All legal questions arising in connection with the work of the Department of State, both as they affected the government of the United States and as they affected other governments, were referred to him for opinion.

Much of the work of the Solicitor's office at this time concerned claims made by the United States against foreign states and their nationals. President Clark devoted a major portion of his efforts to this area of the law. Between 1909 and 1913<sup>8</sup> he was responsible personally for \$2,330,000 in awards received by the United States from international tribunals for injuries suffered by American citizens.<sup>9</sup> The most noted example of President Clark's work on international claims was the Alsop case,<sup>10</sup> which concerned a Chilean expropriation of several American-owned corporations. Secretary Knox assigned President Clark to head the diplomatic negotiations leading to the accomplishment of an agreement upon a protocol under which the matter was referred to arbitration, the King of England acting as "Royal Amiable Compositeur." President Clark was then charged with the preparation and presentation of the case. The King of England awarded the United States \$905,000—one of the largest international awards of the time.<sup>11</sup>

While Solicitor, President Clark assisted in the drafting of our 1911 Treaty of Peace and Commerce with Japan; our

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<sup>5</sup>Parkinson, "Utah Boy," p. 560.

<sup>6</sup>As a result of his work on these cases, President Clark, by invitation of the American Society of International Law (of which he was a member), delivered an address upon the subject of "Political Offenders and Offenses in Extradition," at the annual meeting of that society in 1909. This address is reported in the *American Journal of International Law* 3:459 (1909).

<sup>7</sup>A close friendship developed between President Clark and Secretary Knox. President Clark was often asked to advise Mr. Knox throughout the latter's career, the most notable occasion being when Mr. Knox, as a Senator, opposed our entry into the League of Nations.

<sup>8</sup>During this period, President Clark served as Assistant Solicitor and later as Solicitor of the Department of State.

<sup>9</sup>Parkinson, "Utah Boy," p. 562.

<sup>10</sup>Alsop Case, *Foreign Relations of the United States* (1911), p. 38.

<sup>11</sup>*Ibid.*



loan treaties with Honduras and Nicaragua; and the drafting of the Knox-Bryce arbitration treaties with Great Britain and France. During this period he also drafted the influential memorandum, "The Right to Protect Citizens in Foreign Countries by Landing Forces."<sup>12</sup>

President Clark was active during this period in several assignments in addition to his duties as Solicitor. In 1911 he was appointed a member of the Committee to Report on Assistance of Red Cross Societies in Civil Warfare. In this capacity, he prepared a memorandum analyzing the role of the Red Cross in situations of civil strife and proposed a plan for Red Cross assistance to both sides in cases of insurrection, revolution, or civil warfare. In 1912, he was chosen to chair the American Preparatory Committee to represent the United States on the International Preparatory Committee for the Third Hague Conference, scheduled to be held sometime in 1915. The Conference, however, was aborted by the outbreak of hostilities in Europe in 1914. President Clark was elected a member of the American Society for Judicial Settlement of International Disputes during the same year of his earlier appointment. This concept—the peaceful resolution of international disputes, particularly through judicial techniques—was to remain a central passion for President Clark throughout his life. His interest in arbitral techniques for dispute resolution was a recurrent theme in speeches and articles throughout all those active years in Church leadership long after his formal career as an international lawyer had ended.

In 1913, President Clark was appointed General Counsel for the United States before the Tribunal of Arbitration created three years earlier by a special agreement between the United States and Great Britain.<sup>13</sup> He was charged as Counsel with the management and presentation of legal arguments and the treatment of questions of law and evidence before the Commission.<sup>14</sup>

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<sup>12</sup>*Right to Protect Citizens in Foreign Countries by Landing Forces*, U.S. Department of State Publication No. 538, 3rd ed. rev. (Washington: U.S. Government Printing Office, 1934); This memorandum lists forty-one incidents in which the government of the United States landed forces in foreign countries for the protection of American interests.

<sup>13</sup>See Parkinson, "Utah Boy," p. 563, for a tribute paid President Clark by Secretary Knox upon the occasion of President Clark's retirement as Solicitor and his appointment as General Counsel before the United States-British Arbitration Commission.

<sup>14</sup>See Parkinson, "Utah Boy," p. 563.



President Clark resigned his position as Solicitor for the Department of State later that year and established a private law practice. Public service in international law nevertheless continued to consume most of his time. In 1914, he was appointed General Counsel for the United States before the American-British Claims Commission. It was at this time that he became acquainted with Mr. Dwight Morrow, later to become Ambassador to Mexico. A close friendship developed between them which later led to President Clark's serving as legal adviser to Mr. Morrow in Mexico.

President Clark was commissioned a Major in the Judge Advocate General Officers' Reserve Corps in 1917 and was first assigned to the United States Attorney General, Thomas Watt Gregory. During this time President Clark edited a book entitled *Emergency Legislation*,<sup>15</sup> which analyzed the relative roles of the executive and legislative branches of the federal government in time of war. Later, after appointment as Adjutant to the Provost Marshall General, President Clark was responsible for the preparation of the official legal position of that office on a varied and important list of international legal questions.<sup>16</sup>

After World War I, Under Secretary Fred Morris Dearing of the Department of State asked President Clark to make a detailed analysis of the Treaty of Versailles. The result, entitled *Data on the German Peace Treaty*, was presented by Secretary of State Knox to the Senate Committee on Foreign Relations in August of 1919.<sup>17</sup> President Clark succinctly

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<sup>15</sup>J. Reuben Clark, Jr., *Emergency Legislation* (1918). This work considered specific emergency legislation passed prior to December 1917, dealing with the control and appropriation of private property for the public use, benefit, or welfare; it also analyzed presidential proclamations and executive orders thereunder, to and including 31 January 1918. To all this he added a reprint of analogous legislation since 1870.

<sup>16</sup>This list included *inter alia*: Memorandum re: Power of the President to exercise a pardoning power in favor of a person convicted of murder under the criminal code of the Philippine Islands; May the President, under the provisions of existing law [H.S. 4067-4070] regulate and control the movements of alien enemy females, as alien enemy males?; Memorandum re: Proposed seizure of nickel, brass, copper, graphite and oil purportedly belonging to Germany; Draft of proclamation relating to natives, citizens, denizens or subjects of Austria-Hungary, Turkey, and Bulgaria being males of the age of fourteen years and upwards, and other males and all females belonging to Germany and her allies; Memorandum re: Punishment of German spies for treasonable activities and steps taken for their apprehension. This list is by no means exhaustive, but depicts the variety and import of President Clark's work during this period.

<sup>17</sup>J. Reuben Clark, Jr., *Data on the German Peace Treaty* (1919).



stated his opinion of those portions of the Treaty dealing with the relationship of the Allied Powers and conquered Germany:

It would be difficult for me to find language which would sufficiently express my abhorrence . . . This alliance idea is founded on the general principle—it seems to me—of completely crushing and actually making subject the German people . . . To enslave this entire country is so iniquitous a thing, that modern civilization (to say nothing of the precepts of Christianity) cannot tolerate it.<sup>18</sup>

President Clark maintained a private practice in New York, Washington, D.C., and Salt Lake City from 1913 through 1926. Although he was technically involved in private law practice, his influence, as has been noted, was manifest in the international arena. First, his practice *per se* was mainly related to private claims of American citizens against foreign countries.<sup>19</sup> Furthermore, he was active in the national dialogue regarding the United States participation in the League of Nations in 1919-20. During Senatorial debate on this matter, President Clark supplied data and was an adviser to Senator Philander C. Knox of Pennsylvania, formerly Secretary of State in the Taft Administration, and Senator Borah of Idaho in their campaign against the League. It should be noted, however, that although he was “unalterably opposed to the League,”<sup>20</sup> President Clark later participated in several conferences held under the auspices of the League of Nations,<sup>21</sup> the most prominent of which was the 1921 Washington Conference on the Limitation of Armament.

Along with his lifelong devotion to the development of techniques of peaceful resolution of disputes and his opposition to aggressive war, two other related issues, disarmament and the modernization and implementation of the laws of war, were of paramount concern to President Clark during and after his formal professional career. Secretary of State

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<sup>18</sup>J. Reuben Clark, Jr., “Permanent Court of International Justice of the League of Nations,” Memorandum, 28 May 1923. (Available at the Brigham Young University Library).

<sup>19</sup>For example, *Aderholdt, Grover G. Montrop v. Columbia*, non-reported case—(President Clark’s brief is available at Brigham Young University Library).

<sup>20</sup>Clark, “Permanent Court of International Justice.”

<sup>21</sup>For example, he participated in: The Preparatory Committee for the Third Hague Conference; the Washington Disarmament Conference of 1921; and the Seventh Conference of American States (Pan-American Union) at Montevideo, Uruguay, 1933; Committee for the Study of International Loan Contracts, 1936; and the Committee of Experts on Codification of International Law.



Charles Evans Hughes called President Clark from his private practice in September 1921 to serve as special counsel to the State Department in connection with the Conference on the Limitation of Armament. He contributed not only to the preparation of the Conference itself, but influenced the State Department position relative to the various issues on disarmament under negotiation.<sup>22</sup> President Clark received a further appointment as Expert Assistant to the commissioners appointed by the President to represent the government at the Conference, just prior to its inception. Secretary Hughes additionally asked President Clark to serve as his special assistant in connection with the Conference. President Clark regarded the final results of the Conference limiting naval vessels and weaponry of the United States, Japan, Great Britain, France, and Italy as one of the major accomplishments of disarmament negotiations to that time.

Secretary Hughes appointed President Clark counsel for the British-American Claims Commission soon after the Washington Conference of 1921. He served intermittently in this capacity from 1922 to 1926. It was during this period that he was consulting counsel for the United States Government in the famous Cayuga Indian case,<sup>23</sup> noted, along with the Janes case,<sup>24</sup> in most casebooks on international law. In 1926, Presi-

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<sup>22</sup>See Disarmament Section of this article.

<sup>23</sup>Cayuga Indian Case, (Great Britain v. United States) Nielson Rep. 203, 307 (1926). This case concerned claims by part of the Cayuga Indian nation that had migrated from the United States to Canada. The Cayuga Indians had fought for the British during the American Revolution and the War of 1812. By Article IX of the Treaty of Ghent (1814) the United States agreed to restore to the Indians all possessions, rights, and privileges which they may have been entitled to before the war. In addition, the State of New York covenanted to pay the Cayuga nation \$1800 a year for the land formerly owned by the Indians. Payments and reparations had been made to the Indians still residing within the boundaries of the United States, but not to those in Canada. The Canadian Indians, who eventually prevailed in this case, were represented by Great Britain against the United States.

<sup>24</sup>U. S. A. (Laura M. B. Janes) v. United Mexican States, 1927 Opinions of Commissioners 108 (1927). Mrs. Janes' husband, superintendent of mines for El Tigre Mining Co. at El Tigre, Mexico, was deliberately shot and killed by a former employee of the mining company, who had been discharged. The United States alleged that the Mexican authorities took no proper steps to apprehend and punish the alleged killer; that the efforts made were lax and inadequate and that if prompt action had been taken, the authorities would have been successful. The plaintiff, represented by the United States, received an award of \$12,000 as redress for the grief suffered, the loss of services, and as a deterrent to further governmental laxity. This was an historic decision, as it was in a sense a successful suit, not only for damages based on direct loss to the plaintiff, but also for the failure of the government to apprehend and punish the malefactor. Both the Janes and Cayuga Indian cases are found in almost every casebook on international law compiled from



dent Clark was appointed Agent of the United States for the United States-Mexico General Claims Commission.<sup>25</sup> He was charged as agent with general management and control of the cases and was intermediary between the tribunal and his government. He was named special counsel to the Mixed Claims Commission of the United States and Mexico,<sup>26</sup> later the same year, which again brought President Clark into association with our Ambassador to Mexico, Dwight Morrow.

It was in 1927 that Mr. Morrow asked President Clark to serve as his legal adviser. One of his major accomplishments while in this position was the settlement of the Mexican oil controversy.<sup>27</sup> President Clark, at the request of Secretary of State Frank B. Kellogg, prepared his famous Memorandum on the Monroe Doctrine while he was still counsel for Ambassador Morrow, shortly before Calvin Coolidge appointed him Under Secretary of State in 1928.<sup>28</sup> The Clark Memorandum, one of the most powerful and influential documents against imperial, colonial, or interventionist policies ever drafted by an American in high office, denied the existence of any particular right of the United States to intervene in the affairs of Latin American states. In effect, the (Theodore) Roosevelt Corollary to the Monroe Doctrine was repudiated by the Clark Memorandum. The Memorandum was presented to Congress while President Clark was serving as Under Secretary of State.

President Clark, as Under Secretary of State, was influential in the resolution of several important international issues in addition to shaping the policy of the Department on the Monroe Doctrine.<sup>29</sup> He directed the administrative arrange-

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that time to the present. See, for example, W. Friedman, *International Law Cases and Materials* (1969), p. 78; and W. Bishop, *International Law: Cases and Materials* (1962), p. 45.

<sup>25</sup>For analysis of the status and function of an agent of this Commission, see Ralston, *Law and Procedure of International Tribunals*, pp. 192-197.

<sup>26</sup>The status and function of the Counsel are analyzed in A. H. Feller, *The Mexican Claims Commissions (1923-1934): A Study in the Law and Procedure of International Tribunals* (1935), pp. 284-289.

<sup>27</sup>J. Reuben Clark, Jr., "The Oil Settlement with Mexico," *Foreign Affairs* 6:600 (1928).

<sup>28</sup>J. Reuben Clark, Jr., Memorandum on the Monroe Doctrine, 71st Congress, 2nd Session, Senate Document 114 (1930).

<sup>29</sup>F. B. Kellogg, "Official Statement of and Commentary Upon the Monroe Doctrine by the Secretary of State," 1929 *Foreign Relations of the United States* 698, 71st Congress, 2nd Session, House Document No. 517, Department of State publication 2018 (1948).

ments and served as adviser to the Preparatory Commission for the Geneva Disarmament Conference,<sup>30</sup> part of the progeny of the Washington Disarmament Conference of 1921. He performed similar functions in relationship to the Preliminaries of the Five-Power Naval Conference to be held at London in 1930. The Department of State, under President Clark's direction, developed suggestions for further implementing the Treaty for the Renunciation of War (the "Kellogg-Briand Pact," or "Pact of Paris") signed at Paris, 27 August 1928.<sup>31</sup> President Clark understood that war could not be abolished by ultimatum or resolution, but he believed that the pact was important as a catalyst to direct and refine the growing sentiment against war toward a concrete standard by which the actions of states could be judged in the future. Proposed accession of the United States to the Statute of the Permanent Court of International Justice was considered at length during President Clark's tenure as Under Secretary of State;<sup>32</sup> he opposed accession on the grounds that the Court would be dominated by the European Powers simply as an extension of the Versailles apparatus for the continued subjugation of Germany.

Other conferences were held during this period dealing with matters of deep concern to President Clark. The international Conference of American States on Conciliation and Arbitration was held at Washington in 1928, as were the meetings of the Commission of Inquiry and Conciliation following the Chaco dispute between Bolivia and Paraguay, in December of 1928.<sup>33</sup> The Geneva Conventions for (1) the Amelioration of the Conditions of the Wounded and Sick of Armies in the Field and (2) the Treatment of Prisoners of War,<sup>34</sup> were agreed upon the following year. His commitment to the modernization and implementation of the laws of war continued throughout his life.<sup>35</sup> This, along with his lifelong devotion to the development of techniques for peaceful settlement of international disputes, his belief in the efficacy of juridical instruments in the prevention of war, and the accomplishment of agreements on the limitation of arma-

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<sup>30</sup>Ibid., p. 65.

<sup>31</sup>Ibid., p. 59.

<sup>32</sup>Ibid., p. 1.

<sup>33</sup>Ibid., p. 818.

<sup>34</sup>Ibid., p. 317.

<sup>35</sup>See Laws of War, and Disarmament sections of this article.



ments were of paramount concern to President Clark during and after his formal professional career.

President Clark was appointed Special Representative with rank of Ambassador Extraordinary and Plenipotentiary at the inauguration of Pascual Ortiz Rubio, President of Mexico, in 1930. Later that year, after Dwight Morrow had been elected to the United States Senate, President Hoover named President Clark Ambassador to Mexico.

In 1933, after his formal retirement from public service,<sup>36</sup> President Clark was appointed Delegate of the United States to the Seventh International Conference of American States (Pan-American Union) held in Montevideo, Uruguay. This Conference was the first to be held during the presidency of Franklin D. Roosevelt, who had, in his inaugural speech, dedicated the United States to the policy of the "Good Neighbor." This conference was also the first to discuss "non-intervention." This, of course, was now realistically possible because the United States' protectorate policy had been modified and the Roosevelt Corollary, in effect, eliminated from the Monroe Doctrine by the Clark Memorandum. President Clark was assigned as a member of the United States delegation to this Conference to the Committee on the Organization of Peace. The Montevideo Conference was able to agree upon techniques for peaceful resolution of disputes between the member states and to create an atmosphere of cooperation due in large part to the non-interventionist tone taken earlier by the United States. The Conference created the Committee of Experts on the Codification of International Law, to which President Clark was appointed in 1936. The goal of codification of international law had long been central to the interest and activity of President Clark. He had served previously as a member of the Advisory Committee of the Harvard University Conference on Codification of International Law, chaired by Manley O. Hudson. He also served as a member of the Commission of Experts on Codification of International Law of Phi Delta Phi from 1945 to 1950.

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<sup>36</sup>Secretary of State Henry L. Stimson noted President Clark's years of service upon the occasion of his retirement from public life: "I desire to take this occasion to express my deep and sincere appreciation not only for your distinguished service as Ambassador to Mexico, which has reflected signal credit upon the Department of State, but also my personal appreciation and gratitude for the aid of your wise counsel and loyal cooperation at the beginning of my service in this office." *United States Department of State Press Releases*, Nos. 171-222 (1933), p. 151.

## THE INTERNATIONAL SYSTEM

President Clark opposed any international system which proposed to maintain either the international peace or the municipal status quo by the imposition by certain great powers of their will upon other states by means of force. On this basis President Clark criticized the European balance of power system and, most particularly, our participation in it.<sup>37</sup> President Clark did not oppose our participation in the League of Nations because of any disagreement with the concept of a standing conference system for resolving disputes, as he favored such an approach. Rather, he opposed those portions of the Covenant of the League which he considered to be coercive, relying on military alliance rather than diplomatic negotiation in dispute resolution between sovereign states, being pre-eminently in the tradition of earlier alliance systems which sought to enforce the will of the major powers upon the rest of the world. He had a healthy distrust of any international system which proposed to insure the continuation of any state's government system in the face of internal opposition to such government. His were not the politics of Metternich and Talleyrand.

Woodrow Wilson sponsored the League for precisely the same reason that President Clark opposed it. Wilson also despised the concept of balance of power politics but proposed to replace it with a system of collective security through the enforcement provisions of the Covenant of the League. President Clark, however, considered the dominant effect of the League to be no more than the creation of a modern "Grand Design" of Elizabeth I and Henry IV by which those monarchs attempted to limit the power of Austria, or perhaps a modified "Holy Alliance" through which the Allied Powers attempted to accomplish the same functions two hundred years later against Napoleonic and post-Napoleonic France. This time, of course, the target state, feared and hence circumscribed

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<sup>37</sup>"In essence, the League of Nations is, by intention and by actual operation a military alliance among the great powers of Western Europe, which, with their possessions and dominions and the flattered weak and small powers of the world, have regrouped themselves in a new balance of power arrangement. The real purpose of this alliance is to make secure to themselves the worldwide territorial, strategic, political, economic, and financial gains with which, through the intervention of the United States, they were able to enrich themselves at the end of the great war." Clark, "Permanent Court of International Justice." See note 18 above.



by the alliance of other European states, was post-World War I Germany.

We must have a world organization for purposes of deliberation, but not for the purposes of waging wars and imposing sanctions. We must bring to bear in the solution of matters of world concern, that moral force of the world of which President Wilson rightly thought so highly. As the situation stands today, we of America have lost our own moral force in the world affairs, a force which was once very great; we speak now only as our brute force may sustain us. There is indeed no moral force left in the world to whose voice the warring nations are as yet willing to hearken. We are now living under the law of the jungle wherein . . . every beast fights to the death for his own life.<sup>38</sup>

President Clark considered the attempts of certain states to enforce the status quo by military alliance, or to enforce their will upon the smaller states, or to perpetuate the dominance of the victors over the vanquished following a war, as being both undesirable and impossible of accomplishment. To him, the League was primarily the tool of the victorious powers to enforce an unjust peace settlement at Versailles upon Germany. This purpose all but guaranteed the failure of the League and the resumption of war in Europe. He thought France, particularly, was attempting to use the League as a means of perpetuating the subjugation of Germany.<sup>39</sup>

Another major objection to the League was its lack of universality. President Clark favored a standing conference system, without military coercive powers, which was completely universal in membership, without distinction between vic-

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<sup>38</sup>J. Reuben Clark, Jr., "Factors in the Post-War International Pattern." Speech delivered at the annual American Life Convention, 1943.

<sup>39</sup>"Intent upon wiping Germany off the map as an industrial nation, France is using the reparations question as a screen to obscure its more far-reaching plans," was the charge of J. Reuben Clark in an address before the Rotary Club at the Hotel Utah, Tuesday. Mr. Clark is recognized as an international lawyer having been a special counsel for the U. S. at the Disarmament Conference. The speaker further charged that the Treaty of Versailles is strictly a "French Treaty and that it is the intention of France never to leave Germany until that nation is stripped as an industrial nation and is broken up. The reparations question is the smallest problem that affects the European situation today," he declared. "Payment by Germany is not really expected by any other power in Europe. The reparations question is being kept alive to cover the real purposes behind the European situation. It is foolish to talk of reparations or of peace in Europe, unless through some outside force it is possible to allay the hatred between these two nations." *Deseret News* 24 October 1923.

tors and vanquished in war, or friends and enemies as determined by ideology or governmental or economic systems.<sup>40</sup>

President Clark opposed not only the universal collective security system of the League, but also the more traditional military alliance systems common in European politics. He spoke out during World War II against our membership in any "union of states" allied against the Soviet Union. Even during the height of this great world conflagration, his thoughts were upon the nature of the peace which would follow the war's termination. He noted that one alliance system would only produce another in opposition to it, with results deleterious to peace and security:

It would hardly do to form an open alliance against Russia; and both Britain and ourselves should be wary of an alliance with her. So the device is conceived of a 'union' of states, which, however, would tie the nations together more securely than an alliance and be a greater threat to Russia.

But such an alliance would lead, and such a 'union' will lead, sooner or later, to a counter-alliance by the other nations that would challenge the power of such a 'union,' so meaning either constant war for supremacy or a war of absolute conquest by the one or the other and a consequent enslavement of the conquered. Peace without liberty spells a stalemate in civilization and spiritual development. 'Union now' has far more ill than good in it. Nor must America ever become a party to an attempted military domination of the world.

We must have a peace based on justice rather than might, that is, it must be a peace upon terms that will leave all peoples willing if not anxious to carry them out, because that is a peace that is clearly an alternative to another war. No permanent peace will come unless this be done. The men who are fighting and their families want peace now and hereafter; they of America are not primarily concerned with questions of empire holding or empire building.

Along with this peace should come a will to increase the spirituality of the earth's peoples and a building up of a true spirit of the brotherhood of man by treating all men as brothers, not as enemies nor as menials or inferior orders of creation. Real peace will never come till the Gospel of Christ rules the hearts of men, until we shall yield obedience to the great commandment drawn from the statutes of Israel's Law-Giver: 'Thou shalt love the Lord thy God with all thy heart, and with all thy soul, and with all thy mind. This is the first and great commandment. And the second

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<sup>40</sup>See the International System section of this article.



is like unto it, 'Thou shalt love thy neighbor as thyself. On these two commandments hang all the law and the prophets.' (Matt. 22:37-40) So spake the Master to the quibbling Pharisee.

Such a peace would eliminate at once all armed force, because a rule of force is always a rule of hate on both sides and peace will never be born of hate. This would dispose of international police forces, occupying armies, and all the impossible tasks incident to alien domination. Since war lords know only armies and guns and brute force, none of them of the victor nations would like this, but we their peoples would welcome it as our redemption from bloodshed. For the people love the paths of peace and quiet and the orderly progress of an ever-increasing culture and advancing civilization and a constantly growing spirituality.

A solution by a rule of brute force would discard all the wisdom of the ages and take us clear back to the dawn of civilization. Surely we have grown too much through the generations to make this the best answer we can now make. Surely we shall not try to live through again the whole history of human kind, again using all the devices of armed peace and selfish power that have failed from the beginning.<sup>41</sup>

President Clark did not oppose bilateral or multilateral treaty arrangements under which party states agreed to consult. Nor did he oppose treaty relationships which might lead to joint military action as long as each member state was left free to determine its own reaction to events in accordance with its own constitutional processes. This is seen in his defense of the Four Power Treaty on Insular Possessions in the Pacific.<sup>42</sup> President Clark, then special counsel for the Department of State at the 1921 Conference on the Limitation of Armament, prepared a speech for President Harding to deliver to the Senate preliminary to its advice and consent to the treaty. The speech was eventually delivered by Senator New of Indiana.

Thus the elements out of which has been built the treaty fabric . . . are mutual and essential interests affecting the welfare and peace of the nations concerned and of the world, actual problems calling for solution, unconstrained relinquishment of rights or prerogatives by equal to equal, their being no enemy to be punished or friend to be re-

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<sup>41</sup>Ibid.

<sup>42</sup>J. Reuben Clark, Jr., "Memorandum for the President on the Four Power Treaty on Insular Possessions," 1922.

warded, no compulsory measures of enforcement, no power despoiled—surely these are the elements to which we have a right to look and upon which we must depend for further progress in world righteousness. Take away any of them, and the result, whenever it may be, will be of questionable effectiveness and may be of doubtful morality. While man is what he is, it is difficult to see how nations can ever associate themselves together and work in harmony except upon these great elemental bases.

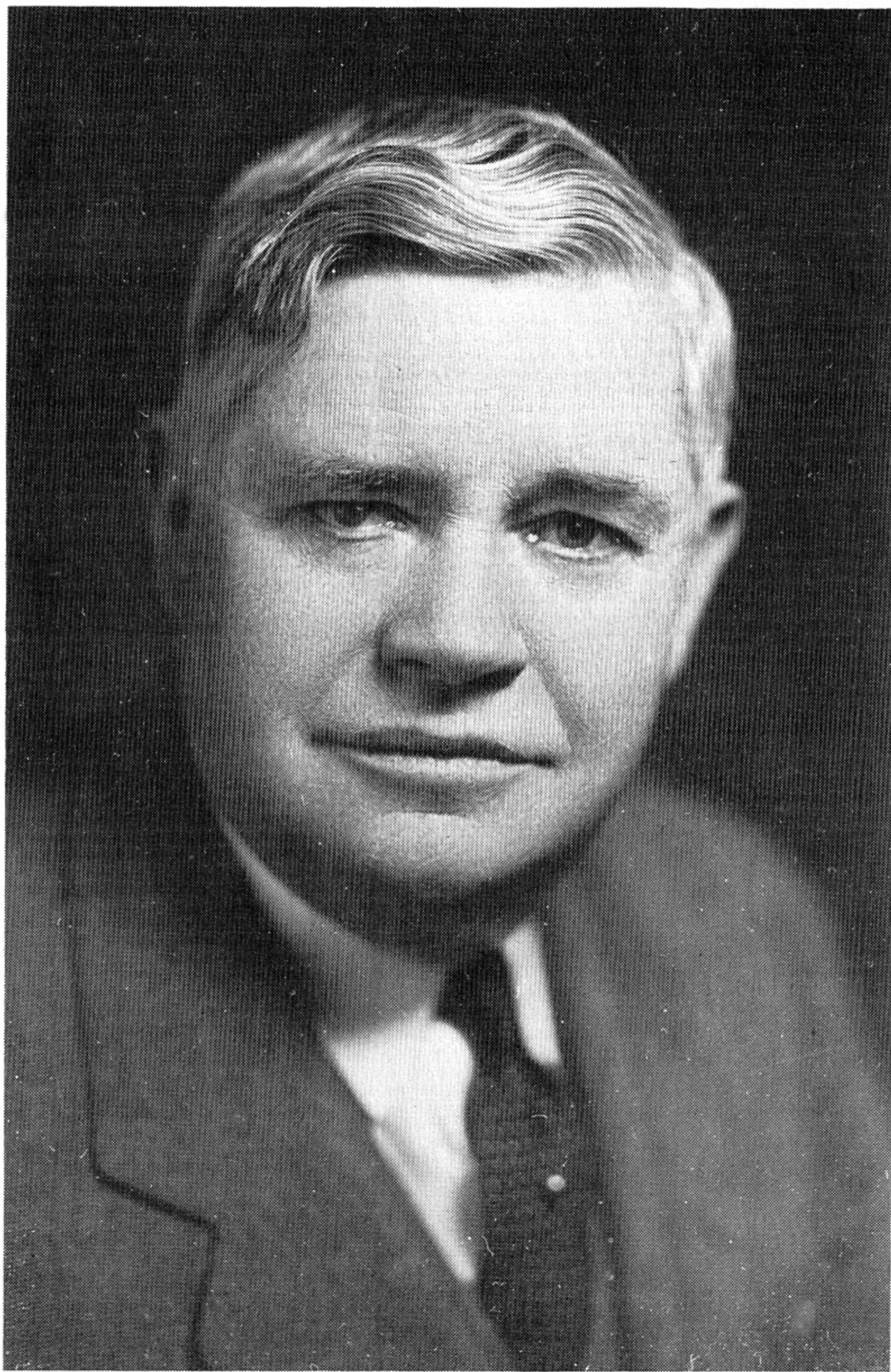
I may first observe [concerning the Four Power Treaty] again that the situation about which the powers are to communicate is one in which they are all concerned. In the next place, the powers concerned, and only those powers, consult together. In the third place, they consult regarding the 'measures' to be taken, jointly or severally, to meet the exigencies of the situation. But they are not committed beforehand, and this is the vital point, to any definite measures, nor are they either committed or under any obligation, to concert on any measure at all. That is to say, if and when a proscribed aggressive action were in any jeopardy, or that the peace of the world and the welfare of its peoples would be best served by inaction, there is no obligation here that we should counsel, consent to, or participate in the measures which any other power might propose as necessary. In other words, there is here not the slightest surrender of our independence of action, we have here no impairment of our sovereignty . . . . We should enter and participate in such a conference uncommitted and with full and complete right to function in the matter before us in strict accordance with our due constitutional order. So that, if the exigencies of the situation finally appeared to require the use of armed force, we might face the question uncompromised, free, and unfettered, to do the thing that then seemed wisest and best, for there is not in this treaty, nor arising from it, any obligation whatever to proceed to this extremity unless and until Congress in the due exercise of its high constitutional sovereign prerogative had fully debated the situation, reached its decision, and formally authorized the waging of war. Is this not the crux of the whole matter, and does it not destroy every vestige of legitimate objection to the Treaty?<sup>43</sup>

President Clark understood the severely limited utility of the use of force in accomplishing real peace and security, whether such force be accomplished by unilateral means, by treaty of military alliance, or by an institution of universal

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<sup>43</sup>*Congressional Record* 62:3408 (6 March 1922). Remarks of Senator New. This was a speech written by President Clark, prepared for use by President Harding, but eventually delivered by Senator New of Indiana.





President Clark as a young lawyer, 1920-21.  
Photograph by Courtesy of J. Reuben Clark, III.



collective security.<sup>44</sup> One of the most powerful sermons on the nature of peace and order ever given by President Clark was delivered in the Mormon Tabernacle, 4 September 1945, on the occasion of an inter-faith service of thanksgiving for the termination of World War II. In that great address, additional parts of which will be quoted later, President Clark said:

We are to assume, for better or worse, the responsibility for the economic, cultural, intellectual, and spiritual welfare of a hundred odd millions of people, whose very existence indeed lies in our hands. Behind each of these peoples lie ages of traditions and conventions that are part of themselves. Some seem to contemplate that we shall coerce the minds and spirits of these peoples. But God himself does not do that. We must come to them with the law of the brotherhood of men, and with mercy, justice, and the love of peace. For peace will not come to the earth while a hundred odd millions of people seethe with hate and vengeance in their hearts. They must be led, not driven, to peace.

Yet we come to our task of self-assumed duties while hate yet smoulders in our hearts, with some amongst us trying to fan it into flame. We are not without a spirit of conquest, nor has the feeling of retaliation left us.

Hate even to loathing, and revenge, and dire fear, fill the hearts of our enemies. They will dream and plan and conspire to visit upon us even as we have visited upon them. We shall seek to change their dreams; we shall punish those who plan and conspire. This is the rule of conquest.

God will not, cannot come where hate meets hate, and revenge meets revenge. Where these things dwell, righteousness cannot abide, and where righteousness is not, the powers of evil command.

Yet we must build for peace. We want no more war. All humanity calls for this. God has commanded it, for from the first he has said, 'love your neighbors as yourselves.' We are all his children—the good, the bad, the fair skin and the dark. He has given to no man the authority to deal with his fellow man otherwise.<sup>45</sup>

While President Clark opposed the League of Nations as being dominantly an alliance system directed at Germany,

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<sup>44</sup>See Force and War section of this article.

<sup>45</sup>J. Reuben Clark, Jr., "The Awesome Task of Peace," *Improvement Era* 48:567 (October 1945). This was an address delivered in the Salt Lake Tabernacle, 4 September 1945, at a community service of all faiths and peoples, gathered in thanksgiving for the return of peace, and conducted by President George Albert Smith.



as the Holy Alliance had been aimed at Napoleonic and post-Napoleonic France, he proposed his own plan<sup>46</sup> for an international system which included a modified form of collective security. His proposal was built upon three existing or suggested institutions or plans: The League of Nations, Senator Borah's proposal to outlaw war and codify international law, and President Harding's proposal for United States' participation in the Permanent Court of International Justice.

President Clark proposed that there be created a world judiciary and a world deliberative body, with quasi-legislative functions, which he called a "World Congress." This two-part paradigm for world unity had in turn two prerequisites. The first was that international war be declared an international crime and the nations waging it international criminals, to be identified and punished by the imposition of economic and military sanctions to be determined by the World Congress. The second was the accomplishment of the codification of international law, as had been proposed earlier by Senator Borah. President Clark put his case for codification:

Obviously a compulsory jurisdiction over international disputes by an international judicial system must be predicated upon an accepted rule of conduct pursuant to which a nation may frame its course and according to which its course when taken may be judged by an international tribunal. No nation may safely submit its conduct to compulsory review when it does not know first what it ought to do or is expected to do under the given circumstances, and second by what rule its conduct under such circumstances will be judged.

This marks the true distinction between justiciable disputes—those concerning matters which may be determined under and in accordance with a recognized rule of law of which the offending nation knew and by which it should have guided its conduct, and non-justiciable disputes—those which concern matters as to which there is no accepted rule by which nations may shape their conduct or by which that conduct may be judged.

Thus a full codification of existing international law is indispensable to the creation of any wise and effective international judicial system with powers of compulsory jurisdiction.<sup>47</sup>

The deliberative World Congress was to be fashioned by

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<sup>46</sup>J. Reuben Clark, Jr., "System of Pacific Settlement of International Disputes: A Program," *Unity* (4 October 1923).

<sup>47</sup>*Ibid.*, p. 42.

enlarging the jurisdiction of the Permanent Court of Arbitration at the Hague. The Congress was to be that body having final decision on the imposition of certain collective security measures against offenders violating agreements outlawing international aggressive war or other portions of the international code. Further, the Congress was to have recommendatory powers both as to general matters coming before it and as to special matters which might from time to time be referred to it by two or more states. The Congress could recommend changes in the international code. It was to elect the members of the World Supreme Court, hereinafter described, from a list of persons nominated by both members and non-members of the Hague tribunal.

The international judicial system was to possess compulsory jurisdiction covering as many subjects as could be agreed upon. The jurisdiction had to be compulsory as to treaty rights and compulsory or voluntary—as could be agreed upon—with respect to international legal rights as described by the code of international law.

The first part of President Clark's international judicial model was an International Supreme Court. Entirely unconnected with the League of Nations, the Court's members were to be nominated by the World Congress and elected by the Hague Court Panel. This Court was to possess appellate and original jurisdiction and consist of nine judges serving terms of six years. It had compulsory jurisdiction over all matters to which the parties agreed, including compulsory appellate jurisdiction of appeals from decisions of the courts of original jurisdiction, except in those situations in which all parties in a particular case agree otherwise. In addition, it had compulsory jurisdiction over any case which had been referred to courts of first instance in which one of the parties afterwards refused to submit to such jurisdiction.

The courts of first instance were to exist so as to localize international justice as much as possible and thereby limit the expense of international litigation. These courts would sit in the capital of the defendant nation and were to be composed of three judges; one chosen by the plaintiff, one by the defendant, and a third, chosen by the Supreme Court from among its members, to preside. Because of their *ad hoc* nature, there were to be no fixed number of these courts. They



were to have permissive jurisdiction over questions arising between states and involving the interpretation of treaties and the application of the international code, and compulsory jurisdiction over all questions upon which disputant parties had agreed to arbitrate.

Universality of membership in the system was imperative in the Clark paradigm. He believed that the possibilities of actual universal participation were enhanced by the fact that the plan called for the use of no new concepts, principles, or instrumentalities. As stated previously, President Clark believed that an international convention had to be negotiated and adopted by *all* nations, declaring international war to be an international crime and the nation waging it to be an international criminal to be punished in accordance with the convention's provisions. War waged for self-defense, however, would remain justifiable. President Clark realized that war would scarcely be abolished by resolution, but believed that such a convention would crystallize a growing world sentiment against war and establish a standard by which every nation could judge future wars. His plan for a world order system was to be the vehicle for the eventual abolition of war as a means of dispute resolution.

With the advantage of hindsight, it would seem that President Clark, not unlike others of his time on both sides of the controversy over United States' participation in the League, put more faith in juridical institutions of dispute resolution than such means justified. Like Wilson, Bryan, Borah, Kellogg, Hughes, and Root, President Clark had high and idealistic hopes that the evolutionary experience of the common law in controlling violence could be transferred to the international community. Many of the institutions so constructed came crashing down in the face of the aggressor nations of the 1930s.

President Clark, however, did not rest his proposed international system entirely upon formal juridical or arbitral institutions. He spoke and wrote often concerning the necessity of maintaining and enlarging upon the political and diplomatic techniques of dispute resolution as created by the Hague Conferences of 1899 and 1907. He favored the use and the continued institutional development of negotiation, good offices, mediation, conciliation, and commissions of inquiry or



fact-finding<sup>48</sup> and often cited the many examples of the successful use of these political and diplomatic techniques of dispute resolution.<sup>49</sup> His plan for world organization included a provision that we "preserve the great provisions of the Hague Convention relating to good offices and mediation and . . . Commissions of Inquiry."<sup>50</sup>

#### THE PROPER ROLE OF THE UNITED STATES IN THE WORLD COMMUNITY

President Clark believed that the United States was uniquely prepared and placed—not by chance—to play a particular role in world affairs.

America, multi-raced and multi-national, is by tradition, by geography, by citizenry, by natural sympathy, and by material interest, the great neutral nation of the earth. God has so designed it. Drawn from all races, creeds, and nations, our sympathies run to every oppressed people. Our feelings engaged on opposite sides of great differences, will in their natural course, if held in due and proper restraint, neutralize the one the other. Directed in right channels, this great body of feeling for the one side or the other will ripen into sympathy and love for all our misguided and misled fellowmen who suffer in any cause, and this sympathy and love will run out to all humanity in its woe, thus weakly shadowing the infinite compassion of the Master.<sup>51</sup>

He saw this country as the great peacemaker, standing aloof from the turmoil of European politics, able to exert its influence as a neutral and moral force standing above the balance of power politics within Europe and apart from the colonial or imperial politics between Europe and Asia. Time and again, in Conference or other church-related address,<sup>52</sup> in

<sup>48</sup>E. B. Firmage, "Fact Finding in the Resolution of International Disputes—From the Hague Peace Conference to the United Nations," 1971 *Utah Law Review*, p. 421.

<sup>49</sup>President Clark explained that the preservation of the "great provisions of the Hague Convention relating to good offices and mediation and to the commissions of inquiry," were essential for the success of his program of peaceful settlement. *Unity* (4 October 1923), p. 42.

<sup>50</sup>*Ibid.*

<sup>51</sup>J. Reuben Clark, Jr. in *Conference Report of the Church of Jesus Christ of Latter-day Saints*, 1938, p. 15. (Hereinafter cited as *Conference Report*.)

<sup>52</sup>Address delivered in the Tabernacle on 26 November 1911, and reported in the *Deseret News*, 9 December 1911, p. 30; "America, a Chosen Land of the Lord," Address at Forty-fifth Annual Conference of the YMMIA, 1940; Clark in *Conference Report*, October 1948, p. 81; "The Awesome Task of Peace," Clark in *Conference Report*, 1939, p. 17; "Let Us Have Peace," *Stand Fast By Our Constitution* (1962), p. 73; "International Conferences—Why and How," *Improvement Era* 37:259.



secular speech<sup>53</sup> or in professional paper,<sup>54</sup> he reiterated his faith in peaceful means of dispute resolution: in good offices, inquiry or fact-finding, mediation, negotiation, conciliation, and especially in juridical techniques, particularly arbitration. Our role as the great mediator, however, could not be performed if we ourselves were a belligerent in the dispute. Our moral position would thereby be destroyed and we would become just another of the many warring and quarrelling states, indistinguishable from the rest by all criteria other than physical strength.

If we shall rebuild our lost moral power and influence by measures such as these which will demonstrate our love for humanity, our justice, our fair-mindedness, our determination to do works of righteousness as God shall make them known to us, we shall then be where at a fitting and promising time we can offer mediation between the two belligerents, and bringing our moral power and influence into action we shall have a fair chance to bring an end to the criminal slaughter of our fellowmen and to give birth to a peace that shall be lasting, because just and fair to every people. Surely this is infinitely more honorable, will have in it infinitely more of humanity, will be infinitely nearer to the Master's way, than sending our young sons overseas to be murdered.

America, the great neutral, will thus become the Peacemaker of the world, which is her manifest destiny if she live the law of peace. Believing as we do that America is Zion, we shall then see the beginning of the fulfillment of the prophecy of Isaiah of old "for out of Zion shall go forth the law," a law of justice, mercy, and righteousness, adopted by the nations of their own free will.<sup>55</sup>

After discussing America's colonial and early national experience, President Clark asserted that the "greatest achievement of the United States in its international relations" had

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<sup>53</sup>J. Reuben Clark, Jr., "Slipping From Our Old Moorings," an address delivered to the Annual Convention of the Utah Poultry Growers Co-Op, 1947; "Some Factors in the Postwar International Pattern," an address delivered to the Los Angeles County Bar Association, 1944; "Our Dwindling Sovereignty," *Stand Fast by Our Constitution* (1962), discourse delivered at the Fourth Annual Pi Sigma Alpha Lecture—Institute of Government, University of Utah, 13 February 1952. (All addresses available at the Brigham Young University Library).

<sup>54</sup>Clark, "The Pacific Settlement of International Disputes;" "The Four Power Treaty;" and J. Reuben Clark, Jr., "Jurisdiction of American-British Claims Commission," *American Journal of International Law* 7:687 (1913).

<sup>55</sup>Clark in *Conference Report*, 1938, p. 17.



been the "actual implementation on our part of the peaceful adjustment of our international disputes."<sup>56</sup>

We have only had three wars in all of our history, foreign wars, up until the time that we entered World War I, and those three wars were: the first, the war of 1812, to which I have already alluded; the next, the war with Mexico, and I never like to discuss that very much, I do not think that the war with Mexico shed any very great credit upon us; and the last, the war with Spain, and I have often thought of that as more or less of an accident, for if we had not had that incident in Havana Harbor, the explosion or the blowing up of the Maine, I think we might have gotten away without that one.

Every other dispute we have had with any nation, we have been able to settle by peaceful means.

By our aloofness during all these years, we escaped all the wars in Europe, we did not participate in any of them; we had no alliances; we moved along the course that we thought we should follow, unhampered by the dictation of anybody else.

We took part in the two Hague Conferences, we tried to work out some plan there that would enable the nations of the world to settle their disputes peacefully, and to that end enter into conventions providing means and methods for such adjustments.

Then in bilateral treaties with England and France, we tried to put forward the cause of arbitration, by eliminating some of the things that prove most difficult in securing arbitration.<sup>57</sup>

In addition to our example as a state which had been able to settle its disputes by peaceful means, prior to our entry into World War I and excepting the three wars described above, President Clark believed that we had a particular role to play as mediator, as a state whose good offices could only be used by belligerents if we were not in that position ourselves. In a Conference address delivered in October 1939, on the occasion of the beginning of war in Europe, he reiterated his belief of the proper role for the United States in that great conflict:

Our plain duty to humanity and to the cause of peace, our duty to our Creator, require that we preserve the moral force and influence we now have, that we regain what we have lost, and that then we increase to the highest possi-

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<sup>56</sup>Ibid.

<sup>57</sup>Clark, "Our Dwindling Sovereignty."



ble point this greatest of all instrumentalities for world peace. If we become parties to this world war, on whatever side, to determine the present issues of the war, we shall lose all this moral power and influence, and sink with the world to the level where just our brute might shall be the sole and only measure of our strength. This would be an appalling prostitution of our heritage.<sup>58</sup>

Later, during World War II and after our entry as a belligerent, President Clark again reviewed our history as a peace-seeking nation and pleaded for a continuation of that tradition.

From the Jay Treaty with Great Britain of 1793, until the recent past, we have encouraged and sought to secure the settlement of international difficulties and disputes by friendly means—by arbitration where we were concerned, and by arbitration and mediation where others only were involved.

In the two Hague Conferences of 1899 and 1907, while other nations busied themselves mostly with conventions dealing with war, our emphasis was placed on perfecting conventions for the pacific settlement of international disputes. This was in line with the lofty purpose of our national diplomacy until after the last Hague Conference. In all these, peace with other members of the society of nations motivated our course.

Nor should we overlook the special efforts of Secretaries Olney, Hay, Knox, and Bryan to negotiate both general and special treaties to promote peace, nor the Kellogg-Briand Pact for the Outlawry of War.

Nor should we end this brief catalogue of some of our efforts without calling attention to the Rush-Bagot notes by which the United States and Great Britain accomplished the limitation of armament on the Great Lakes, an informal agreement that has robbed our Canadian border question of all threat of trouble for more than 130 years.

That, gentlemen, is America's record, the greatest record for peace made thus far by any nation in the world. Future generations will so appraise it.<sup>59</sup>

He ended his discourse with a powerful plea for a return to peaceful ways and a return to our role as the world's peace-maker.

I believe that permanent peace will never come into the world from the muzzle of a gun. Guns and bayonets will,

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<sup>58</sup>J. Reuben Clark, Jr., "In Time of War," *Improvement Era* 42:656 (November 1939). Address delivered to the 110th Semi-Annual Conference of the Church.

<sup>59</sup>J. Reuben Clark, Jr., "Let Us Have Peace," *Stand Fast By Our Constitution* (1962), p. 58.



in the future as in the past, bring truces, long or short, but never peace that endures.

I believe President Wilson had the true principle when he spoke of the strength and power of the moral force of the world. Moral force in a nation fructifies industry, thrift, goodwill, neighborliness, the friendly intercourse of nations, the peace that all men seek; whereas force is barren.

I believe America's role in the world is not one of force, but is of that same peaceful intent and act that has characterized the history of the country from its birth till the last third of a century.

I believe that moral force is far more potent than physical force in international relations.

I believe that America should again turn to the promotion of peaceful adjustment of international disputes, which will help us regain the measureless moral force we once possessed, to the regeneration and salvation of the world. We now speak with the strength of physical force only; we have no moral force left.

I believe we should once more turn our brains and our resources to the problem, not of killing men, women, and children, combatant and noncombatant, but of bringing to them more of good living and high thinking.<sup>60</sup>

President Clark's isolationism did not stem entirely, or perhaps even dominantly, from his secular views on world politics. His political opinions were shaped in large part by a religious faith which was based upon three basic theological postulates, leading in turn to two conclusions for secular politics. First, the Lord has commanded from Sinai and in the Garden, "thou shalt not kill." Second, that injunction applies to war.<sup>61</sup> Third, we are relieved of this prohibition against

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<sup>60</sup>*Ibid.*, p. 76.

<sup>61</sup>"The long-threatened and dreaded war has broken out. Its end and fruition await now the measure of God's infinite wisdom, justice, and mercy. The divine law on the taking of human life was proclaimed at Sinai and in the Garden. This law, we declare, is equally binding upon men and upon nations. It embraces war. We further declare that God is grieved by war and that he will hold subject to the eternal punishments of his will those who wage it unrighteously.

"We affirm that all international controversies may be settled by pacific means if nations will but deal unselfishly and righteously one with another. We appeal to the leaders of all nations and to the people themselves thus to mend and adjust their differences, lest the vials of God's wrath be poured out upon the earth, for he has said he will visit his wrath upon the wicked without measure.

"We call the unrighteous of the world to repentance—a forsaking of sin and a returning to righteousness, for the Lord has said:

'I, the Lord, am angry with the wicked. I am holding my Spirit from the inhabitants of the earth. I have sworn in my wrath



war only when God commands that we go to war—and then He will go before us and fight our battles.

33. And again, this is the law that I gave unto mine ancients, that they should not go out into battle against any nation, kindred, tongue, or people, save I, the Lord, commanded them.

34. And if any nation, tongue, or people should proclaim war against them, they should first lift a standard of peace unto that people, nation, or tongue;

35. And if that people did not accept the offering of peace, neither the second nor the third time, they should bring these testimonies before the Lord;

36. Then I, the Lord, would give unto them a commandment, and justify them in going out to battle against that nation, tongue, or people.

37. And I, the Lord, would fight their battles, and their children's battles, and their children's children's, until they had avenged themselves on all their enemies, to the third and fourth generation.<sup>62</sup>

One conclusion for international politics followed from this. No alliances should be entered into which in any way trammelled our discretion to go to war only under the conditions specified by the Lord. Finally, though not stemming necessarily from this theological teaching, whenever we chose to go to war we lost our potential role as a neutral peacemaker.

In addition to his abhorrence for war (and most particularly for our participation as a belligerent in any war in

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and decreed wars upon the face of the earth, and the wicked shall slay the wicked, and fear shall come upon every man.'  
(Doctrine and Covenants 63:32-33)

"We condemn all of war's foul brood—avarice, greed, misery, want, disease, cruelty, hate, inhumanity, savagery, death.

"We earnestly implore all members of the Church to love their brethren and sisters, and all peoples whoever and wherever they are; to banish hate from their lives, to fill their hearts with charity, patience, long-suffering, and forgiveness. The Master said:

'Love your enemies, bless them that curse you, do good to them that hate you, and pray for them which despitefully use you, and persecute you.' (Matthew 5:44)

"We ask the Lord so to overrule the plans and designs of man that this war shall not spread to countries not now involved, and especially that America shall escape the material and spiritual ravages of war.

"We pray that the spirit now raging in men's hearts, of hate, of exploitation, of desire to dominate, may be supplanted by the spirit of reconciliation and forgiveness, that in obedience to principles of righteousness and of justice this war without further bloodshed and suffering may be brought to an early close." Message from the First Presidency of the Church of Jesus Christ of Latter-day Saints in *Conference Report*, 1939, p. 8.

<sup>62</sup>Doctrine and Covenants 98:33-37.



which we were not morally obliged to participate), President Clark opposed colonial or imperial intervention of any kind into the affairs of other states. Time and again he inveighed against a busy-body foreign policy. His objection to colonial or imperial intervention covered the entire spectrum of classical nineteenth-century practice which extended into our own century, to economic or political intrusions which resulted in interventionist politics of perhaps a lesser order of magnitude. On this point he maintained a completely consistent position from the beginning of his professional career prior to World War I, to the end of his life.

His position on interventionist politics was clearly affected by his abhorrence of any policy resembling that of Metternich and Talleyrand, or those of Elizabeth I and Henry IV two centuries before, in which groupings of states sought to contain the power of a third state or to dictate the nature of its internal polity, most often to accomplish the maintenance of the status quo. In a background paper prepared in 1914, just prior to the outbreak of World War I and in preparation for the projected Third Hague Conference (which was aborted by the great War), President Clark opposed any scheme similar to the Congress of Vienna; he opposed any concept of a big-power directorate over world events to be accomplished by interventionist policies; he opposed the concept of spheres of influence which granted one or another state particular interventionary prerogatives. Finally, he opposed any form of third party intervention in civil strife except to protect the intervening state's nationals.

Is the United States prepared to take the position that the existing status quo of the world shall be permanently maintained, and this status quo includes not only the perpetuation of existing states in their extent, boundaries, etc., but it includes and must include, if it would command the adherence of the monarchies of the world, the perpetuation of the existing status quo of government? Is the United States prepared to say that there shall be no further evolution in the monarchic governments of the world? Would they support a treaty which guaranteed the perpetuation of the absolute monarchy of Russia? . . .

. . . Is the United States itself in a position to join in a sort of second Holy Alliance with a view to determining, or participating in a determination of, the internal policies of foreign peoples with whose aims and aspirations the Ameri-



can people may have little in common? Is the United States prepared to say what form of government shall exist in every other country in the world? Is it prepared to say that no people shall rise up and throw off a despotic power, or correct intolerable evils, by force of arms?<sup>63</sup>

Within months of this writing, World War I began. Before peace came, the dynastic, imperial governments in Russia, Austria-Hungary, and Germany were destroyed and the whole governmental fabric of Europe profoundly and irreversibly changed.

In a speech delivered in 1945 before the National Industrial Conference Board in New York, after the conclusion of the Second World War, President Clark reaffirmed his hostility to the spirit of colonial or interventionist influence upon foreign states, whether accomplished by force of arms, as discussed in his writings prior to the First World War, or by economic levers:

With all due respect to our governmental departments and those who man them, one can be reasonably certain that the dominating element in making the loans by government will, in many cases, be the political element, and political loans are always a highly hazardous venture. No loan is likely to be made to the fellow we do not like, no matter how sound he may be financially, and loans will be made to the fellow we do like, without too much scrutiny about his financial responsibility, providing he promises to play our game. Making such loans would mean our control of the domestic policies of every country willing to sell out to us. Thus we would become not only the monitor, but the dictator of every little country in the world, we would be trying to control their national, economic, even cultural life, to meet the ideas of the official staffs and their civilian cronies of our departments. To do this we shall have to dictate who shall govern the borrowing countries.

There is a good deal of talk about remaking the world to conform to our standards of life and living, as to food, clothing, education, economics, culture, government, and what not.

We must give up this idea too many of us have, that our way of life and living is not only the best, but often the only true way of life and living in the world, that we know what everybody else in the world should do and how they should do it. We must come to realize that every race and every

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<sup>63</sup>J. Reuben Clark, Jr., "Memorandum to the Preparatory Committee to the Third Hague Conference" (1912), pp. 44-45.



people have their own way of doing things, their own standards of life, their own ideals, their own kinds of food and clothing and drink, their own concepts of civil obligation and honor, and their own views as to the kind of government they should have. It is simply ludicrous for us to try to recast all of these into our mold.

Furthermore, we must come to acknowledge and accord to every people, the divinely given right to live their own lives as they wish to live them. We claim this for ourselves; we must yield it to others.<sup>64</sup>

Serious question may be raised regarding the desirability—indeed, the possibility—of America standing completely aloof from European international politics in our time, when there is yet no European “balance.” The existence of two superpowers, with strategic weapons systems which dwarf the military capacity of any other state or grouping of states, changes radically the situation from that which existed when President Clark was engaged in public life. The existence of this relative bipolarity (at least such a condition based upon the criterion of strategic weapons, economic and other forms of power for the moment not considered) caused by two super powers, one with hegemonial if not imperial interests upon Europe and parts of Asia, may make it impossible for the other to stand by as a neutral. But that was not the condition of the world in all but the last few years of President Clark’s life. The goals for which he strove—the preservation of the integrity of each state from alien intrusion; the resolution of disputes by peaceful means; an avoidance of war—are as much to be desired and sought after now as then.

President Clark’s beliefs—in avoiding balance of power politics in Europe, in maintaining our integrity and morality through neutrality in order to perform the role of objective and detached peacemaker, in avoiding the presumptuousness inherent in exerting any colonial or imperial dominance over others—quite naturally led to one of his most influential acts in shaping the nature of American foreign policy and international relations in this hemisphere.

The Clark Memorandum on the Monroe Doctrine<sup>65</sup> repudiated any political or legal right of the United States, by virtue

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<sup>64</sup>J. Reuben Clark, Jr., “Public Loans to Foreign Countries,” 20 November 1945. Address delivered to the 273rd meeting of the National Industrial Cos. Bd., Inc.

<sup>65</sup>President Clark gave public acknowledgment in his Memorandum to John Bassett Moore, Hamilton Fish Professor of International Law and

of the Monroe Doctrine, to intervene in the affairs of Latin American states. This effectively negated the Roosevelt Corollary to the Monroe Doctrine, which doctrine was announced by President Monroe in his annual message in 1823.<sup>66</sup> Basically, the Doctrine declared that the United States would oppose future colonization, or any other form of political control over countries within the Western Hemisphere, by European states. This was qualified by our pledge of non-interference in relations between existing colonies or dependent states in this hemisphere and their metropolitan European states.

The basis of this doctrine, President Clark believed, had been laid by America's early leaders; their policies assured that this country, and indeed this continent, should enjoy an existence separate from Europe. He noted that the Monroe Doctrine was not international law, but rather, in the words of Elihu Root, "rests upon the right of self-protection and that right is recognized by international law."<sup>67</sup> The major clarification accomplished by the Clark Memorandum was its emphasis of the fact that the Monroe Doctrine related solely to relationships between Europe on the one side and American states on the other. It did not define relationships between the United States and Latin American States, nor relationships between the Latin American states themselves.

It is [important] to note . . . that the declaration does not apply to purely inter-American relations.

Nor does the declaration purport to lay down any principles that are to govern the interrelationship of the states of this Western Hemisphere as among themselves.

The Doctrine states a case of United States v. Europe, not of United States v. Latin America.<sup>68</sup>

President Clark noted that many situations popularly

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Diplomacy at Columbia University, and Assistant Secretary of State, the editor of the *Digest of International Law* then published by the Department of State. Clark, Memorandum on the Monroe Doctrine, p. ix. President Clark noted that a substantial part of the basic research in international law and practice upon which the Clark Memorandum was based was accomplished by Professor Moore and was taken from his great *Digest* by President Clark for use in his Memorandum.

<sup>66</sup>It should be noted that the basic points of the Monroe Doctrine had been commonly accepted policy of our country and most European states long before the final development of the formal Doctrine by Adams, Monroe, Canning and Rush.

<sup>67</sup>Clark, Memorandum on the Monroe Doctrine, p. xv.

<sup>68</sup>Ibid., p. xix.



thought to be covered by the Doctrine in fact were not. For example, the Monroe Doctrine was not hostile to the establishment of monarchical governments in the Americas. Monarchies had been established in Brazil, Haiti, and Mexico without objection by the United States.<sup>69</sup> Our objection to Maximilian's empire in Mexico had been based primarily on its reliance upon European troops for its maintenance and support. Further, the Doctrine had no application to wars between American states; it was not concerned with the relations between colonies held in Latin America by European states prior to 1823; it had no relevance to wars between metropolitan European states and their colonies established prior to this date; nor was it a pledge by the United States guaranteeing protection of Latin States beyond our unilaterally accomplished decision in a particular situation to do so. The Doctrine did not prohibit European states from waging war on Latin American states nor did it obligate the United States to defend any Latin state engaged in such a war. A final limitation upon the Doctrine, as determined by President Clark, was that it had never received the formal sanction of Congress.<sup>70</sup>

The so-called "Roosevelt Corollary" to the Monroe Doctrine announced the United States' intention to adjust financial and other difficulties between Latin states and Europe to prevent European states from intervening in this hemisphere in forceful resolution of such disputes. For example, an international legal doctrine of the time, somewhat tenuous then, and more substantially repudiated since, allowed for the forcible collection of debts by certain actions being taken by the lending nation against the debtor nation. Seizure of customs houses occasionally occurred in such situations. President Clark concluded that the policy of the Roosevelt Corollary to intervene before European intervention was not justified by the basic tenets of the Monroe Doctrine.

Finally, President Clark concluded that the Monroe Doctrine was a unilateral pronouncement by the United States, not formally an agreement between the United States and the United Kingdom, or part of conventional international law. It was a statement of policy to be interpreted and applied unilaterally by the United States.

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<sup>69</sup>Ibid., p. xxiii.

<sup>70</sup>Ibid.

## FORCE AND WAR

President Clark did not view international war as simply an extension of political discourse, but rather as a violation of God's law<sup>71</sup> unless sanctioned expressly by Him.

Nothing is more unrighteous, more unholy, more un-Godly than man-declared mass-slaughter of his fellowman for an unrighteous cause. It has brought down the wrath of the Almighty in all times. God will visit His vengeance upon all who bring it. The law declared at Sinai was 'Thou shalt not kill,' and in the Garden of Gethsemane: 'All they that take the sword shall perish by the sword.' With these divine commands deep-embodied in our spiritual consciousness, we can look with no degree of allowance upon the sin of unholy war, and a war to make conquest or to keep conquest already made is such a war.<sup>72</sup>

President Clark attacked as specious and deceptive the reasons usually given for going to war. He did not believe that the world could be made safe for democracy, or freed from want and fear, by means of war. He considered that the real reasons for most wars—from our own war with Mexico to World Wars I and II—were based on greed and lust for power and possessions, leading to imperial wars of conquest.

The love of liberty is a fairly universal passion of humanity when free to express itself. But liberty was never implanted in the hearts of a people from the point of a bayonet, nor will it ever be from the nose of an airbomb. Can we keep a straight face and say that bombers and occupying armies are to bring subjection without fear,—that they will give freedom from fear through fear?<sup>73</sup>

He viewed the natural effects of war—the pain and killing, the brutalizing of a population taught to hate and to kill, the loss of spirituality and the physical and mental degradation produced by both the battlefield and by the propaganda of hate at home—as being its only real results. After describing the physical cost of World War II in terms of the millions of dead and wounded and the overwhelming destruction of property, President Clark noted the profound spiritual effect of that "apostasy from peace:"

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<sup>71</sup>See notes 61 and 62 and accompanying text.

<sup>72</sup>Clark, "In Time of War." See note 58 above.

<sup>73</sup>Clark, "Some Factors." See note 53 above.



youth and older men to the very depths of desponding atheism. Our whole social structure seems undermined. We are becoming a blaspheming, unchaste, non-Christian, Godless race. Spiritually we seem ripe for another war.<sup>74</sup>

Another result of war, far removed from the platitudes about the safety of democracy, or freedoms from want and fear, was an increase in the influence of militaristic thinking, both within our domestic polity and upon our foreign policy. President Clark decried this trend in Conference addresses,<sup>75</sup> secular speeches<sup>76</sup> and in professional writings.<sup>77</sup>

Furthermore, I regret to say, indeed I am almost ashamed to say, that at the moment, our military branches

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<sup>74</sup>Clark, "Let Us Have Peace." See note 59 above.

<sup>75</sup>President Clark called for the reimposition of law upon international violence even during time of war. "Is it not time in the world for a curb to be placed upon the narrow, fiendish concepts of militarists, and their evil lusts and passions by which they are constantly driven to plan and carry out ever increasing woe, misery, destruction, and slaughter of the aged, the infirm, the sick, the crippled, of children, youth, and mothers, babes at their breasts? There are elements of good that must control the base in men, even in war. How long will their ears be deaf to the cries of the Christian conscience of the world, and to their own better instincts as men? How long will they challenge the eternal principle voiced by the Master two milleniums ago?' 'With what measure ye mete, it shall be measured to you again?' And again 'Put up again thy sword unto his place for all they that take the sword shall perish with the sword.' " J. Reuben Clark, Jr., "With What Measure." Address delivered at Semi-Annual Conference, 8 April 1945. See also text accompanying note 127.

<sup>76</sup>"It seems safe to say that never in the recorded history of the world has hate found such a place in the hearts of men as today. Our millions from the war come home hating our enemies, and they are not too discriminating in transferring that hate to their home-folk neighbors, who displease them. The tens of millions of our allies, back from the war, are saturated with a like hate, which is likewise transferable. The millions of our late arms-bearing enemies are cursed with the same hate, and our treatment of them as a conquered foe is making that hate a consuming fire in their souls.

"This hate has entered the hearts of great masses of the civilians of all the late warring nations. This hate breeds fear, not only among us people who fought, but among those who were, in effect, neutrals. Hate and fear always command force as their ally, and these three together demand the extermination of that which is hated and feared.

"Hate and fear made and used the atomic bomb, the greatest potential curse that man has yet known, for it can wipe out mankind, even as it may be the greatest potential blessing yet available to him. Furthermore, our military men are planning that we shall exterminate our next enemies, and those enemies are planning that they will exterminate us.

"Popular feeling is being flogged into a support of this plan. The press, the movies, the radio, the rostrum, all are deliberately used to build this terrible aim in our hearts. Enormous sums are expended by the military in propaganda, to scare us civilians into a blind following of their insanity. Often this propagandizing is crudely done, at other times it is carried on with great craft and cunning. We are to be made so jittery with fear that we shall follow with eyes shut where they lead.

"What a travesty on human intelligence to speak of the late conflict as a war to destroy fear and want, for fear never before crushed out sanity

seem in almost complete control of our own government. They appear to dominate Congress, and under the circumstances, we may assume they are in sufficient control of our foreign relations to be able to set the international scene. To us who do not know, it looks clear that we are today getting the same sort of forebodings that preceded the last war. We are not justified in doubting, on the facts we have, that we of the United States are, for the first time in our history, under a real threat from our military arm, and that if the plans of the militarists carry, we shall become as thoroughly militarized as was Germany at her best, or worst. Certain it is we are being generously dosed with that sovereign narcotic, which designing militarists have in the past always administered to their peoples, the doctrine that to ensure peace we must maintain a great army and gigantic armaments. But this ignores, indeed conceals, the unvarying historical fact that big armies have always brought, not peace, but war which has ended in a hate that in due course brings another war.

Our militarists will no more be able to let a great army lie unused than they were able to withhold the use of the atom bomb once they had it, even though some military men are now quoted as saying the war was won before the bombs were dropped on Nagasaki and Hiroshima. Under the threat that Germany was perfecting such a bomb, we were justified in perfecting ours. But it may well be a disaster to civilization for us unnecessarily to have initiated its use. Some of us think it was shameful.

All this is not the way to peace, but to war.<sup>78</sup>

President Clark was one of the early proponents for the

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so much as it does today, and want never sapped the lives of so many peoples as now, and all this because of the war. Hate and fear are the terrible, fiendish offspring of this war.

"I have already referred to the plans of the General Staffs of the world to make the next war a war of actual extermination. In this connection we must note that the army reports that are given out, quite clearly suggest plans to develop bomb-carrying rockets and thus exterminate the enemy. But that is a game two can play, and if it can be effectively done, it will be the fellow who starts first who will win. Japan's example in the last war shows what that could mean. And it seems fatuous to insanity to assume that other nations will not develop an atom bomb. The acts and attitude of our most likely future enemy, suggest they have the secret already. . . .

"All this in the face of the divine command: 'Thou shalt love thy neighbor as thyself.' It is just as certain as that we are here today, that unless our own General Staff is brought under rigid control, and we change our tactics and diplomacy, our children, and indeed some of us, will be the victims of the most dire war this world has ever seen, and it is not certain that we shall be the victors." J. Reuben Clark, Jr., "Slipping From our Old Moorings."

<sup>78</sup>J. Reuben Clark, Jr., "Foreign Affairs." Speech delivered 28 November 1928 to the National Group, Washington, D.C. (Available at the Brigham Young University Library).

<sup>78</sup>Clark, "Awesome Task," p. 71.



outlawry of war. As has been described previously,<sup>79</sup> the outlawry of war was a basic part of his own proposal for an international organization for dispute resolution. However, he believed that several exceptions should be made to any such agreement. In his background writings done in preparation for the Washington Conference on the Limitation of Armaments, held in 1921,<sup>80</sup> President Clark noted four exceptions to his draft proposal for the outlawry of war. First, civil war must remain legal, as it seemed to be on occasion the only way a people could rid themselves of oppressive regimes.<sup>81</sup> Second, he favored an exception permitting the forcible protection of nationals abroad. (This older rule of international law has been under increasing criticism and has substantially atrophied. President Clark noted the possibility of its abuse<sup>82</sup> and decried interventionism under this guise with a fervor unsurpassed by the critics of this rule today.)<sup>83</sup> At the time of his preparation for the Washington Conference, President Clark favored another exception allowing belligerent operations against a state defaulting on an arbitral award.<sup>84</sup> He seemed to retreat from this exception later in his life, however.<sup>85</sup> Finally, and most important to the problem he was then considering—namely, a disarmament treaty—he favored an exception to the outlawry of war to permit belligerent operations for the enforcement of disarmament provisions of a treaty sufficient to preserve the integrity of the agreement.<sup>86</sup>

As would be expected, President Clark supported the Kellogg-Briand Treaty outlawing aggressive war.<sup>87</sup>

There are many causes for international unfriendliness, but the most potent of them all, indeed more potent than

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<sup>79</sup>See the International System section of this article.

<sup>80</sup>J. Reuben Clark, Jr., "Preliminary Memorandum No. 3," (Prepared for the United States Preparatory Committee for the Washington Disarmament Conference, 1921); J. Reuben Clark, Jr., "Preliminary Suggestions," (Memorandum prepared for the Washington Disarmament Conference, 29 July 1921).

<sup>81</sup>See discussion in this article of international laws of civil strife.

<sup>82</sup>"Preliminary Memorandum No. 3," pp. 5-6.

<sup>83</sup>Cf. Thomas and Thomas, *The Dominican Crisis 1965* (1967).

<sup>84</sup>"Preliminary Memorandum No. 3," p. 8.

<sup>85</sup>J. Reuben Clark, Jr., "Public Loans to Foreign Countries," address delivered in New York, 1946. (Text available in Brigham Young University Library.)

<sup>86</sup>"Preliminary Memorandum No. 3," p. 8.

<sup>87</sup>Treaty for the Renunciation of War (Kellogg-Briand Pact), 46 Stat. 2343, 94 L.N.T.S. 57 (Paris, 27 August 1928).

all the others combined, is international war. The embers of hate enkindled during such a conflict glow for many years; sometimes a generation must pass before the coals are so dead they may not be fanned into a flame and may become an engulfing conflagration.

Few of us have lost a vivid memory of what those terrible postwar years meant . . . . We should go far before we again invite such an experience. Whatever makes for peace, we should upon the most material considerations—to say nothing of the larger humanitarian and spiritual aspects—support or foster. Secretary Kellogg has made a great move towards peace by negotiating the Treaty renouncing war. There are some who will say it goes too far; there are others who will complain it does not go far enough. Whatever may be said on the one side or the other of this difference in view, this may be said for the Treaty itself: it crystallizes the peace sentiment of the world against war. It is a standard around which the influences that make for peace in the world, can hereinafter rally. It will be the acclaim of peace which will, at least sometimes, drown the alarm of war. It is the 'thou shalt not' which, becoming operative, will hereafter bring every nation making war, face to face with its blighted word, for judgment by peoples of the world.<sup>88</sup>

President Clark had no illusions about the capacity of an international agreement outlawing war to, in itself, legislate war out of existence. He considered the effect of such a treaty to be worthwhile, however, in its capacity to cause a hardening of public opinion against aggressive war and a refining of international legal thinking on the definition of such a war.<sup>89</sup> (In a similar manner he supported many disarmament agreements accomplished, beginning with the Rush-Bagot agreement, and continuing through the first decades of this century.)<sup>90</sup>

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<sup>88</sup>Clark, "Foreign Affairs."

<sup>89</sup>President Clark explains his position on the values of a treaty outlawing war: "While war will scarcely be abolished by resolution . . . it would crystallize a growing world sentiment against war, would declare a standard by which the nations and peoples thereof would be entitled to judge every future war (condemning or otherwise the parties thereto in accordance with the standard set up) and would so give direction and form to the great operative moral forces in the world by which alone the ultimate disappearance of war from the earth may be accomplished." Clark, "System of Pacific Settlement," pp. 37 and 39.

<sup>90</sup>Nor should we overlook the special efforts of Secretaries Olney, Hay, Knox and Bryan to negotiate both general and special treaties to promote peace nor the Kellogg-Briand Pact for the outlawry of war.

"Nor should we end this brief catalogue of some of our efforts without calling attention to the Rush-Bagot notes by which the United States and Great Britain accomplished the limitation of armament on the Great Lakes,



Consistent with his position on the outlawry of war, President Clark believed that title to territory acquired by conquest should not be recognized in international law, a position later to become United States policy, at least for a time, and known as the Stimson Doctrine of Non-Recognition.<sup>91</sup>

. . . if conquest can give a good title to territory, then conquest is a legitimate means of getting good title to territory.

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an informal agreement that has robbed our Canadian border question of all threat of trouble for more than 130 years." Clark, "Let Us Have Peace," p. 58.

"Nor is the idea of a limitation upon armament anything new to the United States. More than 100 years ago, the United States and Great Britain entered into an agreement limiting their respective naval armament on the Great Lakes under circumstances and with the application of principles which seemed to be worthy of more than mere passing comment at this time. The Treaty of Ghent, made in 1817, has continued in force, modified, till the present time." Clark, "Limitations of Arms Conferences," Speech, 1924.

<sup>91</sup>"Conquest is the acquisition of the territory of an enemy by its complete and final subjugation and a declaration of the conquering state's intention to annex it. In practice a title by conquest is rare, because the annexation of territory after a war is generally carried out by a treaty of cession, although such a treaty often only confirms a title already acquired by conquest . . . .

"There is an obvious moral objection to the legal recognition of a title by conquest, but it is no greater than the moral objection to the recognition of an enforced cession of territory. That the latter has in the past conferred a valid legal title is undeniable, and it would have been idle for the law to have accepted the effects of force when the formality of a forced assent had followed and not otherwise. The attitude of the law towards both these titles has been merely a corollary, but a necessary corollary, of its inability to regulate the use by states of armed force. So long as war continues to be used as an instrument of national policy, it will continue to produce the same results as it has in the past, and one of those results will be the annexation of territory.

"It was proposed in 1932 by Mr. Stimson, then American Secretary of State, and his proposal has come to be known as the Stimson Doctrine of Non-Recognition, that states should refuse to recognize 'any situation, treaty or agreement which may be brought about contrary to the covenants and obligations of the Pact of Paris.' Thereby, he said, 'a caveat will be placed upon such actions which, we believe, will effectively bar the legality hereafter of any title or right sought to be obtained by pressure or treaty violation.' The Assembly of the League also passed a resolution to the same effect.

"Unfortunately the legal consequences which Mr. Stimson foresaw for his doctrine are by no means sure. If non-recognition should leave unchanged the facts of which it marks disapproval, it would result in a discordance between the law and the facts which in the long run would merely advertise the impotence of the law. Within three years of the League Resolution, Italy had conquered Ethiopia, and most of the League states had decided that it was expedient to recognize that Ethiopia had become Italian territory. The truth is that international law can no more refuse to recognize that a finally successful conquest does change the title to territory than municipal law can a change of regime brought about by a successful revolution. What have hitherto been the legal consequences of successful war cannot in the long run be avoided by any change in the law, or any well-intentioned convention of states which does not also register a change in their practice in respect of war."

Brierly, *The Law of Nations*, 6th ed. (Waldcock, 1963), pp. 171-73, quoted in Friedman, *International Law* (1969), pp. 465-466.



This is the unholy rule of force, the unholy rule that 'might makes right.'

This is the rule that has lain behind every great empire that has ever been built during the whole history of the world; it lies behind every great empire that exists today. There is nothing new in the doctrine, neither in the practice.

Under such a rule, war is and must always be the instrument of the growth of empire. Under such a rule nations rise and fall, as might advances or wanes.

Under such a rule, safety in empire comes only to the power which is dominant in arms and resources.

But such a rule of force, of 'might makes right,' is Satan-born. It is not of God.

Obviously no great empire of conquest can sleep quietly and comfortably at nights if the have-nots swagger forth in search of more territory and are willing to fight for it.<sup>92</sup>

Most of the literature in international law and foreign policy dealing with war prevention treats only the supposed origin of wars, that is, their physical beginnings.<sup>93</sup> President Clark understood that many, if not most, international wars have their origins, partially at least, in the nature of the resolution of their predecessors. He noted, in many addresses and writings, that the seeds of World War II were planted at Versailles.<sup>94</sup> Unlike many others who have made the same point, President Clark forecast such a result shortly after the

<sup>92</sup>J. Reuben Clark, Jr., *Conference Report*, 1938, p. 13.

<sup>93</sup>Fred Ikle explains: "How are wars brought to an end? Historians, students of military strategy, and experts on foreign affairs have tended to neglect this question. Much attention, by contrast, has been devoted to the question of how wars begin. Thus, the origins of World War I and World War II have been studied frequently and in much detail; the motives, plans, and efforts for terminating these two wars have received far less consideration.

"This imbalance prevails not only among studies of past wars but also in writings on contemporary issues of international conflict, whether they are concerned with how to deter wars or how to fight them. Indeed, past neglect of the question of ending wars has contributed directly to its current neglect in military strategy and peacekeeping. If historians have less to offer on the termination of war than on the initiation of hostilities or on the conduct of military campaigns, contemporary strategists and statesmen will be less stimulated to anticipate and cope realistically with the problem of bringing wars to an end." Fred Ikle, *Every War Must End* (1971), p. v.

<sup>94</sup>"This is the very issue that, twenty years ago, we sent our young America to Europe to settle. It was our fighting there which gave to the Principal Allied and associated powers their victory. We got nothing out of the conflict but the ill will of everyone—our foes because they were our foes, and of each of our allies because of unbounded generosity, and our naive, unsophisticated unselfishness at Versailles. But we did not then settle the issue. It has risen again. We would not settle it now by joining in this conflict. This is one of those questions which can be settled only by the parties themselves by themselves." Clark, "In Time of War," p. 656.



Versailles settlement.<sup>95</sup> This same reasoning caused him to seriously doubt the wisdom of pursuing a policy of "unconditional surrender" against Germany in World War II.<sup>96</sup> He evidently understood that the vacuum created by the complete devastation of Germany would be filled by another European power. The only state sufficiently powerful after the war to accomplish this was the Soviet Union.

Finally, President Clark warned against allowing our victory at the end of World War II to be turned into another spiraling rivalry, this time against the Soviet Union. He recognized the threat that this totalitarian state posed to our country, but still maintained that a peaceful resolution of our differences should be sought:

Between ourselves and our late ally Russia, we are building a jealousy, a fear, a rivalry, and a hatred that unless halted will take us into the direst tragedy in the history of the world, in its magnitude, in its physical destructive force, and in its intellectual and spiritual degradation, and possibly even to our annihilation . . . .

We alone in all the world challenge Russia's aims. She hates and fears us. We hate and are fearful of her. Thus far the two powers seem to plan and scheme only in terms of force. Battles on land, on sea, in the air, are to settle the matter. So far as we of the public know, the two sides have never worked together honestly trying by peaceful means to reach a mutual live-and-let-live understanding. We do not know of even an effort on the part of both parties together, mutually to concede, mutually to put out of view the intent to use force to gain the end sought. Such an

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<sup>95</sup>In a letter from J. Reuben Clark to his father, reported in the *Salt Lake Tribune*, 26 February 1917, President Clark shows that he could foresee this event before the United States entered World War I. He states: "In my judgment, and I feel perfectly satisfied that my judgment is right, it will be a monumental mistake reaching out to a future disaster for us to take part in any European Peace Conference. Problems of Europe are wholly distinct from us. We have kept out of them for nearly a century and a half. We have had comparative peace as a result, whereas, Europe has been regularly convulsed with wars, with intermission varying from ten to twenty-five years. European local interests are not our interests and we have no business mixing therein. Moreover, if we get into the European situation, Europe will get into the American situation. Our Monroe Doctrine will disappear. We shall have strong European governments pushed up under our noses. We shall have all the rivalries incident to such a situation and those rivalries will certainly and inevitably lead to armed conflicts. We cannot but pray that we shall miss this cup. In this connection, the words of Washington in his farewell address delivered 120 years ago, are just as apt as they were the day he delivered them."

<sup>96</sup>Clark, "Let Us Have Peace;" Clark in *Conference Report*, October 1946; reported also in "Demand Respect for Human Life," *Improvement Era* 49:688 (November, 1946); "With What Measure."

effort may have been made, but we do not have the facts. Indeed, we must regretfully admit that our own military establishment seems to be now deliberately planning and preparing for another great war, it must be with Russia, since of the whole world she alone has the power and resources to challenge us, which war both sides plan, it is said, to make the most terrible and destructive of all recorded time.<sup>97</sup>

#### THE LAWS OF WAR

The modernization and implementation of the laws of war were central themes in President Clark's philosophy of international law. This was true not only because he considered the laws of war to be the nucleus and seminal spring of traditional international law, but also because he had an abiding concern for humanity.<sup>98</sup> He believed that the laws of war, as they have developed since the time of Hugo Grotius in the sixteenth century, were but a reflection of the laws of God announced on Sinai and in the Garden of Gethsemane.<sup>99</sup> He observed:

The commandment 'Thou shalt not kill . . .' is binding upon every one of God's children. It speaks to them as individuals; it commands them as associated together in nations . . . it embraces the mass slaughter of war . . . . It forecast the Master's law of love and forgiveness . . . .

To Peter, striking off with his sword the ear of Malchus, the High Priest's servant, at the moment of the Savior's arrest, Jesus said: 'They that take the sword shall perish with the sword,' and lastly, 'Thou shalt love thy neighbor as thyself,' which James called the 'Royal Law,' which Jesus declared was one of the two commandments upon which hung all the law and the prophets.<sup>100</sup>

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<sup>97</sup>Clark, "Let Us Have Peace."

<sup>98</sup>This concern was manifest in nearly all of President Clark's religious and secular speeches and his professional writings related to international law. See, for example, his conference addresses delivered in: April 1937, October 1938, April 1939, October 1939, April 1942, October 1945, October 1946, April 1948, and October 1948. See also the following articles, speeches and memoranda: "Slipping From Our Old Moorings;" "In Time of War;" "The Awesome Task of Peace;" "Let Us Have Peace;" "With What Measure;" "Some Factors;" "Limitation of Arms Conferences;" "Demand for Respect;" "Our Dwindling Sovereignty;" "Preliminary Memorandum No. 3;" "Memorandum on the Four Power Treaty;" "Limitation of Armaments at the First Hague Conference;" "The Next Advance;" and "Preliminary Suggestions."

<sup>99</sup>Clark, "Slipping From Our Old Moorings;" "Let Us Have Peace;" "With What Measure;" *Conference Report*, 1945; and "Message of the First Presidency," in *Conference Report*, 1938.

<sup>100</sup>Clark, "Slipping From Our Old Moorings."



He believed these prohibitions against violence could be retired only by God's command.<sup>101</sup> Wars of conquest violated God's law and the dictates of humanity.<sup>102</sup> President Clark understood that an agreement prohibiting aggressive war, like a disarmament agreement, would not get to the basic elements of war causation. But these approaches—seeking agreements to outlaw war and to limit its implements—were within the range of accomplishment by government while more basic remedies were not:

Accordingly a mere treaty provision, however broad-sweeping or condemnatory, cannot change the great fundamental ambition for power and dominion, all of which are beyond the reach of mere government, being lodged with the people themselves, effort for advancement in the elimination of war must be focused upon that which gives promise of yielding to treaty stipulation and which generally is wholly within the power of government, that is to say, upon the making of an undertaking between governments hereafter to regard international war as an illegal instrument for working out aggressive national aims and to consider the adjustments secured by a victor in such a war as void and of no force or effect,—or as it is sometimes expressed to outlaw international war and nullify the aggressor's triumphs.<sup>103</sup>

To be justified in going to war in self-defense, a nation must be foreclosed from all other alternatives; it must truly be that nation's last resort.<sup>104</sup>

President Clark was adamant in his belief that once war had begun, "there are certain things that human beings would not do to their fellows."<sup>105</sup> This statement reflects his deep belief in the efficacy of the humanitarian laws imposed on the parties in armed conflict. It is this aspect of the laws of war that dominated his writing and speeches on the subject. He was impressed with the development and application of these laws from the time of Hugo Grotius until the First

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<sup>101</sup>See Doctrine and Covenants 98:33-37.

<sup>102</sup>Ibid.; "In Time of War."

<sup>103</sup>Clark, "Preliminary Memorandum No. 3," p. 4. See also, J. Reuben Clark, Jr., "General Pact for the Renunciation of War." A memorandum prepared for the Senate Committee on Foreign Relations, 15 January 1929; and J. Reuben Clark, Jr., "Criticism of Plan to Outlaw War." Memorandum prepared for Senator New of Indiana, 17 January 1922.

<sup>104</sup>See "Preliminary Memorandum No. 3," p. 5.

<sup>105</sup>Clark, "With What Measure."

World War, but was troubled by the change of behavior since 1914.

But as to these eternal principles, where do we now stand? 'Thou shalt not kill.' We still frown on murder, but do I need to tell you in what small esteem life is now held? . . . The military staffs of all nations, including our own, fresh from bloody battlefields, now plot and work night and day, even more feverishly than before World War I, and without the dissimulation that preceded that planning and scheming for the destruction, the literal extermination of every people in the world except their own and their favored friends. God's law is: 'Thou shalt not kill,' and He made no exceptions either directly or by implication, either as individuals or nations except by His special direction.<sup>106</sup>

President Clark believed that it was every nation's responsibility to establish human dignity and the principles of Christianity to international affairs. Accordingly, the laws of war loomed large in his conceptualization of international law and its role in the world. A summary of the history of the laws of war is helpful in appreciating President Clark's attitude toward them.

Although the wars fought in antiquity<sup>107</sup> could be characterized generally as being brutal,<sup>108</sup> each civilization developed rules or laws governing its military's conduct in war.<sup>109</sup> Perhaps the most advanced example comes from ancient India, where, although the Brahmans formulated maxims similar to Machiavelli's Prince, they (unlike the latter) recommended moderation and even liberality to the vanquished. Their "laws of warfare," set down in the "Code of Manu"

<sup>106</sup>Clark, "Slipping From Our Old Moorings." See note 53 above.

<sup>107</sup>For the purposes of this article, antiquity encompasses the time period from the dawn of civilization to around 200 A. D.

<sup>108</sup>See Q. Wright, *Study of War*, (1965); L. Montross, *War Through the Ages* (1960); Turney-High, *Primitive War, Its Practice and Concepts* (1949); A. Nussbaum, *A Concise History of the Law of Nations*, rev. ed. (1954); T. A. Walker, *A History of the Law of Nations*, 1(1889).

<sup>109</sup>For example, in ancient Greece, some religious practices were generally followed in war. The asylum of temples was extended to fugitives from battle and priests were usually considered inviolable. The belligerent parties were allowed to bury their dead. See Thucydides, *Peloponnesian War*, bk. 6; and F. Laurent, *Etudes sur l'Histoire de l'Humanite*, 3(1865). Roman rules of war also had many religious overtones. Polybius explains that the laws of war allowed the defeated to be with their wives when sold into slavery. Polybius, Shuckburg, ed. 2:58 (1884). To deface temples, statues, and similar structures, without any prospect of strengthening oneself or weakening the enemy was regarded as wanton violence, *Ibid.*, 5.11.



(*Manava-Dharma-Sastra*)<sup>110</sup> seem to have been inspired by a genuine regard for the rights of humanity. Humane and even chivalrous treatment of combatants, as well as non-combatants, was recommended.<sup>111</sup>

Although wars in the Middle Ages are considered to be the epitome of barbarism insofar as the laws of war are concerned, there were some significant advances made during this period. St. Augustine (354-430 A.D.) revived the ancient Roman doctrine of the "just war," and Tertullian (160-230 A.D.) made strenuous objection to war and its atrocities on the basis of the scriptures. Later, Isadore of Seville (560-636) and, more importantly, Thomas Aquinas (1225-1274) advanced these concepts. The Roman Catholic Church developed a comprehensive legal system which was codified and came to be known as *Corpus Juris Canonici*. These laws, of course, were neither national nor international, but rather supra-national or universal. They did, nevertheless, relate directly to the historical development of the laws of war as they are known today. Because of the nature of political organization during the Middle Ages, feuds or "private wars" were rampant. When the writers of the period discussed war, they envisaged these feuds rather than the national wars that we have experienced. The Roman Catholic Church did accept the legitimacy of the feuds, but attempted to control or at least mitigate them by means of the principle of the "Truce of God."<sup>112</sup> These truces were days during which no fighting could occur. In 1041 A.D., these were expanded by the French Prelates to last from sunset Wednesday until sunrise Monday; they had become general ecclesiastical law by the Third Lateran Council in 1179.<sup>113</sup>

In addition to regulating the time and duration of battle,

<sup>110</sup>*Ordinances of Manu*, trans. Burnell and Hopkins; *The Laws of Manu: Sacred Books of the East*, trans. G. Buhler (1886).

<sup>111</sup>The Code of Manu demands that: "The Sovereign rulers . . . are advised to ravage the enemy's territory, and even 'spoil his fodder, food, water, and fuel;' (bk. 6, art. 195) "to burst tanks, enclosures and trenches; to assail him and terrify him by night." (bk. 6, art. 196). Yet the warrior should not 'slay enemies by concealed weapons, nor barbed or poisoned [weapons], nor with fire kindled arrows.' (bk. 6, arts. 204-205.) Nor should a warrior "on horseback slay an enemy down on the ground, a eunuch, a suppliant, one with loosened hair, is seated, one who is praying, one who says 'I am thy prisoner.' " (bk. 6, art. 91.)

<sup>112</sup>See "Truce and Peace of God," *Encyclopedia of Social Science* 15:107 (1951); E. Semichon, *La Paix et La Treve de Dieu*, 2 vols. 2nd ed. (1864).

<sup>113</sup>A. Nussbaum, *Law of Nations*, p. 17.

the Church attempted to control its ferocity and the treatment of combatants and prisoners by forbidding the use of the crossbow and arch,<sup>114</sup> and prohibiting the enslavement of Christian prisoners of war. Notwithstanding these few advances, medieval war was replete with excesses of savagery and lack of control.<sup>115</sup>

Whatever degree of regulation of war there had been completely disintegrated with the decentralization of the *Comunitas Christiana*. The emergence of the secular "nation-state" relatively unaffected by the limitations placed on the conduct of war by the Church, the development of new instrumentalities and methods of war, the deep ideological split between Catholics and Protestants, resulted in war being conducted with the greatest cruelty. This is the period to which President Clark often referred when he spoke of the extreme savagery of war in the Middle Ages.<sup>116</sup>

Hugo Grotius, commonly known as the "father of international law,"<sup>117</sup> shocked by the excesses of the Thirty Years War, became convinced of the need for the development of laws of war. He subsequently wrote his classic *De Jure Belli et Pacis* and in its preface declared his motivation:

I saw prevailing throughout the Christian world a license in making war of which even barbarous nations would have been ashamed; recourse being had to arms for slight reason or no reasons; and when arms were once taken up, all reverence for divine and human law was thrown away, just as if men were thenceforth authorized to commit all crimes without restraint.<sup>118</sup>

From that time until 1914, the laws of war occupied a prominent place in the teaching and practice of international law.

<sup>114</sup>Resolution of the Second Lateran Council, Canon XXIX (*mansi, socorum conciliorum nova et amplissima collectio*, XXI, 1769, p. 533), cited in A. Nussbaum, *Law of Nations*, p. 310.

<sup>115</sup>See Laurent, *Histoire du droit des gens*, 10(1865). During this same period, Islamic Doctrine and practice was far in advance of its Christian counterpart. Caliph Abu Bekr (died 634 A.D.), for example, commanded his soldiers to spare women, children, and old men, and to leave the palms, homes, and orchards unhurt, and to treat their prisoners with pity. T. A. Walker, *History of the Law*, 1:75.

<sup>116</sup>Clark in *Conference Report*, 1946.

<sup>117</sup>His designation as "father of international law" is appropriate insofar as it is derived from the conceptualization of international law (law between nation-states), but many of his concepts of war, peace and humanitarianism were borrowed from the early Spanish juriconsults (Vittoria, Suarez, etc.). E. Nys, *Le droit de guerre et les précurseurs de Grotius* (1882).

<sup>118</sup>H. Grotius, *De Jure Belli et Pacis Libri Tres*, Parolegoemena, S. 28, J. B. Scott ed., F. Kelsey, trans. (reprint, 1964).



President Clark considered this emphasis to be in large part responsible for some of the major advances of civilization.<sup>119</sup> He believed that one of these significant achievements was a sustained effort to maintain the "distinction between combatants and noncombatants. War was to be waged between armies and not between civilian peoples. Statesmen and nations sought to relieve non-combatants from the woes, cruelties, and horrors of war."<sup>120</sup>

President Clark was proud of the American role in the development and progress of the laws of war. Up to the time of the American Civil War, there had not been a modern written code regulating war between nation-states. In 1863 Francis Lieber prepared the "Instructions for Government of Armies of the United States in the Field."<sup>121</sup> These rules provided, *inter alia*: that bombardment, without notice, of places where there were civilian peoples was forbidden; for the protection of museums, of libraries, of scientific institutions; that undefended towns were not to be bombarded and civilians were to be spared; that old men, women, children, and the wounded were to receive the maximum possible protection; that wanton violence, unauthorized destruction of property, robbery, pillage, rape, wounding or killing inhabitants were prohibited under penalty of death. These rules were adopted by several nations, as they modeled their "war codes" after Lieber's. In addition, several international peace conferences, notably the two Hague Conferences of 1899 and 1907, followed the Lieber example of regulating war.

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<sup>119</sup>See Clark in *Conference Report*, 1946, p. 84, where he states: "Because of this condition Grotius wrote his work *De Jure Belli et Pacis*, which was the beginning of the bringing into war of something of humanity, if humanity may be properly spoken of in connection with war." See also J. Reuben Clark, Jr., "Some Factors of a Now-Planned Post-War Governmental and Economic Pattern," an address delivered at the thirty-eighth annual American Life Convention, 7 October 1943, where he states: "From the time of Grotius until World War I, men had consciously tried ever to lessen the ills of war, and especially to relieve non-combatants—old men, women, and children, the sick and the wounded—from the ravages of war. Nations had sought to find ways to restrict as much as might be the theater of war, and to recognize and protect neutrals in their normal trade and travel. War was held a curse whose evils should be kept, so far as might be done, within the smallest limits and affecting the fewest numbers. In this great march of humanity for a higher level of international life and relations among the peoples of the earth, this great country of ours took a leading and glorious part."

<sup>120</sup>Clark in *Conference Report*, 1946, p. 84.

<sup>121</sup>*General Orders Affecting the Volunteer Force*, Adjutant General's Office, 1863 (1864), no. 100. Printed in G. G. Wilson, *International Law*, 9th ed. (New York, 1935), cited as "General Orders 100" and Lieber's Code.





President Clark in 1959.

Photograph by Courtesy of J. Reuben Clark, III.



President Clark honored this effort to lessen the savagery of war and believed it represented the essence of Christianity.<sup>122</sup> He was proud that "in this march of humanity for a higher level of international life and relations among the peoples of the earth the United States took a leading and glorious part."<sup>123</sup> He was distressed, however, that in his time "the world had gone back a half a millenium in its conduct of international relations in time of war, and that no nation has to bear a greater blame for this than our own."<sup>124</sup> He believed that Grotius' prefatory statement applied as forcefully today as when it was written. "In World War One we began to sag back into barbarism."<sup>125</sup> In World War II,

. . . all distinctions between combatants and non-combatants disappeared. This was inevitably so, if they used the type of weapons they employed. So we had many towns destroyed in England . . . . There were many towns in Germany equally destroyed, including Berlin, and particularly Dresden and as to this last city, some of our people, Americans, are affirming that the bombardment of Dresden (where it is said we killed in two nights more than two hundred fifty thousand people, men, women and children, including wounded who had been collected there) was in violation of a tacit understanding that if Germany would leave Oxford and Cambridge alone, we would not touch Dresden. I do not know how true this report is, but we know the result.<sup>126</sup>

President Clark called for the reimposition of law upon international violence even during time of war.

Is it not time in the world for a curb to be placed upon the narrow, fiendish concepts of militarists, and their evil lusts and passions by which they are constantly driven to plan and carry out ever increasing woe, misery, destruction, and slaughter of the aged, the infirm, the sick, the crippled, of children, youth, and mothers, babes at their breasts? There are elements of good that must control the base in men, even in war. How long will their ears be deaf to the cries of the Christian conscience of the world, and to their own better instincts as men? How long will they challenge the eternal principle voiced by the Master two milleniums ago: 'With what measure ye mete, it shall

<sup>122</sup>See note 119.

<sup>123</sup>Clark, "Some Factors." See also section on Proper Role of United States in the World Community in this article.

<sup>124</sup>Ibid.

<sup>125</sup>Clark in *Conference Report*, 1946, p. 85.

<sup>126</sup>Ibid.

be measured to you again?' And again: 'Put up again thy sword into his place; for all they that take the sword shall perish with the sword.'<sup>127</sup>

Thus, President Clark deplored the concept of "military necessity"<sup>128</sup> and total war. In the face of the laws of God and the dictates of humanity, "that man must refrain . . . from using weapons that viciously maim and torture their victims,"<sup>129</sup> militarists operated under the assumption that they must be prepared to do whatever is necessary to gain victory.<sup>130</sup> "In fact," he explained, "it is said that the employment of poison gas was suggested to President Roosevelt by his military advisors, but he refused."<sup>131</sup>

To President Clark, the ultimate acceptance of this philosophy and accordingly the ultimate violation of the laws of war was the use of the atom bomb.

We have been among the leaders in developing the great principles of the laws of war, that went to the humanizing of war, most of which went into discard when we entered World War II. We had developed since the time of Grotius, the doctrines that tended to control and limit the destruction of non-combatants, old men, women, children. All of that went by the boards at Hiroshima.<sup>132</sup>

In addresses delivered at General Conference and in secular speeches he expressed his opposition to the use of this weapon and his fear of the future.

The next war is now planning under a system that will call for the use of weapons which will wipe out cities and, if necessary, nations. I have had it reported . . . that our military men are saying that if we had a forty-eight hour lead, the war would be over. How many of us brethren are really horrified by the thought of the indiscriminate, wholesale slaughter of men, women, and children—the old, the decrepit, the diseased; or are we sitting back and saying, 'Let's get at it first.' How far away is the spirit of murder from the hearts of those who take no thought in it . . . .

<sup>127</sup>Clark, "With What Measure."

<sup>128</sup>This is the concept that is philosophically in opposition to the humanitarian concept of the laws of war. It maintains that any action is valid so long as it is required by military necessity. Victory must be sought at any price. This concept develops into that of total war.

<sup>129</sup>Clark, "With What Measure."

<sup>130</sup>See President Clark's arguments in opposition to this assumption in the Disarmament section of this article.

<sup>131</sup>Clark, "With What Measure."

<sup>132</sup>Clark, "Our Dwindling Sovereignty," p. 22.



Today we sit quietly with our consciences scarcely stricken when we contemplate Nagasaki and Hiroshima where we introduced the use of the Atom bomb.<sup>133</sup>

And again:

The considerations which brought about the non-use of weapons such as dum-dum bullets [and] poison gas . . . are equally as potent against the use of the atom bomb. There should be some things that humans would not do to their fellows.<sup>134</sup>

President Clark's abhorrence of indiscriminate slaughter of the innocent was not confined to the use of non-conventional weapons like the atom bomb. As noted earlier, he expressed similar horror at the reports of the slaughter of the people of Dresden.

It was not only the particular type of instrumentality which was to be condemned, but also the attitude of acceptance of wholesale murder of innocent people for the accomplishment of so-called military or political ends. He believed that not only the use but also the very development of such methods should be proscribed.<sup>135</sup>

Thus we in America are now deliberately searching out and developing the most savage, murderous means of exterminating peoples that Satan can plant in our minds. We do it not only shamelessly, but with a boast. God will not forgive us for this.

If we are to avoid extermination, if the world is not to be wiped out, we must find some way to curb the fiendish ingenuity of men who have apparently no fear of God, man, or the devil, and who are willing to plot and plan and invent instrumentalities that will wipe out all the flesh of the earth. And, as one American citizen of one hundred thirty millions, as one in one billion population of the world, I protest with all of the energy I possess against this fiendish activity, and as an American citizen, I call upon our government and its agencies to see that these unholy experimentations are stopped, and that somehow we get into the minds of our war-minded general staff and its satellites, and into the general staffs of all the world, a proper respect for human life.<sup>136</sup>

<sup>133</sup>Clark in *Conference Report*, 1948, p. 174. Address delivered at General Priesthood Meeting, 5 April 1948. See Firmage, "The Treaty on the Non-Proliferation of Nuclear Weapons," *American Journal of International Law* 63:711 (1969).

<sup>134</sup>Clark, "With What Measure."

<sup>135</sup>*Ibid.*; Clark in *Conference Report*, 1948.

<sup>136</sup>Clark in *Conference Report*, 1946.

Closely related to President Clark's concern for the laws of war was his interest in the development of an international law of civil strife. Here again, his efforts went to the regulation of such conflicts and the measures that could be taken to mitigate their horrors and destruction. The major part of his study on this topic was related to his appointment, in 1912, as the American Representative to the Ninth Annual Conference of the International Red Cross held in Washington, D. C. It was before this Conference that President Clark presented his influential memorandum, "Assistance of Red Cross Societies to Forces Engaged in Insurrection, Revolution or any type of Civil Disturbance." His thesis in this memorandum was that the Red Cross Societies should be allowed to render aid and assistance to the ill and wounded of both sides in countries where civil war or insurrection existed. For a clear understanding of the significance of his proposition, a brief summary of the laws of war as they regard civil strife is in order.<sup>137</sup>

Francis Lieber incorporated into his code a distinction between "international wars" and "civil wars," but the distinction between domestic and foreign wars had been present since antiquity.<sup>138</sup> This is in keeping with traditional international law which regarded civil strife as a domestic issue lying beyond the jurisdiction of international norms.<sup>139</sup> Not-

<sup>137</sup>For a more complete analysis of the international law of civil strife, see E. Firmage, "Summary and Conclusion," in *The International Law of Civil War*, Falk ed., 405 (1971): "Classic international law has been only marginally concerned with the application of international rules of conduct to internal conflict. Such rules as exist are few, tentative, and to a considerable extent contradictory. Norms governing intervention in civil wars generally veer between two opposite approaches; one stresses the legitimacy of outside support for the incumbent government against either internal political rebellion or secession—an approach that has been described by one author as Metternich legitimacy. The other stresses that international law developed a stronger emphasis upon anti-intervention doctrine than upon doctrine favoring constitutional legitimacy. The former approach favors one-sided intervention, the latter neutrality. The case studies, however, show clearly that neither principle has been consistently observed and that the same outside power has applied one or the other, depending upon the circumstances and its political strategy. Continental powers, in particular the United States and the Soviet Union, have in the postwar period tended to practice one-sided intervention in the exercise of a hegemonial interest in the political and social structure of states considered to be within their sphere of influence."

<sup>138</sup>For example, the ancient Israelites applied a different law to members of the Twelve Tribes from that which they applied to the Gentiles. See Judges 21.

<sup>139</sup>I. Hyde, *International Law Chiefly as Applied by the United States*, 2nd ed., Sec. 73 (1947); II Oppenheim, *International Law*, Lauterpacht, 7th ed. (1952), p. 209. President Clark states: "In the first place no ban



withstanding this general rule, civil war may attain the status of international war, both as regards the rights and duties of the contending parties and of third states through recognition of the insurgents as belligerents.<sup>140</sup> At this point, traditionally, international laws of war apply to the conflict. Although the laws of war are to apply once belligerency is recognized, the incumbent government is always loath to recognize such a status, as it considers such a recognition tantamount to an acceptance of the insurgents' legal standing. The incumbent considers itself to be the sole sovereign power on the territory and pretends to exercise a monopoly of unconditional constraint. Thus, although civil war is not considered illegal from the international point of view,<sup>141</sup> it is the ultimate of illegality from an internal perspective. When civil strife occurs, therefore, the incumbent government resents any aid or assistance that might be tendered the insurgents. This necessarily includes "non-political" humanitarian aid, as the very existence of the rebel force constitutes a political and perhaps a physical threat to the continuance of the incumbent government. To the incumbent any aid rendered, no matter how neutral or humanitarian its tender may be, represents a tacit recognition of the international status of the conflict and at the same time may constitute a provisional recognition of the insurgent forces.

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can be placed on civil war, for it is in the individual nations that ambition for place and power has freest rein and largest opportunity for the oppression of the peoples of the earth, and history shows that not infrequently armed resistance is the only effective weapon against tyranny." "Preliminary Memorandum No. 3," p. 4.

<sup>140</sup>Lauterpacht, *Recognition and International Law* (1947). For a valid state of belligerence to exist, the following elements must be present: (1) a state of general hostilities; (2) occupation and a measure of orderly administration of a substantial part of the national territory by the insurgents; (3) the insurgent forces must act under responsible authority and must observe the rules of warfare; and (4) there must be a practical necessity for 3rd states to define their attitude towards the civil war. II Oppenheim, *International Law*, Sections 59 and 76, pp. 209, 249. U.S. Department of Army, *The Law of Land Warfare Field Manual*, 27-10, paragraph 11(a) (1956). See also, Firmage, "International Law and the Response of the United States to 'Internal War.'" *The Vietnam War and International Law*, Falk ed. 2.89 (1969).

<sup>141</sup>This is because if it were deemed illegal, it would be tantamount to a denial of the existence of any right of self-determination. See also, H. Lauterpacht, *Recognition and International Law*; G. Scelle, *Revue General de Droit Internationale Public* (1938), p. 266; J. Weber, *Problems de Droit International Posee par les Guerres Civiles* (1940); H. Wehberg, "Guerre Civiles et le Droit Internationale," *La Crise Mondiale* (1938), p. 180. Debates of the Commission of International Law of the United Nations on Crimes Against Human Rights (1950); E. Castren, *Civil War* (1966).



This is the problem that President Clark confronted directly in his memorandum to the International Conference of the Red Cross. General Yermaloff of Russia voiced the traditional objection to any tender of aid to a rebel force: "Under the laws of this country, insurgents or revolutionaries are criminals and the Red Cross frankly has no business considering the question of extending aid to outcasts."<sup>142</sup> President Clark answered this traditional position:

First, it must be clearly kept in mind that the Red Cross is an organization which has and can have obviously no international political status; that its sole reason for existence is the dispensing of aid, relief, and succor to suffering humanity wherever such exists and irrespective of race, creed, or conditions; that its activities wherever engaged are as a consequence, wholly devoid of international political significance or effect; and finally that, therefore, a tender of service by it is not and cannot be construed as an act having any, even the slightest political color or meaning.

I observe that my esteemed colleague, General Yermaloff, states that insurgents and revolutionists can be considered under the laws of his country only as criminals. I presume that the words 'traitor' and 'treason' are known in all languages and to all peoples, but I beg to suggest to his attention the fact that the opinion of the world upon matters of this kind in recent past has made much advance. In early times this position was not wanting to consider that every soldier before capture and after capture, whether well or wounded, might be treated as an enemy and put to death, but we have outgrown that conception. We now, in times of international conflict, vie with one another extending assistance to those of the enemy who may happen to fall into our hands. Now the prisoners of war are treated as our own soldiers, they are nursed back to health and strength with identical care and attention given our own, and are returned under appropriate conditions to forces or countries from which they came. In this connection, I need no more than to refer to the reciprocal treatment of Spain and the United States in 1898, and of Russia and Japan in 1904. Shall we say that those who oppose us in civil conflicts, those who are kindred to us, our fathers, our sons, and

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<sup>142</sup>J. Reuben Clark, Jr., "Assistance of Red Cross Societies to Forces Engaged in Insurrection, Revolution, or Any Type of Civil Disturbance." Speech delivered to the Ninth Conference of the International Red Cross, 17 May 1912, and reprinted in the *Salt Lake Herald Republican*, 18 May 1912; J. Reuben Clark, Jr., "Assistance of Red Cross Societies to Forces Engaged in Insurrection, Revolution, or Any Type of Civil Disturbance." Memorandum to Ninth Conference of the International Red Cross, May 1912.



our brothers, are to receive less consideration, less kindness and less love than our alien enemies?<sup>143</sup>

President Clark believed that the humanitarian laws of war should apply to civil strife just as they apply to international strife. Respect for human life was the important issue. To foresake that because of diplomatic or political considerations was to reject all the humanitarian advances made by civilization and to act contrary to the laws of God. His position has not been accepted by state practice, but is still expounded by the proponents of the International Red Cross and by virtually all the commentators writing on the subject.<sup>144</sup>

#### PEACEFUL SETTLEMENT OF DISPUTES

Central to President Clark's philosophy of international law was his great faith in techniques of peaceful resolution of disputes. He believed that lasting solutions to international disputes were far more likely to be accomplished by peaceful means than by war. Time and again he voiced support for the accomplishments of the Hague Conventions of 1899 and 1907, the Bryan Treaties, and other international agreements on the creation and use of institutions of peaceful resolution of disputes. He supported the political and diplomatic techniques of negotiation, good offices, mediation, conciliation, and commissions of inquiry or fact-finding.

<sup>143</sup>President Clark sets up, as a prototype of the treatment of enemies which will insure peace, that treatment afforded Lee and the Confederates by General Grant. Grant desired to cause as little humiliation as possible for Lee, and to eliminate rancor. He granted 25,000 rations; he allowed the Confederates to keep their horses. Because of this "there was no bitterness, no hatred." Clark declares: "Appomattox showed the temper of this people of ours, not in the course of a long period of growth, advancement and peace, but at the close of a bloody, fratricidal war, where literally father fought son, and son father, and brother fought brother—a kind of war that makes more and deeper wounds than any other kind of conflict. Yet this temper and concept, this high idealism and lofty purpose of Grant and Lincoln, seemingly fostered by the tragedies of war, followed us for half a century thereafter . . . ."

"You will recall that at Appomattox, dealing with a foe he could easily and quickly have crushed to the point of extermination, Grant was most careful and solicitous. He let the Confederate officers and soldiers retain their private property; he immediately provided Lee's army with food; the men immediately fraternized together, often eating at the same messes; he paroled all officers and men." "Let Us Have Peace," pp. 31-32, 37.

<sup>144</sup>See J. Bond, "Internal Conflict and Article Three of the Geneva Convention," *Denver Law Review* 15:84 (1971); G. I. A. D. Draper, "The Geneva Conventions of 1949," 114 *Hague Académie de Droit International, Recueil des Cours* 63(1965); J. Pictet, *Commentary on the Geneva Conventions of August 12, 1949*, 4(1958).

In his own plan,<sup>145</sup> offered as a substitute for the League of Nations, and combining certain proposals of Senator Borah (which would outlaw international aggressive war and codify international law) and President Harding (who favored our participation in the Permanent Court of International Justice), President Clark first called for the continued development and use of the institutions of peaceful resolution created by the Hague Convention for the Pacific Settlement of International Disputes. Later he was to propose some changes designed to strengthen these techniques.

The First Hague Conference (1899) (to which delegates were sent by President McKinley) framed, and The Second Hague Conference (1907) (to which delegates were sent by President Roosevelt) amplified and amended The Convention for the Pacific Settlement of International Disputes. This Convention provided for three methods of peacefully settling international disputes, as follows:

1. Good Offices and Mediation on the part of disinterested nations.

The United States was the first to invoke this method of peaceful adjustment when it mediated between Ecuador and Peru while Mr. Knox was Secretary of State, and by so doing prevented those countries from going to war.

2. Commissions of Inquiry.

This machinery was used for investigating the Dogger Bank incident between Russia and Great Britain, during the Russo-Japanese war, and so averted what seemed to be an imminent possible war between Russia and Great Britain.

3. Arbitration.

The United States and Mexico were the first to use this method of adjustment under the Hague Convention, while Mr. Hay was Secretary of State, when the two nations took the Pius Fund Case to The Hague.

The United States as well as other powers, have since that time used The Hague Tribunal to secure the adjustment of a number of matters of the highest international importance and danger.<sup>146</sup>

In his work preparatory to the abortive Third Hague Conference, President Clark considered those parts of President Wilson's peace proposal dealing with inquiry or fact-finding techniques to represent an advance over the more informal

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<sup>145</sup>Clark, "The Pacific Settlement of International Disputes." See also Laws of War section of this article.

<sup>146</sup>Ibid.



techniques of the two preceding Hague Conferences.<sup>147</sup> He preferred a permanently organized standing commission over the *ad hoc* commissions of the Hague Conferences; he suggested a commission possessing compulsory jurisdiction rather than the voluntary jurisdiction possessed by the Commissions of Inquiry of the Hague Conferences; and he favored universal jurisdiction over the subject matter of the dispute as stipulated in Wilson's proposal rather than the Hague Convention system which excluded disputes involving "honor or vital interests" of the parties.<sup>148</sup> Most of these proposals were adopted in the Bryan Treaties, a series of bilateral agreements between the United States and over thirty other states, providing for standing commissions of inquiry, and possessing the sweeping jurisdictional power favored by President Clark. These treaties, sponsored by Secretary of State William Jennings Bryan and the Wilson administration, were failures.

Whether due to the rigidities present in the Bryan treaties—the permanent commissions, their compulsory use, the power of the commissions to initiate action—or, what is more likely, to the onset of World War I and the consequent breakdown of most pacific systems of dispute resolution, the Bryan treaties were a failure. Of the 30-odd Bryan treaties concluded, 28 entered into effect. Only 10 permanent commissions were ever established and none was ever called upon to conduct an investigation in a dispute. The treaties are important solely because of their influence upon the Covenant of the League of Nations and upon treaties of inquiry and conciliation entered into during the League period.<sup>149</sup>

In retrospect, it would seem that the more informal diplomatic and political techniques of the Hague Conferences were used because of their flexibility. The theoretically more powerful quasi-judicial techniques favored by President Clark were not used by the nations of the world because they feared their binding, compulsory nature.

President Clark reserved his highest hopes, however, for judicial techniques of dispute resolution, particularly that of arbitration.

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<sup>147</sup>Clark, "Memorandum on the Four Power Treaty." For a contrary view, see E. Firmage, "Fact Finding in the Resolution of International Disputes—From the Hague Peace Conference to the United Nations," 1971 *Utah Law Review* (1972), pp. 425-426, 473.

<sup>148</sup>J. Reuben Clark, Jr., "Memorandum for the American Preparatory Committee for the Third Hague Conference," (1912), pp. 50-51.

<sup>149</sup>Firmage, "Fact Finding," p. 926.

One of the proudest achievements of our whole history, is our early espousal of and our subsequent fidelity to this principle of the peaceful adjustment of international disputes . . . . These adjudications cover almost an infinitude of circumstances. We have submitted to arbitration the far reaching, sovereignty-touching question as to whether or not we have conducted our belligerent operations in accordance with the laws of war. We have invoked the judgment of international tribunals as to whether we have fulfilled our obligations under treaties, and have done this even where it involved the question of our rights on the High Seas. We have entrusted to such tribunals the question on the neutral or un-neutral conduct of a neutral towards ourselves as a belligerent in respect of matters involving the honor of both ourselves and the other country, and have done this when the tempers of both peoples were so aroused as to threaten to engulf our two mighty nations in a fratricidal war. We have called for the opinion of an unbiased international tribunal.<sup>150</sup>

International arbitration is a judicial process for settling international disputes based on the consent of the parties in conflict. Such arbitration contemplates a *final* settlement of a dispute between parties having "legal personality" under international law,<sup>151</sup> who agree to submit the controversy to a neutral party for a final decision or award. Arbitration is to be distinguished from conciliation or mediation, in which the role of the neutral party is to persuade the states in dispute to accept a settlement, rather than to impose upon them a *binding* decision as in arbitration. Article XV of the Hague Convention of 1899, in establishing the Permanent Court of Arbitration, declares the object of international arbitration to be: "The settlement of differences between States by judges of their own choice, and on the basis of respect for law."<sup>152</sup> President Clark breaks international arbitration down into two parts:

A nation may arbitrate questions of policy . . . as to which it may become involved in matters of difference with other nations . . . .

. . . The other kind of arbitration is an arbitration of legal

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<sup>150</sup>Clark, "Memorandum on the Four Power Treaty."

<sup>151</sup>For our purposes, to have "legal personality" is to have the characteristics of a state: (a) A permanent population (b) A defined territory (c) Government (d) Capacity to enter into relations with other states.

<sup>152</sup>32 Stat. 1799, 2 Malloy 2016.



differences; that is, differences which arise between two governments on questions and matters of law.<sup>153</sup>

History shows international arbitration was occasionally practiced between the various city-states of ancient Greece.<sup>154</sup> During the Middle Ages, it was frequently used as a means of peaceful settlement of disputes.<sup>155</sup> Arbitration then fell into disuse until it was revived in the nineteenth century by a series of arbitrations between the United States and the United Kingdom arising out of the Jay Treaty (1794) and the Treaty of Ghent (1814).<sup>156</sup> After its revival, arbitration played an important role in nineteenth-century international law. The clearest modern manifestation of effective arbitration was probably the "Alabama Claims," which concerned the claims of the United States against the United Kingdom for damages arising out of the activities of the Confederate warship, "Alabama."<sup>157</sup> Out of the nineteenth-century arbitrations a system of rules and procedures for arbitration was developed that became generally accepted. In 1875 the Institute of International Law (a private organization) completed an influential draft code of these arbitral rules and procedures.<sup>158</sup>

The principle and procedure of arbitration was further developed at the Hague Peace Conference of 1899. One of its major accomplishments was the creation of machinery to peacefully settle international disputes. The Conference produced the *Convention for the Pacific Settlement of International Disputes*<sup>159</sup> which contained, in addition to provisions on good offices, mediation, and inquiry,<sup>160</sup> a number of articles on international arbitration. This Convention did not impose any specific obligation to arbitrate; it merely attempted to establish the procedure and institutions to be utilized when two

<sup>153</sup>J. Reuben Clark, Jr., "Jurisdiction of the American-British Claims Commission," *American Journal of International Law* 7:687 (1913).

<sup>154</sup>Ralston, *International Arbitration from Athens to Locarno* (1929), pp. 153-189. Note, however, that this wasn't theoretically pure international arbitration because it was between city-states who considered themselves part of an "inner circle" of related "Hellenic" states. Thucydides, 4.97; Herodotus 7.13; Polybius 2.58 and 4.6.

<sup>155</sup>*Ibid.*

<sup>156</sup>Simpson and Fox, *International Arbitration* 1-4 (1959), cited in Friedman, *International Law: Cases and Materials* (1969), p. 259.

<sup>157</sup>*Ibid.*, pp. 8-9; Hyde, *International Law*, 2nd ed., (1945) pp. 1592-1593.

<sup>158</sup>Projet de reglement pour la procedure arbitral internationale," 1877 *Annuaire de l'Institute de Droit Internationale* (1877), p. 126.

<sup>159</sup>32 Stat. 1799, 2 Malloy 2017.

<sup>160</sup>Firmage, "Fact Finding."

or more states agreed to submit a dispute to arbitration. The Convention contained detailed rules and established the so-called "Permanent Court of Arbitration," which was really no more than a permanent panel of arbitrators, known as "members of the court," from which an *ad hoc* court could be convened.<sup>161</sup>

The Second Hague Conference (1907) continued the development of this "Permanent Court," as it established the method of selection;<sup>162</sup> it required each party to the Convention to nominate a maximum of four persons to the panel. When two states decide to submit a dispute to the Court, they select two arbitrators from the panel,<sup>163</sup> who then choose an umpire.<sup>164</sup> In practice, a special treaty (*compromis*) is usually framed for creating a court for any particular case. The Second Hague Conference also pronounced a *voeu* (resolution) that there be an assembly of a third peace conference within another period corresponding to that between the first and second Conferences. The third conference, planned for 1915, failed to meet because of the outbreak of war in 1914.

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<sup>161</sup>The Permanent Court of Arbitration, established by the Hague Conference of 1899, is commonly known as the "Hague Court." The permanent panel has its seat in the Peace Palace at the Hague.

The procedure of arbitration utilized by the Hague Court differs from that of Judicial settlement by the Permanent Court of International Justice in that the personnel of the tribunal are chosen by the parties to deal with a particular dispute and the tribunal is not strictly bound to apply international law, while the personnel of the World Court are chosen to serve for a term of years by a procedure that has no reference to the particular dispute and the court is obliged to apply international law.

The work of the Hague Court has greatly diminished since establishment of the International Court of Justice, but it continues to function in occasional controversies, and the personnel of its panel of arbitrators nominate candidates for judges of the Permanent Court of International Justice.

The diminishing use of the Hague Court is indicated by the fact that while fourteen cases were submitted to it before World War I, only four were submitted in the inter-war period, and none since 1936.

Some of the more important cases submitted to the Hague Court were The North Atlantic Fisheries (Great Britain v. United States, 1910); The Orinoco Steamship Company (United States v. Venezuela, 1910); Island of Palmas case (Netherlands v. United States, 1928). The Permanent Court of Arbitration is an institution of long history and great prestige, and proposals have been made that its procedures be re-examined with a view to strengthening and revitalizing it. For a full list of the cases, see J. H. Choate, *The Two Hague Conferences* (1969), p. 49.

<sup>162</sup>Article XLIV of the Second Hague Convention (1907), 36 Stat. 2199, 2 Malloy 2220.

<sup>163</sup>Only one of these could be a national or nominee of the selecting state.

<sup>164</sup>For the history, development, and status of the Permanent Court of Arbitration, see Francois, "La cour Permanente d'Arbitrage, son Origine, sa Jurisprudence, son Avenir," *Haute Académie de Droit Internationale, Rec. des Cours* 87:460 (1955).



The American Preparatory Committee for the Third Hague Conference, nevertheless, developed elaborate plans for its role in the ill-fated Conference. In a 140-page memorandum,<sup>165</sup> President Clark, who chaired the American Preparatory Committee, developed the issues that he proposed be discussed at the Conference and the stipulations he deemed it imperative for the American Delegation to secure. One of the most important concerned arbitration. The first two Hague Conferences had attempted, but failed, to pass a declaration for compulsory arbitration, President Clark believed, because the "continental parliamentary methods" utilized by the Conference had allowed the Russian president of the Conference to wield his plenary procedural control to require unanimity to pass any declaration. Thus, compulsory arbitration failed to be adopted, although a two-thirds majority favored it. President Clark, therefore, recommended to the Preparatory Committee that every effort be made by the American Delegation to secure a stipulation providing for compulsory arbitration.<sup>166</sup> The adoption of compulsory arbitration was imperative to President Clark, as he believed that peaceful settlement of international disputes through arbitration was necessary to establish world peace.<sup>167</sup> The diplomatic history of the United States, he believed, had proven this proposition.<sup>168</sup>

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<sup>165</sup>Clark, "Memorandum for American Preparatory Committee."

<sup>166</sup>*Ibid.*, p. 76.

<sup>167</sup>J. Reuben Clark, Jr., "The Next Advance in the Judicial Settlement of International Disputes." Memorandum, 3 May 1915. This was actually an article prepared for the American Society for the Judicial Settlement of International Disputes. The Society declined to publish it in the form submitted, and Clark refused to alter it; consequently, it was never published.

<sup>168</sup>Clark manifests this pride in his "Memorandum on the Four Power Treaty," p. 4:

We have called for the opinion of an unbiased international tribunal upon the question as to whether the judgments of our own Supreme Court—the most powerful court in Christendom—were in accord with the applicable and controlling rules and principles of international law. We have appealed to such a tribunal for determination as to whether or not certain military operations we had conducted were warranted or unwarranted under all the attending circumstances, a question involving the propriety of our exercise of the most fundamental attribute of our sovereignty. We have adjusted in large part our northern and considerable part of our southern boundaries, land and water, by the same method, and have thereby lost the same claimed territory of our homeland. Finally we have sought and obeyed the decision of international tribunals as to our ownership of territory forming by proximity and asserted claim an integral portion of our homeland, even where that decision required us to relinquish title to what we had honestly believed to belong to us." See also text of note 150.

During the period of time President Clark was preparing this memorandum for the Preparatory Committee of the Third Hague Conference, the American Peace Society, the American Society for the Peaceful Settlement of International Disputes, and other interested groups were agitating for the establishment of a truly permanent court to replace the Hague Permanent Court of Arbitration. President Clark observed, however, that the real difficulty in the peaceful settlement of international disputes was not in forming a "permanent" court as opposed to a permanent panel from which an *ad hoc* court was selected; nor was it in enforcement of the judgment; rather, the vital point was in securing a binding agreement to arbitrate.<sup>169</sup> He concluded that the most feasible approach to this would be to follow the lines suggested, but which failed, in the Second Hague Conference; that is, to frame a list of subjects, and provide that all disputes arising therefrom be submitted to arbitration. Although he admitted that such a plan had faults, he claimed that however small and limited such a list might be, it would still "constitute a real gain in the progress of the cause of arbitration."<sup>170</sup> Put in slightly different terms, President Clark's plan would have established a principle and procedure which would enable an injured government, party to the agreement, in certain specified matters, to hail into court the defendant government, also party to the agreement, whether that government was willing or not, and to secure a judgment by default if the defendant nation proved indifferent or obdurate.<sup>171</sup> The key to the success of this proposal, President Clark felt, was that states would agree to the jurisdiction of the arbitral body in advance of the occasion of any particular dispute. After such agreement, jurisdiction of the tribunal would be mandatory. This would have required an amendment to the Convention on the Pacific Settlement of International Disputes. This Convention's plan of "limited obligatory arbitration" was faulty in that it required the disputing state to make a special agreement before each case could be arbitrated and after the occurrence of the dispute in question; it also failed to provide that if one of the parties refused to arbitrate the other party could proceed to

<sup>169</sup>Clark, "Memorandum for the American Preparatory Committee," pp. 62 and 76.

<sup>170</sup>*Ibid.*, p. 77.

<sup>171</sup>Clark, "Memorandum for the American Preparatory Committee," p. 16.



the arbitration alone. Clark believed that his plan for compulsory arbitration was the "most promising," the "most important," and the "most effective" in promoting the judicial settlement of international disputes. "It is," he explained, "certainly far and away more important than movements looking to the establishment either of an international constabulary or of a truly permanent world court."<sup>172</sup>

#### DISARMAMENT

President Clark believed that selective and wise disarmament agreements would strengthen any prohibition against aggressive war and at the same time mitigate the horrors of war if such prohibition failed. The latter basis for support of disarmament agreements merged with his belief in the efficacy of the laws of war;<sup>173</sup> for parts of the corpus of the laws of war included prohibitions against the possession or the use of certain types of weapons. He did not accept the thesis that an increase in weaponry automatically resulted in an increase in national security.

"We are being generously dosed with that sovereign narcotic . . . that to ensure peace we must maintain a great army and gigantic armaments. But this ignores, indeed conceals, the unvarying historical fact that big armies have always brought, not peace, but war . . . ."<sup>174</sup>

President Clark, as noted before, did not believe that either laws proscribing aggressive war or disarmament agreements reached the basic causes of war. Such root causes, he believed, were in large part beyond the power of government to affect. Such basic changes in the nature of man would have to come by the civilizing process of centuries.

If the thirst for wealth, the greed for territory, the ambition for power and dominion could be removed from men, there would be no more war. But these are some of the basic immutable human passions to be softened at least, possibly eliminated, only by civilizing centuries.<sup>175</sup>

He did not conclude from this, however, that attempts to

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<sup>172</sup>Ibid., p. 20.

<sup>173</sup>See Laws of War section of this article.

<sup>174</sup>Clark, "Let Us Have Peace"; "We never will have perpetual peace between two countries that are fully armed. Armament does not spell peace." Clark as quoted in *Deseret News*, 30 August 1945.

<sup>175</sup>Clark, "Preliminary Memorandum No. 3," p. 2.

outlaw war, or to delimit certain weapons systems, were fruitless. Rather, he felt that government should act in such areas, even though such actions accomplished less than would be desired, simply because those were the "levers" susceptible to governmental actions.<sup>176</sup>

President Clark favored the limitation of military budgets as one feasible technique of arms control. He proposed that such a provision be sponsored by the United States at the Third Hague Conference. Each party state would obligate itself to maintain its existing budget without increase, unless six months notice of increase were given, along with a justification for the action. He also supported treaty provisions prohibiting the use of certain instrumentalities of war. He expressed support for existing limitations on the use of poison gases and dum-dum bullets and hoped for further advancement in restricting the use of these and other instrumentalities.

The promiscuous use of submarines, aircraft, and poisonous gases against non-combatants during the last war, and the purpose—as it is popularly understood—of army and navy men the world over to develop and perfect these instrumentalities with the intention of using them in the next great war in an effort to exterminate peoples, renders it indispensable that this country should take the high ground that the armies and navies of the world shall not be permitted to plan and prepare beforehand for the working out of any fiendish holocaust to mankind. Because it is an unthinkable thing that we shall permit lodgment in the minds of the peoples of the world the thought that the next war is not to be planned and prepared for as a war of actual extermination, a conception which even the dark ages did not venture to, for at worst they then left the conquered their lives. The future war must be fought by army against army, not army against people.

It may well be that no matter if the Conference reaches restrictive agreements covering such matters, that still the armies and navies of the world will plan secretly for the indiscriminate use of such things against non-combatants in the next war and it may even be that they will measurably prepare for such use. But any such planning and preparation will be carried out under a sense of the reproof of mankind against such a course, and will be infinitely less harmful to the peoples of the world than unrestricted legalized activities of the same sort.<sup>177</sup>

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<sup>176</sup>See note 103 and accompanying text.

<sup>177</sup>*Ibid.*, pp. 20-21.



President Clark expressed particular support for arms limitation agreements to protect civilian populations. He proposed a revision in the laws of war to accomplish this:

Each of the parties hereto does hereby agree that in all belligerent operations of whatever character in which they may hereafter find themselves engaged, it will not, except as a matter of indispensable reprisal, use submarines or other submersibles for hostile destructive purposes against enemy vessels or works other than vessels or works of war, or use aircraft against other than armed forces or armed craft or actual fortified places or actual bases of operations or supplies or places of manufacture of munitions of war, or use poisonous gases or other chemicals injurious to human life except only that the same produce instant death and except only against the armed forces of the opposing belligerent, and that it will scrupulously observe and protect the persons, property, and liberties of all non-combatants outside the actual zone of field operations, and so far as the conduct of such operations will permit, within the zone of field operations also.<sup>178</sup>

President Clark opposed any system of sanctions which required alliance systems and the use of force as a means of enforcement.<sup>179</sup>

President Clark's philosophy and proposals on disarmament are exemplified most succinctly by his suggestions to the American Delegation to the Washington Conference of 1921. There follows a summary of the historical context in which his ideas developed and from which the Washington Conference emerged.

By the end of World War I, Japan, Great Britain, and the United States were caught up in an accelerating naval arms race. Each feared the effects of stopping its ambitious programs while the others continued to build. The problem went beyond the momentum of arms manufacture, however, as each of these countries had possessions and ambitions in the Pacific Far East. Tension grew between the United States and Japan, as Japanese student mass meetings commonly argued methods of fighting the United States, and in America, several alarmist books<sup>180</sup> forecast the "inevitable war with Japan."

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<sup>178</sup>Ibid., pp. 18-19.

<sup>179</sup>Ibid., p. 27.

<sup>180</sup>E.g. F. McCormick, *The Menace of Japan* (1920); W. Pitkin, *Must We Fight Japan* (1921), cited in T. Bailey, *Diplomatic History of the American People* (1964).

When the Anglo-Japanese Alliance continued, after its objects—Germany and Russia—had been prostrated, American Anglophobes and the Hearst Press became convinced that it was now aimed at the United States.<sup>181</sup> Although Great Britain announced that it would not consider the Alliance binding in a war between the United States and Japan, pressure continued for its termination. The Washington Conference became a tactful method for terminating the Alliance and further alleviating tension in the Pacific Far East by a disarmament agreement.<sup>182</sup>

Limitation of armament by mutual agreement was a concept by no means novel to the Washington Conference of 1921.<sup>183</sup> Abbe St. Pierre, Immanuel Kant, Jeremy Bentham and many other publicists, statesmen, and philosophers had considered disarmament at length. Czar Nicholas II of Russia had attempted to promote a disarmament plan in the First Hague Conference in 1899, and President Wilson's concept of disarmament was incorporated into the Covenant of the League of Nations.<sup>184</sup>

In President Wilson's view and reflected in the League Covenant, disarmament was inextricably connected with a mutual security system to provide for the nation's protection. President Wilson believed the only alternative to such a mutual security system was a powerful naval and military establishment, adequate reserves of military equipment, universal military training, a world-wide system of espionage, and authority in the executive branch of government to use the nation's armed forces for protection of the nation's security.<sup>185</sup> Membership in the proposed mutual security system

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<sup>181</sup>Ruhl Bartlett, *Policy and Power*, (1964), p. 166.

<sup>182</sup>T. Bailey, *Diplomatic History of the American People* (1964), p. 638; C. N. Spinks, "The Termination of the Anglo-Japanese Alliance," *Pacific Historical Review* 6:321-340 (1937).

<sup>183</sup>In fact, prohibition on types of weapons had existed from antiquity, but this was neither disarmament *per se*, nor agreement between nations. See Laws of War section of this article; see also J. Reuben Clark, Jr., "Limitation of Arms Conferences," speech delivered in 1924. (Available in the Brigham Young University Library.)

<sup>184</sup>The League Covenant, however, laid down no rule of limitation to be applied to all governments; it neither provided nor suggested a plan of limitation; it did not prescribe any governing or controlling principles for the curtailment of the armies and navies of the powers. It was no more than an expression of hope.

<sup>185</sup>Bartlett, *Policy and Power*, p. 166-167; T. A. Bailey, *Woodrow Wilson and the Great Betrayal* (1945); D. F. Fleming, *The U. S. and the League of Nations, 1918-1920* (1932).



was not approved by the American people, as reflected in the election of Warren Harding in 1920.

The Republican Party, having successfully blocked United States participation in the League of Nations, was now faced with the stern logic of the Wilson alternative. But the naval arms race was opposed by pacifists, by businessmen who disliked the cost, and by those who felt that to continue would push Great Britain and Japan together in antagonism against the United States. In December of 1920, Senator Borah of Idaho introduced a resolution in the Senate designed to bring about a tri-power disarmament conference. By mid-1921, the proposal was unanimously approved in the Senate and passed the House with only four dissenting votes. Plans for such a conference were soon developed, in spite of President Harding's secret opposition.<sup>186</sup>

When domestic preparations were complete, Secretary of State Hughes sent informal inquiries to London, Paris, Rome, and Tokyo.<sup>187</sup> Belgium, China, the Netherlands, and Portugal were later invited, to include all parties with interests in the Pacific Far East. The delegates assembled in Washington on 12 November 1921.

The State Department asked President Clark to be its special counsel "for the preparation of certain matters in connection with the Limitation of Armament and the Far Eastern Conference;" just prior to its convocation, the Department also appointed him "expert assistant to the American commissioners appointed by the President to represent the Government of the United States at the Conference." Later, he served as special counsel to Secretary of State Hughes during the Conference. President Clark was influential in both the preparation and the actual progress of the Conference.

President Clark believed that the Conference was of "utmost far-reaching importance to the peace, progress, and prosperity of the world and the happiness of its peoples."<sup>188</sup> He understood the possible weaknesses of such a conference and made suggestions to mitigate them, but certain of his important suggestions were ultimately dropped. He suggested

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<sup>186</sup>Bailey, *Diplomatic History*, p. 639. President Harding resented Borah's initiative because the former was trying to gain support for his own plan of an "association of nations."

<sup>187</sup>*Ibid.*

<sup>188</sup>Clark, "Preliminary Suggestions," p. 1.

that two categories of disarmament issues be entertained by the Conference: first, the "direct problems," such as the size, extent, and character of armaments; and second, the "indirect problems," such as the necessity of framing new war codes to implement the direct problem solutions. Regarding the size and extent of armament, he suggested a specified per capita tax; that is, that no more than a certain sum per capita per year should be spent on armament by any nation.<sup>189</sup> He recognized, however, the existence of a popular demand for some limitation upon the numerical size of both armies and navies of the world powers, and a need to meet this demand if possible. President Clark considered the problem of the character of armament to be equally important to that of its size and extent, yet none of his suggestions on this point were incorporated into the Washington Conference. He believed that it would be most important to consider the extent and purpose of future use of aircraft, submarines, and poisonous gases. He observed, "the promiscuous and uncontrolled use of these instrumentalities during World War I, was of such notorious character, was so deservedly reprobated by the people of the world, that there must be a radical curtailment of their use in the future."<sup>190</sup> He felt nothing could justify the government's failure to use its influence to restrict the use of these instrumentalities. Historians have judged this failure to incorporate the character of armament provisions into the Convention to be its "fatal flaw."<sup>191</sup>

The decision to limit the Washington Conference on disarmament to naval disarmament was grounded on three related assumptions: (1) that the armaments really dangerous to American security and world peace were naval armaments; (2) that the significant rivalry in naval armament was in capital ships, large cruisers, and aircraft carriers; and (3) that the limitation of armament should be based on the principle of parity among the naval powers.<sup>192</sup>

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<sup>189</sup>He suggested that to establish the per capita tax one must consider: population of countries, extent of national territory, distribution of national territory, amount and character of colonial or other territorial possessions, length of coastline, nature of national territory, whether insular or largely land locked, revenues of the nations, and budgets of the nations, "Preliminary Suggestions," pp. 5-6.

<sup>190</sup>Ibid., p. 7.

<sup>191</sup>Bartlett, *Policy and Power*, p. 167.

<sup>192</sup>Bailey, *Diplomatic History*, p. 639.



The final agreement on disarmament, commonly known as the Five Power Treaty, was signed on 7 February 1922. It called for a ten year abandonment of all building programs of capital (battle) ships and the scrapping by the United States, Great Britain, and Japan of designated capital ships based on the ratio of 5:5:3 respectively. France and Italy were later included to create a 5:5:3:1.67:1.67 ratio.<sup>193</sup> To compensate for the difference in ratio, the United States, Great Britain, and Japan agreed that no power would strengthen its fortifications or naval bases in a designated area of the Pacific.<sup>194</sup> A limitation was placed on the size,<sup>195</sup> but not on the number of small cruisers, and on the total tonnage of aircraft carriers of the United States, Great Britain, and Japan. There was no limitation on submarines, destroyers, or the types of weapons that could be used. Curtailment of fortification in the Far East alleviated tension there, as the powers agreed to respect each other's rights. Thus, Japan accepted a small naval ratio, but obtained greater security; Britain and America consented to leave certain insular possessions without further protection, but retained greater tonnage in capital ships.

The second aspect of the Washington Conference of 1921 specifically concerned international tensions in the Far East.<sup>196</sup> This part of the Conference produced two treaties: the Nine Power Treaty and the Four Power Treaty, under which the members of the Conference and states later acceding<sup>197</sup> agreed to "respect the sovereignty, the independence, and the territorial integrity of China, to refrain from securing special rights, privileges or spheres of influence in China, and to consult

<sup>193</sup>Conference on Limitation of Armaments, Washington, D.C., 12 November 1922, p. 62.

<sup>194</sup>This area included the Phillipines, Guam, Midway, American Samoa, and the Aleutian Islands.

<sup>195</sup>Cruisers were not to exceed 12,000 tons or to carry guns with larger than 8-inch calibre.

<sup>196</sup>The Anglo-Japanese alliance was not the only problem, as turmoil prevailed in the Far East. China still lacked a central government strong enough to keep order or to maintain its territorial integrity. Asiatic Russia was also in chaos, as the Bolshevik authority extended only to Lake Baikal, and a separatist republic functioned at Chita. Japan had resisted prodding to return the Kiaochow leasehold to the authorities at Peking, to remove her soldiers from the Chinese eastern frontier, and to evacuate Russian territory. Certain territories formerly of German possession had been mandated to Japan by the Paris Peace Conference and confirmed by the League of Nations. Secretary Hughes challenged the legality of such distribution without U. S. consent. R. W. Leopold, *The Growth of American Foreign Policy* (1962), pp. 428 and 429.

<sup>197</sup>Belgium, the Netherlands, Portugal, and China.



together whenever one part to the Conference felt a situation had arisen that involved its provisions."<sup>198</sup>

Consequences of the Washington Conference are difficult to assess because of long-range as well as immediate effects and entanglement with other events during the complicated inter-war period.<sup>199</sup> From the diplomatic point of view, the treaties emanating from the Washington Conference were a substantial achievement as an example of problem settlement by negotiation and compromise. Many critics of the Conference have argued that because the armies of the world were going to use any means necessary to win, the United States should have prepared to the ultimate and for the worst. President Clark countered that the armies and navies of the world should not be allowed to plan such a holocaust. He expressed a value he perceived in disarmament conferences:

It may be true that after the war is under way the nations will act as the critics have suggested, but the damage will not be nearly so great and the effect on humanity and civilization will be infinitely less if we have to prepare for

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<sup>198</sup>Clark, "Preliminary Suggestions."

<sup>199</sup>There are differing opinions as to the success of the Washington Conference. "From the diplomatic point of view, the Five Power Treaty was a substantial achievement. It offered a heartening example of settlement of problems by discussion and compromise. It halted a dangerous naval arms race and fostered better relations among Pacific States." Leopold, *American Foreign Policy*, p. 443. Ruhl Bartlett states: "Secretary Hughes declared the Naval Treaty 'absolutely' ended competition in naval armament, left the relative security of the several powers unimpaired and made 'perhaps the greatest forward step in history' toward the 'reign of peace.' That the Treaty was more important for peace than the League of Nations would have been, as the Secretary implied in his last remark, was his judgment, but the first two parts of his statement were inaccurate. Competition in naval armament was not halted save in capital ships, while the relative security of the U. S. was seriously weakened, for it not only scrapped a greater quantity of naval tonnage than any other power, but also surrendered the right to strengthen its position in the area of greatest insecurity while it left Japan relatively stronger. Probably even more important, the wide acclaim given to the Conference by the Harding Administration strengthened the idea that the limitation of naval armaments was the surest road to world peace, that since harmony allegedly now existed among the great powers, the U. S. did not need to strengthen its Navy within treaty limits, and that further naval limitation should be effected. As a result, three more naval arms Conferences were held, in Geneva in 1927 and in London in 1930 and 1935 . . . . Relatively, therefore, the U. S. and Britain weakened further their naval strength at a time when world stability was rapidly disintegrating. Although the U. S. began to strengthen its Navy after Japan denounced the Washington Treaty in 1934, it was not until 1938 that the U. S. and Britain began fully to realize what they had done or failed to do during the previous sixteen years and hastily started to rebuild their navies, but by that time it was too late to rectify their mistakes in time to prevent the humiliating and costly defeats of 1941 and 1942." Bartlett, *Policy and Power*, p. 170.



such measures after hostilities have begun, instead of planning and preparing it all beforehand.<sup>200</sup>

Although he believed in prepared self-defense, he opposed the very concept of "total war." Preparation and planning of total war would only guarantee mass slaughter and the destruction of all humanitarian advances of civilization.<sup>201</sup> Not being naive about the prospects for an enduring settlement, President Clark warned the American Committee that to hold out too great a hope regarding the results of this type of conference would cause disappointment. He believed that the very nature of things made great advance in this area most improbable. Nevertheless, President Clark remained devoted to the principle of disarmament and considered it to be a prerequisite to any substantial compliance with the laws of war:

To bring us to our peace, we should have total, not partial world disarmament as the Atlantic Charter suggests. The reasons may be given in a sentence. You will no more have a world society of law and order by taking away the guns from a part of the gang and letting the others [have] theirs, than you will by having all of them tote all the guns they can carry,—and all history shows this last will not bring peace.<sup>202</sup>

President Clark, as a true professional, did not denigrate the value of disarmament or war crimes agreements simply because he realized that they did not provide ultimate solutions to world problems. He understood that governments are obliged to work in these areas and with those tools which are available to them; that often this will result in less than ideal solutions. However, if governments refused to deal in any but long-term solutions we may not all survive the short-term:

And may I be allowed here a word of admonition,—It will not do for us to think these treaties may be dismissed with a contemptuous smirk that being merely treaties, they mean nothing, are made only to be broken, that they are valueless. This is the doctrine of despair and must not be propagated. For what, I ask you, is the alternative? If nations may not establish by mutual undertaking the rules and principles by which they are to be governed; if the sovereign plighted faith of mighty peoples is hereafter to be

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<sup>200</sup>Clark, "Preliminary Memorandum No. 3."

<sup>201</sup>See sections on Force and War and Laws of War in this article.

<sup>202</sup>Clark, "Factors in the Now-Planned Post-War International Pattern."

freely and without censure, flaunted; if, in short, nations may not trust one another, then I say to you the world is lost. Because the alternative to life under free, common understanding, with mutual trust and forbearance, in an association of recognized, unconstrained peers, is domination by one or by few under such a rule of brute force as will plunge the world into chaos, and threaten humanity with oblivion. No, we may not cast aside these treaties as mere idle words under penalty of being overwhelmed by the outburst of righteous condemnation from all the peoples of the world.

But he feared that the best efforts of governments would not be sufficient:

But my heart is heavy with foreboding, because the nations (ours among them) are proposing to arm on a scale never before equalled in the history of the world; and armed nations have always been fighting nations. I fear Armageddon is not yet fought, and, if fought with this weapon, we shall pray the Lord to fulfill his promise:

'And except those days be shortened, there should no flesh be saved: but for the elect's sake those days shall be shortened.' (Matt. 24:22)<sup>203</sup>

## CONCLUSION

The basic beliefs of President J. Reuben Clark, Jr. on international law and order are startlingly relevant to the issues of today. This would probably come as no particular surprise to President Clark. Speaking to a university audience during the Korean War, he answered the charge that his views on international order were dated by time with the answer that "human nature does not change; in its basic elements it now is as it was at the dawn of history, as our present tragic plight shows. Even savages inflict no greater inhumanities than are going on in the world today."<sup>204</sup>

The goals toward which he strove are as desirable and as necessary of attainment today as they were at the beginning of this century. He devoted his professional life to working toward the goal of establishing the rule of law rather than of force as the central factor in international life. He was implacably opposed to the perversion of Hobbesian thought which said that brute power or force, and law, are synonymous.

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<sup>203</sup>Clark, "The Awesome Task of Peace."

<sup>204</sup>Clark, "Our Dwindling Sovereignty."



He opposed international arrangements among the great powers to keep the peace by enforcing the status quo upon smaller states by policies of intervention, colonial rule, or imperial governance. He possessed a revulsion for aggressive war unsurpassed by any current commentator known to this writer. He believed in the efficacy of international agreements to curb war and to circumscribe its means and mitigate its effects if all efforts to avoid it failed. He believed in the necessity of achieving disarmament agreements and served as a principal adviser in several such conferences, as he believed, consistent with prophets before,<sup>205</sup> that armaments possessed would eventually be armaments used. He devoted much of his professional life toward the development of peaceful techniques of dispute resolution, from political and diplomatic means such as mediation, good offices, conciliation, and inquiry or fact-finding, to judicial techniques such as arbitration or formal court procedures. He believed that the United States had a particular role to play as a peacemaker in world affairs, as a city which was set upon a hill, for other nations to see and emulate. This position, he believed, could be sustained only through the maintenance of separateness sufficient to insure a political neutrality which would allow this country to perform the role of peacemaker and arbiter; not by forcible means as the world's policeman, but by the force of moral example in which our civilization would attract the emulation of others by the sheer desirability of our society. Then, he believed, out of Zion should go forth the law, to be adopted by the nations of the world of their own will.<sup>206</sup>

Whether such neutrality could be maintained by one of two superpowers around which much of the rest of the world is polarized may be doubted. It would be unfair to President Clark, however, to impose upon his identification of basic goals the particular modalities of their accomplishment which he would have employed at an earlier time under vastly different circumstances. For while human nature has shown de-

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<sup>205</sup>Brigham Young saw this and lamented it as the United States was on the brink of civil war: "When the nations have for years turned much of their attention to manufacturing instruments of death, they have sooner or later used those instruments. Our nation, England, France, Germany, Austria, Italy, and other nations have exercised their inventive skill, and expended much means in inventing and fabricating instruments of death . . . . From the authority of all history, the deadly weapons now stored up and being manufactured will be used . . . ." *Journal of Discourses* 8:157.

<sup>206</sup>Clark, "In Time of War."

pressingly little change for the better since the two World Wars, the structure of the international system has altered from that of a European "balance" to that of a polarization between two superpowers. Each fears that its withdrawal from active international political involvement would see the other quickly move into the void, whether by imperial governance or hegemonial influence. And yet both superpowers have had more than sufficient reason to question the nature of their involvement in areas within and without their so-called "security zones" or spheres of influence. Interventionism has turned as sour for the intervenors as it has always been for the victims of such presumptuousness. Both states have seen the limitations of their effective power and may now hopefully possess less of that hubris which could lead to their destruction.

The basic goals remain. The role of peacemaker can only be exercised effectively by persuasion, not by force. And that in turn requires that the spiritual, moral, and cultural house of the would-be peacemaker be in order. The need for the elimination of aggressive war, the mitigation of the results of war when it cannot be avoided, the better way of peacefully resolving disputes and limiting a disastrous arms race are all more necessary now than before. A policy of colonial or imperial interventionism is no more desirable now than in earlier years. And each goal possesses that basic prerequisite—the health of our own domestic polity based upon an increase in the force of our spiritual, moral, and intellectual values. For this is the fundamental strength of the nation.<sup>207</sup>

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<sup>207</sup>"And now, we can behold the decrees of God concerning this land, that it is a land of promise; and whatsoever nation shall possess it shall serve God, or they shall be swept off when the fulness of his wrath shall come upon them. And the fulness of his wrath cometh upon them when they are ripened in iniquity.

"For behold, this is a land which is choice above all other lands; wherefore he that doth possess it shall serve God or shall be swept off; for it is the everlasting decree of God. And it is not until the fulness of iniquity among the children of the land, that they are swept off.

"And this cometh unto you, O ye Gentiles, that ye may know the decrees of God—that ye may repent, and not continue in your iniquities until the fulness come, that ye may not bring down the fulness of the wrath of God upon you as the inhabitants of the land have hitherto done.

"Behold, this is a choice land, and whatsoever nation shall possess it shall be free from bondage, and from captivity, and from all other nations under heaven, if they will but serve the God of the land, who is Jesus Christ who hath been manifested by the things which we have written." (Ether 2:9-12.)

"And I, the Lord, would fight their battles, and their children's battles, and their children's children's until they had avenged themselves on all their enemies to the third and fourth generation." (Doctrine and Covenants 98:37.)



May God endow us with knowledge and understanding; help us and our allies to see our task aright; give us understanding of men and nations; bestow upon us justice, tempered with mercy; enlighten us that we see the things that matter as against those that do not; give us discernment of men and nations; put pride and arrogance, self-righteousness and intolerance, hate and revenge, from our hearts, and plant into peoples' hearts the ways of peace and righteousness, they forsaking force and the rule of might; give us, above all else, wisdom to govern in accordance with the eternal principles of the everlasting gospel, for in no other way and by no other process will peace come permanently to men.<sup>208</sup>

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<sup>208</sup>Clark, "The Awesome Task of Peace."



Clark is an able man. He works hard, thinks straight, and has the capacity of getting at the bottom of things. He is one of the few men to whom, after listening to their statement of a case, I feel justified in giving an opinion without reading all the documents myself.

John Bassett Moore, eminent jurist  
and authority on international law

In my judgment [Reuben Clark] is perhaps the soundest international lawyer in this country . . . . Were I President, I would make him Chief Justice of the Supreme Court . . . . No one could have gone there better equipped at the start.

Philander Chase Knox,  
Secretary of State