

THE PROBLEM OF AN INTERNATIONAL COURT OF JUSTICE

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The Problem of an International Court of Justice by Hans Wehberg

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HANS WEHBERG

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DR. HANS WEHBERG

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Carnegie Endowment for International Peace

DIVISION OF INTERNATIONAL LAW

James Brown Scott, Director

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BY

DR. HANS WEHBERG

GERICHTSREFERENDAR IN DÜSSELDORF

TRANSLATED FROM THE GERMAN BY

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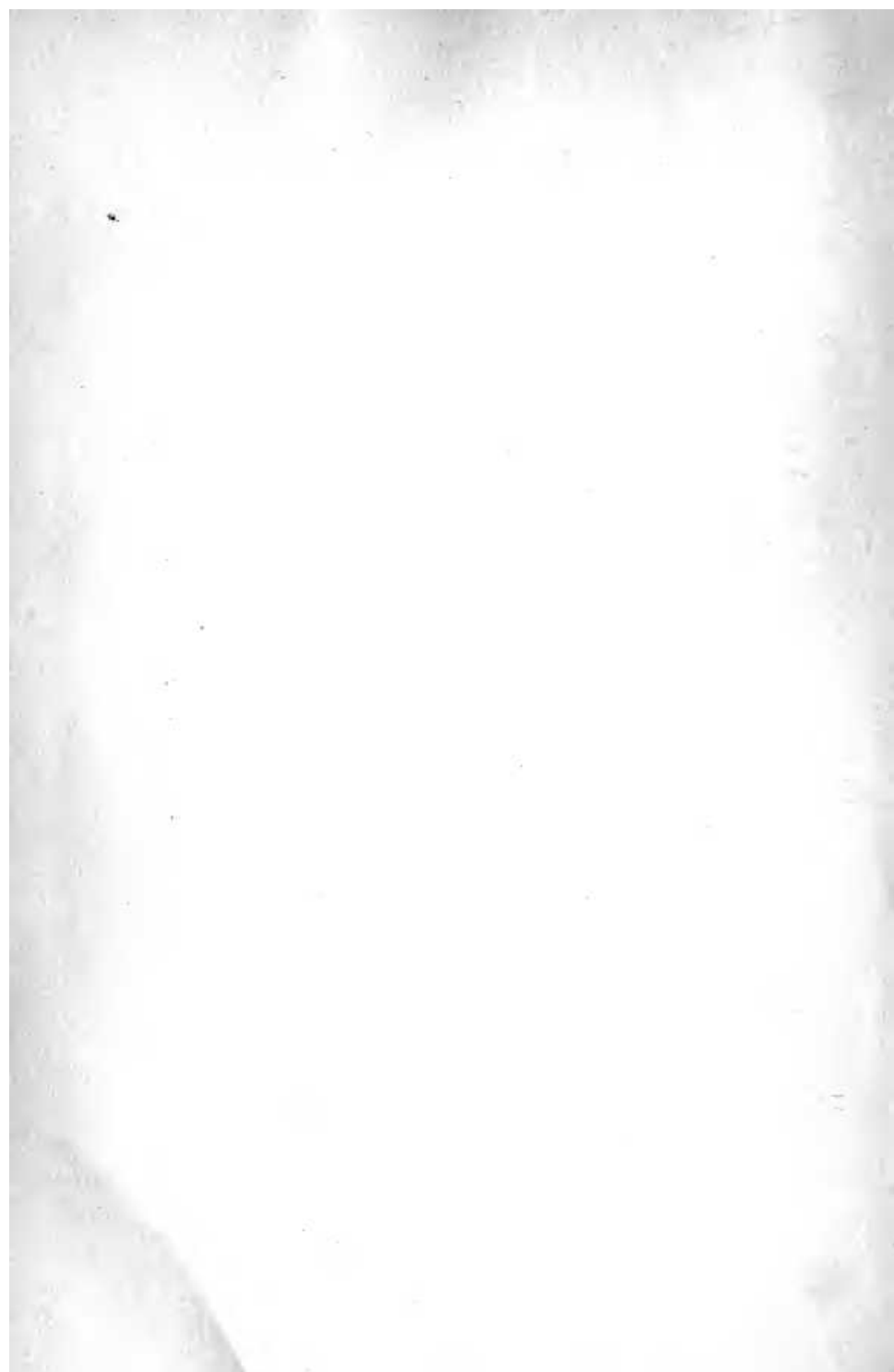
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TO
JAMES BROWN SCOTT
UNITED STATES DELEGATE TO THE SECOND HAGUE
CONFERENCE
IN RESPECT AND GRATITUDE

' May I say that while, fortunately for some of us, justice is tardy, I think it proper in a meeting such as this to say that you have in this room the man who more than all others devoted his energy, thought, time and wonderful capacity for work in the endeavour made by the United States delegation to work out a permanent judicial court at The Hague. The failure to carry the plan through was certainly the greatest possible success, because the project for the Court, which was his work, was unanimously recommended by the Conference. I suppose that in some way when the world demands this Court, some person will evolve a scheme by which its judges can be designated. I refer with great pleasure to one of my warmest friends, Dr. James Brown Scott, a member of the American delegation at the Second Peace Conference at the Hague.'

(Address by the Honorable William I. Buchanan, Delegate of the United States to the Second Hague Peace Conference, at the fifteenth Lake Mohonk Conference, 1909. *Report*, p. 53.)



INTRODUCTORY NOTE BY THE DIRECTOR

IN the spring of 1912 there was issued, in the German language, a book entitled *Der Staatenverband der Haager Konferenzen*, or as it may be rendered in English, *The Union created by the Hague Conferences*. This work is the first of a series of volumes under the general title *Das Werk vom Haag*, or *The Work of The Hague*, published by Messrs. Duncker and Humblot of Munich and Leipzig, and due to the enterprise and devotion of Dr. Walther Schücking, professor in the University of Marburg, Germany. The series, as a whole, was intended to make known the results of the First and Second Hague Conferences by publishing monographs dealing with the declarations, conventions, and recommendations, as well as the problems of the Conferences, so that the students and scholars of Germany might be furnished with all information essential to a correct understanding of the Conferences.

In the conduct of this enterprise Professor Schücking has secured the co-operation of the following well-known publicists: von Bar, Fleischmann, Kohler, Lammasch, von Liszt, Meurer, Niemeyer, Nippold, von Ullmann, and Wehberg. Thus far two volumes of the series have been issued, viz., the volume by Professor Schücking referred to above, and one by Dr. Hans Wehberg, entitled *Das Problem eines internationalen Staatengerichtshofes*, or *The Problem of an International Court of Justice*. A third work in three volumes, entitled *Judicial Decisions of the Permanent Court at The Hague*, is in process of publication, being a careful and accurate account of the cases which have

been tried by temporary tribunals formed from the Permanent Court since its establishment in 1902.

The present volume, which is Dr. Wehberg's monograph on the problem of an international court of justice, cannot be read by any one without admiration for the skilful manner in which he has discussed the various problems connected with an international court and without a feeling of gratitude for the balanced judgment and the spirit of fairness which he has displayed in the attempt to solve the problems connected with the proposed court, which are both many and difficult.

Dr. Wehberg approached the question of an international court of justice with considerable misgivings, and, in a previous publication, he declared himself to be a partisan of the so-called Permanent Court of Arbitration and opposed to the establishment of a truly permanent court composed of professional judges acting under a sense of judicial responsibility. Study and reflection, however, have convinced him of the necessity of the latter court, and the volume under review is calculated to strengthen the faith of those who believe in the proposed court and to persuade many doubters and waverers who are open to argument.

Dr. Wehberg believes that international law must be developed in order more adequately to meet the world's needs; that the conflicts inevitably arising between nations, in so far as they are of a legal character, can best be decided by a court of justice composed of permanent and professional judges whose duty it will be both to find and to apply the principle of justice decisive of the conflicts submitted to the court; and that such a tribunal can safely be entrusted to develop the system of law, as is the wont of courts, which it applies to the decision of concrete cases. He believes, and rightly, that the nations appearing before the court should