one hand, and how much of it is merely national policy expressed in law for reasons of municipal convenience, on the other, it is evident that substantial parts of the federal statutes rest upon the former as well as the latter justification. Certainly this may be said of much of the penal legislation for the enforcement of neutrality,[15] of legislation for the protection of the diplomatic representatives of foreign states,[16] and of enactments providing punishment for the counterfeiting of foreign currencies.[17] Probably the federal laws protecting the uniform of friendly nations,[18] punishing conspiracy to destroy the property of foreign governments abroad,[19] and penalizing aid to insurrection in friendly states,[20] may be said to rest in a measure upon the same broad foundation. With respect to other legislation the justification of international obligation is more debatable.[21]

The existence of an international obligation to protect foreign governments locally against defamation seems amply supported by principle and analogy. Such legislation should assure at least a minimum of protection.[22] Beyond the minimum indicated by international duty, Congress may go as far as constitutional authority permits and wise policy seems to require.

EDWIN D. DICKINSON.

THE INSTITUTE OF INTERNATIONAL LAW

The thirty-fifth session—the most recent—of the *Institut de Droit International*, was held from August 21 to August 28, 1928, in the city of Stockholm which is now, and for seven continuous centuries has been the capital of Sweden, and whose beauty is so obvious and so compelling as to require mention even in the chronicle of a scientific gathering.

Important as are the resolutions of the Institute, which have given it

[15] U. S. Criminal Code of 1909, §§ 9–18, 35 U. S. Stat. L. 1088, 1089; Act of 1917, c. 30, Tit. V, 40 U. S. Stat. L. 217, 221; U. S. Code Ann., Tit. 18, §§ 21–38.

[16] U. S. Rev. Stat., §§ 4062–4065; U. S. Code Ann., Tit. 22, §§ 251–255. See Respublica *v.* De Longchamps, 1 Dall. 111.

[17] U. S. Criminal Code of 1909, §§ 156–161, 35 U. S. Stat. L. 1088, 1117; U. S. Code Ann., Tit. 18, §§ 270–275. See Emperor of Austria *v.* Day, 2 Giff. 628; United States *v.* Arjona, 120 U. S. 479.

[18] Act of 1918, 40 U. S. Stat. L. 821.

[19] Act of 1917, c. 30, Tit. VIII, § 5, 40 U. S. Stat. L. 217, 226.

[20] In addition to legislation for enforcement of neutrality cited note 15, *supra*, see Joint Resolution of 1922, 42 U. S. Stat. L. 361; U. S. Code Ann., Tit. 22, §§ 236–237. See DeWutz *v.* Hendricks, 2 Bing. 314; Kennett *v.* Chambers, 14 How. 38.

[21] See U. S. Rev. Stat. §§ 4071–4073. *Cf.* U. S. Rev. Stat. § 753. *Cf.* also Act of 1917, c. 30, Tit. II, § 3, and Tit. VIII, § 2, 40 U. S. Stat. L. 217, 220, 226.

[22] Canada's Criminal Code contains the following: "Every one is guilty of an indictable offence and liable to one year's imprisonment who, without lawful justification, publishes any libel tending to degrade, revile or expose to hatred and contempt in the estimation of the people of any foreign state, any prince or person exercising sovereign authority over such state." Revised Statutes of 1927, c. 36, §135.

primacy among agencies of international law, more important still is the election of members, inasmuch as its existence and its prestige, due to the services which it renders, depend upon the choice of those who may carry on and perhaps add to its general traditions. The members are selected from the associates. At the administrative session, the following were chosen: Messrs. Jules Basdevant (France), Professor of International Law in the Law School of the University of Paris; Eugène Borel (Switzerland), Professor of Public and Private International Law at the University of Geneva, President of the Permanent Council of Conciliation between Germany and Sweden; Philip Marshall Brown (United States), Professor of International Law at Princeton University; Walter Simons (Germany), President of the Supreme Court of Germany, former Minister of Foreign Affairs of Germany, and former President of the German Reich; Francisco José Urrutia (Colombia), member of the Council of the League of Nations, Minister of Colombia to Switzerland, former Minister of Foreign Affairs of Colombia.

The associates are elected from the outside, the national groups of three members proposing candidates, and when there are fewer members than three from any country, the Bureau recommends. At the same administrative session the following were elected: Messrs. Edwin M. Borchard (United States), Professor of Law at Yale University; Didrik Galtrup Giedde Nyholm (Denmark), Judge of the Permanent Court of International Justice at The Hague; José M. Trias de Bes (Spain), Professor of Public and Private International Law at the University of Barcelona, former Deputy of the Spanish Parliament; Osten Undén (Sweden), Professor of the Conflict of Laws at the University of Upsala, former Minister of Justice and former Minister of Foreign Affairs of Sweden; Alfred Verdross (Austria), Professor of International Law at the University of Vienna.

The intention of the founders was to create an international institute of international law; for this reason it was provided that of the sixty members and the sixty associates, not more than one-fifth may belong to any one country. The purpose was to prevent the predominance of a national view. In the same manner the requirement for election to membership of a majority of members present and voting by correspondence is to have the full Institute, as far as possible, present and absent, express its opinion as to the titles and qualifications of the members and associates to be elected. Approximately fifty-five members and associates attended the session of Stockholm, drawn from some twenty-one different countries.

The session of Stockholm was formally opened on the afternoon of August 21st by an address of its President, Mr. Knut-Hjalmar-Leonard Hammarskjöld, a distinguished statesman of that great cultural center which we call Sweden. For many years he served the international community as arbiter in difficult and complicated disputes; and his country he has served as Prime Minister. Mr. Eliel Löfgren, the Minister of Foreign Affairs, responded in an address in which he not merely welcomed the members of the Institute, but

stated in happy terms the services which, in his opinion, the Institute had rendered to international law.

Mr. de Visscher presented his report as Secretary General, which can, without exaggeration, be said to be a model of what a report of this kind should be.

For the past few years the Institute has been working with renewed vigor, having entirely recovered, it would seem, from the disintegrating effects of the war, of which scientific bodies, especially those of an international character, have been the victims.

At the meeting of the Institute at The Hague in 1925 steps were taken to reorganize the method of work, with the result that commissions were constituted to reëxamine all of the resolutions of public international law dealing with peace and those relating to the conflict of law, which had been adopted at the various sessions of the Institute since its formation at Ghent in 1873. The result was that within the next two years after the session of The Hague, the Institute found itself in the possession of reports from many of its commissions, of which nine were adopted with modifications at the session of Lausanne in 1927, and four at the session of Stockholm. Many are still outstanding, so that the Institute, at its next session in the coming year, will have an embarrassment of riches at its disposal.

The Bureau of the Governing Board had selected from the treasures some eight reports: the regulation of vessels in foreign ports; territorial waters; the extension of obligatory arbitration and the obligatory jurisdiction of the Permanent Court of International Justice; the protection of minorities, the rights of humanity and of the citizen; and a proposed dictionary of international law. These, it will be observed, deal with public international law. Three projects of private international law were also included: criminal law in its relation to nationality; nationality; the conflict of law in the matter of international navigation. Finally, there was to be a communication on the status in Europe and America of the codification of international law.

It was hoped that the eight reports would be considered, and that Dr. Wehberg would be able to read his paper on codification. This he did on the last day of the session. It was found, however, due to the difficulty of the subjects, and to the animated discussion to which they gave rise, only possible to reach resolutions on the regulation of vessels in foreign ports and territorial waters, both of which belonged to the section of international public law; and criminal law in its relations with nationality, and the general subject of nationality, both of which fall within the domain of the conflict of laws, for the non-English-speaking world is inclined to consider nationality as belonging to private, rather than to public international law. It thus happened that in the end two resolutions were adopted upon both of these branches, and a paper was read on the codification of international law.

It will be observed that the projects of public international law are interrelated as are those of private international law; those of public interna-

tional law deal with the regulation of vessels within foreign ports and territorial waters, and those of the conflict of laws deal with nationality in two of its different aspects. The regulation dealing with vessels in foreign ports is restricted to time of peace, as indeed is that relating to territorial waters. In a certain sense, ports might properly be considered as falling within territorial waters, so that the two might have formed but a single project. It was, however, thought best, and in fact it was best, to consider each topic separately. As the Institute dealt first with the question of ports, it will be discussed first.

The project consists of no less than forty-six articles, so that it would be impossible to analyze its provisions within the space of an editorial comment. It is perhaps sufficient to say, in general, that it restates in admirable form what may be considered the most advanced and enlightened practices of the present day; and to call attention to a few of its provisions which may seem to have a special interest.

As a general principle, ports are to be open to the commerce of the world, but there are special cases in which the state within whose territorial waters they lie may exercise its sovereignty to the extent of withdrawing them from the category of open ports. This article gave rise to much discussion. It was, however, adopted slightly amended in the following form:

> As a general rule access to the ports and other portions of the sea specified in the first article, is open to foreign vessels.
>
> As an exception and for a term as limited as possible, a state may suspend this access by particular or general measures which it is obliged to take in case of serious events touching the safety of the state or the public health. This power is not excluded by the existence of treaty provisions guaranteeing in a general way free access to the said ports or anchorages.
>
> Entrance to the ports can also be refused to a particular flag by way of reprisals [Article 3].

Warships are, of course, allowed the customary immunity; merchant vessels are subjected to the jurisdiction of the port. The question has arisen of late as to the status of a merchant vessel engaged in a government service. The project accords immunity to vessels other than men-of-war when they are engaged in a governmental and non-commercial enterprise, otherwise not. The status of vessels of this category is thus regulated by Article 27:

> Vessels employed in a civil public service do not, as a general rule and in the absence of treaty provisions, enjoy the immunities recognized by the present regulations for military vessels.
>
> Nevertheless these vessels, if they are exclusively assigned to civil public service, can not be the object of seizure, stoppage or detention by any judicial process nor by any writ *in rem*.
>
> In this case the state in whose public service the vessel is, is responsible for it.

The status of vessels owned by the state or by public authority engaging in commerce is dealt with as follows in Article 45:

> Vessels which are the property of public collectivities or laden by them and performing a commercial service are assimilated, with regard to their legal status, in the cases provided for in the present regulations, to vessels which are state property or chartered or laden in whole or requisitioned by them and performing a commercial service.

It was foreseen by the members of the Institute that the provisions of this project would give rise to discussion, as do the unwritten rules of international law. Therefore, they provided for their discussion and adjustment in the 46th and last article in the following ways:

> All differences which may arise concerning the interpretation or the application of the present regulations are susceptible of being settled by international courts, and can consequently be submitted to arbitration under the conditions determined by existing conventions between the parties. In the absence of such conventions, each of the interested states is entitled to lay the difference before the Permanent Court of International Justice.

To a larger extent the project on territorial waters is a reproduction of existing practice. The question of the extent of the waters and the limits within which the neighboring state may acquire its jurisdiction beyond low-water mark gave rise to long and animated debates. The project as presented proposed to double the customary limit of three miles from low-water mark in the case of marginal waters and bays. Finally, the three-mile limit was preserved, with a recognition of international practice in bays whose entrances are more than ten miles across. It was, however, considered in the case of the three-mile limit that international usage might justify jurisdiction beyond the three-mile limit. These matters are dealt with in Articles 2 and 3, and their importance justifies their quotation:

> The width of the territorial sea is three marine miles.
>
> International usage may justify the recognition of a greater or less width than three miles [Article 2].
>
> The width of the territorial sea is measured, from the coasts, beginning with low-water mark; from ports, beginning from the seaward extremity of their most advanced fixed work; for bays and gulfs belonging to the same state, beginning from a straight line drawn across the nearest part of the opening from the sea where the spread between the two coasts does not exceed ten marine miles, unless an international usage has sanctioned a greater width.
>
> For bays whose waters bathe territories belonging to two or several states, the territorial sea follows the sinuosities of the coasts [Article 3].

The same question presented itself in a modified form in Article 12. There is a very general feeling that while the three-mile limit should be maintained, the jurisdiction of the state might be extended for certain specifically defined purposes, especially the purposes of national security in the matter of neutrality, to sanitary police, to custom regulations, and in the matter of

fisheries. A final result is stated in Article 12 of the project, which was adopted by a very large majority:

> In a supplemental zone adjacent to the territorial sea, the coastal state may take the measures necessary for its security, respect to its neutrality, its sanitary and customs police, and its fisheries. It is competent to take cognizance, in this supplemental zone, of infractions of the laws and regulations on these subjects.
>
> The width of the supplemental zone can not exceed nine marine miles.

It will be observed that by the project the state practically annexes territorial waters to an extent of three marine miles from low-water mark, and that it is authorized to exercise jurisdiction for certain specified purposes within a supplemental zone of nine miles beyond the three miles in question, so that, as its opponents stated at the time, the freedom of the seas was cut down nine miles exactly at that portion where it is most advisable that it be free from local interference. There is, of course, danger that the creation of a supplemental zone with a limited jurisdiction might give rise to disputes. Article 15, the last of the project, provides a method for their adjustment. It is identical with Article 46 of the regulation of ports, and need not be quoted.

So much for public international law.

The first of the projects dealing with the conflict of laws is entitled Criminal Law in its Relations with Nationality. It was a short convention as presented, consisting of ten articles. It is still shorter as it emerged from discussion. As originally drafted an attempt was made to temper the law of the state in which the crime was committed by the law of the state of which the accused was a citizen, in the case of offenses committed by foreigners. The Institute was overwhelmingly of the opinion that criminal law was territorial, and that foreigners as well as natives should be subjected to the law of the territory within which the offense was committed. In some respects it was suggested, rather than provided, that the judge might take into consideration the practice of the law of the state to which the accused belonged. However, the project recognizes as fundamental the law of the territory in which the criminal offense had been committed.

The project on nationality is of a present interest and of great practical importance. There are two principles which contend for the mastery: that of the blood (*jus sanguinis*), and that of the place of birth (*jus soli*). A compromise is attempted between the two so as to allow a foreigner born within a country to choose, upon becoming of age, the nationality which he would prefer: that of the place of birth, or that of the blood. In Europe generally the *jus sanguinis* is accepted, and naturally so, because since the organization of that vast continent upon present lines, its population has been but slightly affected by immigration; whereas in other parts of the world, such as the American continents, the population is largely, if not wholly, due directly or indirectly to immigration. The Western World

therefore accepts the doctrine of *jus soli*, with here and there a concession to *jus sanguinis*. The question is complicated. It is now one of confusion, because of citizenship very generally extended to women, and their very natural and, in the opinion of the present writer, proper desire to be treated on a plane of equal and exact equality with male citizens.

The project adopted by the Institute on this subject does not accept either principle as definitive, but is a compromise which can be best and indeed most shortly stated by the quotation of its six articles and annex:

> The Institute,
>
> Reserving for the present the examination of the principles and rules on nationality laid down by the Institute in the Cambridge session of 1895 and that of Venice in 1896;
>
> Whereas since that time new questions have arisen which in themselves call for a solution, declares that it adopts the following resolutions:
>
> Art. 1. No state should apply, in the acquisition and loss of its nationality, rules which would have as a consequence double nationality or lack of nationality if the other states accepted the same rules.
>
> Art. 2. No individual can lose his nationality without acquiring a foreign nationality.
>
> Art. 3. No individual can by naturalization acquire a foreign nationality so long as he resides in the country whose nationality he possesses.
>
> An individual can not acquire by naturalization a foreign nationality unless he makes application therefor.
>
> The state of residence may nevertheless impose its nationality, at the expiration of a certain time, fixed so far as possible by convention, and under reserve of a right of option.
>
> Art. 4. The laws of a country of which a woman who marries a foreigner is a national should permit her to preserve her nationality so long as she does not acquire the nationality of her husband.
>
> When the law of the country of the husband gives the wife his nationality, the law of the country of the wife can preserve her original nationality for her only on the double condition:
>
> (1) That the married couple reside in the country of the wife;
>
> (2) That the wife manifests an express wish therefor.
>
> Art. 5. In the case where the laws of a state confer on the wife the nationality of her husband by the sole fact of marriage, this legislation may nevertheless refuse such effect for reasons of general policy.
>
> Art. 6. If the married couple have not the same nationality, in so far as the child follows the nationality of its parents, it takes the nationality of its mother when:
>
> (1) The father has abandoned the mother before the birth of the child;
>
> (2) The child is born in the country of which the mother has since her marriage retained or resumed nationality, under reserve in this case of a right of option for the nationality of the father.
>
> Annexed voeu:
>
> The Institute of International Law expresses the wish that, in their legislation on nationality, the states respect and maintain the unity of the family so far as circumstances permit.

On the 28th of August the Institute held its closing session, at which Mr.

Hammarskjold was the recipient of merited congratulations for the manner in which he had presided. In the last administrative session, composed exclusively of members (held in the afternoon of the 28th), it is customary to elect the President and the First Vice President of the next session; and in the public session which follows, composed of members and associates, the city is selected in which the next session is to be held. Mr. James Brown Scott was elected President for the session of 1929, and Mr. Albert de Lapradelle, First Vice President. It was unanimously and by acclamation decided that the session of 1929 should be held in the City of New York.

JAMES BROWN SCOTT.

INSTITUTE OF INTERNATIONAL RELATIONS, NORTHWEST SESSION

The Institute of International Relations, organized on the Pacific Coast, held its Northwest Session with the University of Washington at Seattle, July 22–27. This is the third session of the Institute, the first having been held at Riverside, California, the second at Los Angeles. The selection of Seattle as the place for holding the session of the present year was wise, considering the importance of Seattle in respect to the trade between United States and Japan, and the coöperation between the University of Washington and the business and professional interests of Seattle resulted in an extremely interesting and valuable conference.

Relations with the Orient naturally occupied the most prominent place. The Institute of International Relations on the Pacific Coast may be said now to be an institution. The special form of it this year was given largely by the Executive Secretary, Dr. Charles E. Martin, dean of the Social Science Faculty of the University of Washington. The Institute was carried on along the lines that have been developed by the Williamstown Institute of Politics. Lectures open to the public were provided for each evening session. The mornings were allotted to round tables, the attendance of which was limited to delegates and registered members of the Institute. Each afternoon a conference was held which engaged the attention of the entire membership.

The subjects of the round tables with the leaders were as follows: China, Professor Latourette of Yale University; Race Problems, Professor McKenzie of the University of Washington; American Foreign Policy and Administration, Professor Godshall of Union College; Latin-American Affairs, Professor Stuart of Stanford University; Disarmament and the National Defense, Lieut. Com. Barr, United States Navy; International Finance, Mr. Harry B. Lear, President, University National Bank, Seattle; Japan, Professor Gowen of the University of Washington; The British Commonwealth of Nations, Hon. J. T. Thorson of Winnipeg, Member of the Canadian Parliament; International Law and Organization, Professor Reeves of the University of Michigan; International Commerce, Professor Mears of Stanford