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**Heinrich Lammasch,
Scholar of Public International Law and Austrian Statesman**

Introduction

Legal history primarily serves the purpose of revealing the roots of legal concepts and institutions, describing their development and showing their impact on human society. Legal norms habitually are the result of customary human behaviour and of intellectual reflection. Their implementation lies in the hands of human beings. History of law therefore must not confine itself to the study of the evolution of legal concepts and norms, but equally has to encompass the performance of people drafting and applying the law. In fact, it is the life and work of the individuals that make history of law a lively and fascinating experience. It also paves the way to better understanding of contemporary positive law.

What is true for the history of law in general also applies to the history of public international law. International legal doctrine as well as practice is closely related to individuals. Their life, their ideas and their ambitions are part of the history of international law, which has known a great many outstanding lawyers, personalities who have proven both scholarly excellence and political vision. Heinrich Lammasch, Austrian professor and politician, undoubtedly was one of them.²

Heinrich Lammasch's Life

Heinrich Lammasch was born at Seitenstetten/Lower Austria in 1853. He finished his legal studies at the School of Law of the University of Vienna in 1876. In 1882 he was appointed associate professor of criminal law at the University of Vienna. Only three years later he became full professor of criminal law, legal philosophy and public international law at the University of Innsbruck. His appointment to the Vienna University followed in 1889. In the same year Lammasch took part in the First Hague Peace Conference as legal adviser of the Austro-Hungarian delegation. In 1907 he joined the delegation of the Monarchy at the Second

¹ Former Austrian ambassador, Professor at the Pázmány Péter Catholic University, Faculty of Law

² Verdross, Alfred: Heinrich Lammasch, 17 *Österreichische Zeitschrift für öffentliches Recht* (1967) 214; Willibald Plöchl: Zur Entwicklung der modernen Völkerrechtswissenschaft an der Wiener Juristenfakultät, in *Frhr von der Heydte/Seidl-Hobenveldern/Verosta/Zemanek* (Hrsg), Festschrift für Alfred Verdross (1960) p. 31. Simma, Bruno: Heinrich Lammasch, in: *Neue Deutsche Biographie*, 13 (1982) p. 447; Oberkofler G., Gerhard: Heinrich Lammasch, 1993; Verosta, Stephan: Der Bund der Neutralen. Heinrich Lammasch zum Gedächtnis (Vortrag), Österr. Akademie der Wissenschaften, Wien, Köln, Graz, Böhlau in Komm. 1969, 176-197; Verosta, Stephan: Theorie und Realität von Bündnissen. Heinrich Lammasch, Karl Renner und der Zweibund (1897-1914), Wien 1971.

Hague Peace Conference. In 1900 he was elected member of the Permanent International Court of Arbitration in The Hague, which he chaired three times.

Lammasch was a member of the Austrian Upper House (Herrenhaus) in Vienna from 1889 to 1917, where he soon proved to be a powerful orator and an expert on matters of criminal law and legislation. He also used to be adviser of the heir to the throne of the Austrian Empire, Archduke Franz Ferdinand, assassinated in Sarajevo in July 1914. During the First World War Lammasch was striving for a peace of understanding (Verständigungsfrieden). In 1917 Lammasch published his book on "The Law of Nations after the War"³. Shortly before the end of the war, Emperor Charles I appointed Lammasch Prime Minister of the Monarchy on 27 October 1918. When the Emperor waived his right to exercise political authority on 11 November, Lammasch presented the Emperor's letter of resignation to the President of the Provisional National Assembly and handed over government business to the State Council of the National Assembly. In 1919 he served as expert of the Austrian delegation at the peace negotiations with the Entente at St. Germain-en-Laye. His fellow-delegate was the social democrat Karl Renner, the first chancellor of the Republic of Austria.⁴ Lammasch was 67 years old when he died in Salzburg on 6 January 1920. In its obituary the *New York Times* paid tribute to Lammasch as "a world authority on international law".⁵

Lammasch was a sincere and courageous personality with a strong character⁶. As a practising Catholic he was committed to humanity and Christian values. His political views were fundamentally conservative with a strong sense of realism being always open for new ideas.

Lammasch, Professor of Criminal Law

Lammasch published a great many legal studies in the field of criminal law, among them some monographs that made him earn an international reputation as an outstanding legal scholar. Among those mention should be made of the following pre-eminent publications: Extradition for Political Crimes"⁷, "The Law of Extradition and the Right to Asylum"⁸, and "Introduction to Austrian Criminal Law"⁹. He also wrote some critical essays on the outdated provisions of Austrian criminal law and on the 1893 Plener-Windischgrätz draft criminal code.¹⁰

Lammasch was also engaged in the drafting of important legislative documents. His draft of a new Austrian criminal code on which he was working during the years 1906 to 1912, deserves particular mention. In 1904 together with Chlumecky and Bilinski he presented a bill to the parliament aiming at the improvement of the protection against defamation.¹¹

³ Das Völkerrecht nach dem Kriege.

⁴ After the Second World War Karl Renner was Federal President from 1945 to 1950.

⁵ New York Times, January 7, 1920.

⁶ Even the very critical and liberal journal *Die Fackel*, (edited by *Karl Kraus*), commended Lammasch on many occasions as an upright conservative Christian character who is standing up for humanity and peace; see e.g. the articles „Für Lammasch“ in No. 474-483, Mai 1918, pp.46 – 49 and „Lammasch und die Christen“ in No. 519/520, November 1919, pp.153 – 155.

⁷ Die Auslieferung wegen politischer Delikte, 1884.

⁸ Auslieferungsrecht und Asylrecht, 1887.

⁹ Grundriss des österreichischen Strafrechts, 1899

¹⁰ E.g. „Vorschläge zur Revision des Strafgesetzentwurfs“, Wien 1894 and „Diebstahl und Beleidigung“, Wien 1893.

¹¹ See Kraus, Karl (ed.): *Die Fackel*, No. 171 (Dezember 1904) pp. 4 et seq. and No. 174 (Januar 1905), pp. 10-11.

As a member of the Upper House Lammasch took the floor on many occasions when matters of criminal law were on the agenda. He commented on the reform of the criminal and press law just as much as on the problem of offences to religion.¹²

Lammasch, Scholar of Public International Law

As a professor of international law, Lammasch was an admired and popular teacher. As a student Joseph A. Schumpeter attended his courses on Foreign Policy and International Law. It appears that Lammasch's political views and teachings had exerted a strong influence on him. After finishing his studies, Schumpeter continued to keep in touch with his former professor. The famous economist, Minister of Finance and later on Harvard professor used to consult Lammasch on political matters, in particular during World War I.¹³

It was his research on questions of extradition that turned Lammasch's attention to public international law.¹⁴ His relevant publications brought him an international reputation as an outstanding legal scholar. The formal acknowledgement of his academic achievements followed in 1887 when he was elected member of the Institute of International Law. One of the outstanding objectives of the Institute had been the codification and progressive development of the law of nations. This was all the more pertinent because of the disregard of states for rules of international law that seemed to gain ground in the second half of the nineteenth century. Countless gross violations occurred especially in the field of the law of war.¹⁵ His interest in foreign policy and international peace induced Lammasch to take active part in the work of the Institute.¹⁶ In addition, his membership in the Institute gave him the opportunity to come into contact with the most distinguished international lawyers of his time.

From 1916 on Lammasch got more and more preoccupied with the concept of the peace to come and with questions related to the structure of international co-operation conceived to make sure that the future peace be a lasting one.

In 1919 a collection of essays entitled "Europe's Eleventh Hour"¹⁷ was published. The book contains Lammasch's most challenging wartime articles together with his outstanding and provocative peace speeches held in the Upper House towards the end of the war. Among the articles mention must be made of "Who was the First Pacifist?"¹⁸, "Christianity, International Law and the Preservation of Peace"¹⁹, "The Future Peace Alliance"²⁰ and „On the Chances for a Lasting Peace"²¹.

¹² Ibid. No. 109 (July 1902), pp. 23-26.

¹³ <http://www.wu-wien.ac.at/usr/h95d/h9550387/Seminare/Schumpeter.htm#1>

¹⁴ Verosta: *Theorie und Realität von Bündnissen*, op.cit. p. 2.

¹⁵ Ibid.

¹⁶ Verosta: *Theorie und Realität von Bündnissen*, op.cit., pp. 2-3.

¹⁷ *Europas elfte Stunde*, München 1919.

¹⁸ *Wer war der erste Pazifist?* 1917.

¹⁹ *Christentum, Völkerrecht und Friedenserhaltung*, 1915.

²⁰ *Der künftige Friedensbund*, 1916.

²¹ *Über die Möglichkeit eines dauerhaften Friedens*, 1917

In an article printed in the “Friedenswarte” in 1916²² he stepped up against the misuse of reprisals in time of war likely to bring about a dangerous escalation of mutual illegal violence between belligerents. In this context he rejected the widespread opinion expressed by his colleagues Eltzbacher and Bornhak of the University of Berlin alleging that the law of war as it had been in force until July 1914 was in the meantime destroyed by the war so that States could freely act without any legal restrictions. According to these views violations of the law of war may after a certain lapse of time even derogate from existing rules, provided they are committed sufficiently often. Lammasch raised strong objections to that concept. He insisted that the violation of a provision of international law in no way causes its abolition by “*usus contrarius*”. The opposite point of view would deny the progress that international law has made ever since the Congress of Vienna.

On the occasion of a speech delivered by the German Imperial Chancellor von Bethmann Hollweg in the “Reichstag” addressing the necessity to take effective measures for securing lasting peace by the establishment of international organizations like arbitral tribunals, Lammasch wrote an article on „The Future Peace Alliance”²³ in which he referred to former President William H. Taft’s initiative of July 1915 suggesting an international body of compulsory mediation. The idea goes back to Secretary of State Jennings Bryan’s 1913 proposal to conclude bilateral treaties on a similar basis. As experience showed, arbitral tribunals are not able to settle all kinds of differences, in particular not severe inter-state conflicts on grounds of controversial national interests. Welcoming the President’s proposal Lammasch underscored the advantages of such proceedings in view of the fact that parties to the conflict would not be allowed to declare or wage war before the mediating body had given his advisory opinion. In the meantime passions would cool off and the parties be prompted to reconsider their positions. The result of the mediation once published would also have an important impact on world public opinion and affect the good reputation of the states involved.

In 1917 Lammasch published an important book on “The Law of Nations after the War”²⁴ in which he discussed fundamental questions of contemporary international law. He firmly rejected the unfounded allegations that international legal order was about to collapse. The book also deals with such crucial issues as international law and cultural community, international law and sovereignty, complying with treaty obligations and Machiavellian government, the limits to the obligation of treaty compliance, the clause “*rebus sic stantibus*” and how to preserve peace. In this last chapter Lammasch recalled the Hague Peace Conferences where states adopted such procedures for the peaceful settlement of disputes and preservation of international peace as international fact-finding, mediation and arbitration. He criticized, however, that The Conferences did not make them mandatory.

A year later, in 1918 Lammasch came back to the idea of an international peace organization. In his essay entitled „The Peace Alliance of States”²⁵ he shared the view of many other observers that lasting peace could only be achieved on three conditions: first, that procedures

²² Abgestorbenes Völkerrecht, in: Europas elfte Stunde, pp. 128 – 132.

²³ Published in the „Neue Freie Presse“ in 1916 and reprinted in “Europas elfte Stunde”, pp. 89-92.

²⁴ Das Völkerrecht nach dem Kriege, 1917.

²⁵ Der Friedensverband der Staaten, Leipzig 1918.

serving the peaceful settlement of disputes as recommended by the Hague Peace Conferences become mandatory; second, that this obligation must be made enforceable by sanctions; and third, that the implementation of sanctions must be assigned to an organization of states with as wide-ranging participation as possible. In this context Lammasch referred to the “League to Enforce Peace” founded in Philadelphia in 1915 even though he preferred to talk about a Union of States rather than of a League, which in his view implies a group of states opposing another. The only objectives of the Union should be to save humanity as far as possible from the sufferings and losses of future wars by preserving peace. Lammasch was realistic enough to admit that, although the Union would not be able to abolish war, it should at least for the time being contain armed conflicts. He furthermore emphasized that, contrary to some extremist proposals demanding the creation of international tribunals with compulsory jurisdiction, the Union should be more modest by encouraging states only to earnestly attempt the peaceful settlement of their disputes. As far as arbitration is concerned, it should be governed by generally recognized principles of law. Disputes implying fundamental national interests or the honour of states should be submitted to an independent and permanent body of mediation chaired by a neutral citizen. Incidentally, Lammasch clearly refused to accept arguments referring to the sovereignty of states, including not only their right to war but also the right to decide when they want to resort to the use of force. In his opinion, the only leftover meaning of sovereignty is that states are independent of the arbitrariness of other states. However, sovereignty does not mean independence of the law.

Lammasch, the Moderate Pacifist and Partisan of Neutrality

Lammasch was a dedicated pacifist. Like the German professors of international law Schücking, Delbrück and *von Wehberg*²⁶, Lammasch came under the influence of the international peace movement at an early stage. He appreciated the endeavours of the movement which began in the United States and England where peace societies had been founded by the Quaker community as early as 1815-1816.²⁷ Based on the early Christian ethics of the Sermon on the Mount they firmly rejected war between nations. In Europe, pacifism was rooted in humanitarian, cultural and economic traditions rather than in religious concepts. Yet, European pacifists were not less radical and impetuous than their overseas friends. In the second half of the nineteenth century European pacifists called for general disarmament, at a moment when the arms race was at its peak. However, by the turn of the century, pacifism gave up its extremist attitude. Instead of the unrealistic demand for general disarmament, it promoted the idea of arbitration.²⁸ Although governments did not sympathize with the movement, Lammasch held the view that the convening of the Hague Peace Conferences was not least the result of the pressure put on governments by the movement.²⁹

Lammasch was a member of the “Austrian Society of Friends of the Peace” founded in 1891 by Bertha von Suttner,³⁰ author of the novel “Lay Down Your Arms!”³¹ and one of the leading

²⁶ Riesenberger, Dieter: *Geschichte der Friedensbewegung in Deutschland. Von den Anfängen bis 1933*, Göttingen 1985, pp. 54-55 and 104

²⁷ Society for the promoting universal peace.

²⁸ *Der Wandel der Friedensbewegung*, in: *Europas elfte Stunde*, pp. 80 – 86.

²⁹ H.Lammasch: *Der Friedensverband der Staaten*, Leipzig 1918, p. 9.

³⁰ Hamann, Brigitte: *Bertha von Suttner. Ein Leben für den Frieden*, München 1986.

³¹ *Die Waffen nieder!* 1889.

figures of the international peace movement. The movement, mainly supported by intellectuals, reached its peak of popularity in the second half of the century. Some of its representatives, including Nobel prize winners von Suttner and Alfred Hermann Fried, placed much hope in the Hague Peace Conferences of 1899 and 1907, believing that they will bring about lasting world peace by giving priority to disarmament and by establishing obligatory arbitration for international disputes likely to generate armed conflicts. In contrast to von Suttner and some other pacifists, however, Lammasch did not share utopian concepts. He was a realist facing the facts as they were. In his last public speech he said: "I do not believe in the eternal peace, but I do believe that I have to undertake everything leading to it."³²

In 1911 Lammasch was elected to the European Council of the Carnegie Foundation for International Peace. He also joined the so called "Meinl" group, a political circle of Austrian intellectual pacifists, established by the businessman *Julius Meinl* in 1915.

The group served as a platform for public debates and for peace initiatives aiming at the termination of World War I. One of the outstanding members of the group was the politician and university professor in Vienna and at Harvard, Joseph Redlich, member of the Progressive Party and of the Imperial Council for more than a decade. Redlich also joined the Austrian Fabians, an influential circle of intellectual reformers. Following the example of the British "Fabian Society", Fabians were striving for a humane socialism. They refused the ideas of class struggle, Marxism and revolution. One of the most famous Fabian was Michael Hainisch, who was later elected Federal President of Austria.

Lammasch was equally active within the Inter-Parliamentary Union. His engagement was highly appreciated by the members of the IPU. In 1910 the IPU organised an official dinner in honour of the international lawyer Lammasch in Vienna.³³

In his essay „On the Chances for a Lasting Peace”³⁴ Lammasch reminds his readers of the fact that since the Middle-Ages peace treaties between Christian Powers have been signed with the clearly declared intention to preserve peace for ever (*“paix à perpétuité”*). Raising the question how durable peace would be after the end of the war (World War I), Lammasch expresses the view that for a variety of reasons peace will last for at least thirty to forty years this time. He believed that peoples were tired of war and national economies were exhausted. Unfortunately, he was rash in his judgement...

In the years 1917 and 1918³⁵ Lammasch addressed three famous "Peace-Speeches" to the Austrian Upper House³⁶.

In the first speech delivered on 28 June 1917 he was seeking the grounds for the failure to sustain lasting peace. He recognized one of them in the policy of "guarantees" practiced in

³² Quoted *ibid.* p. 3.

³³ Hamann, *op.cit.* p. 405.

³⁴ Published in: *Deutsche Revue* 1917 and reprinted in "Europas elfte Stunde", pp.105-116.

³⁵ Erste Friedensrede im Herrenhause des österreichischen Reichsrats am 27. Juni 1917; Zweite Friedensrede im Herrenhause des österreichischen Reichsrats am 27. Oktober 1917; Dritte Friedensrede im Herrenhause des österreichischen Reichsrats am 28. Februar 1918. In: *Europas elfte Stunde*, pp. 135 – 172.

³⁶ The „Herrenhaus des Reichsrates“ was the Upper House of the Austrian (Cisleithanian) Parliament after the Compromise with Hungary in 1867.

peace treaties in the past, which consisted primarily of the annexation of territory. They may have been justified at the time. Lammasch stressed, however, that forced cessions only sowed the seeds of new conflicts. Another reason for new wars lay in the arms race. Moreover, Lammasch did not spare diplomats the reproach of mocking the compliance in good faith with treaty obligations.

In his second address to the Upper House on 27 October 1917 Lammasch castigated the tendency to crush or at least to humiliate the enemy. He also condemns effervescent nationalism and calls for the creation of an international organisation and the peaceful settlement of disputes.

In his last peace speech given on 28 February 1918, Lammasch emphatically defended the desire of the Austrian people to make peace. He considered President Wilson's Fourteen Points as well as his reactions to the tentative moves of the Imperial Government towards peace being a good and promising basis for peace talks and appealed to his fellow senators to listen to the voice of the peoples, of humanity and reason, to the teachings of Christianity and to the appeals of Pope Benedict XV. The years of rallying calls were definitely over. Time has come to seek peace.

The military authorities of the Monarchy observed Lammasch's pacifism with suspicion. In April 1918 the Counterintelligence Office - Enemy Propaganda Unit of the K.u.K.. High Command reported to the War Ministry about a speech of Karl Kraus, editor of the critical journal "Die Fackel", in which the speaker praised Lammasch as an upright pacifist.³⁷ The report reproached Kraus among other things for his celebration of Lammasch and urgently recommended the Ministry to prohibit military persons to attend such events. A few days before a forged letter of an unknown "patriot" was addressed to the High Command expressing the indignation of the writer at Kraus's speech allegedly appealing to the army officers present at the meeting to shatter their sabres. War Minister Stöger-Steiner immediately informed the police and went even so far as to notify Prime Minister von Seidler of the incident. The investigation went on and on and lasted until October 1918 when Lammasch took over the office of Prime Minister. As a result, the War Minister's letter of 10 April was answered by the new Prime Minister. Lammasch informed the minister on 31 October that the allegations against Kraus turned out to be untrue.³⁸ The Prime Minister's letter undoubtedly put the War Minister in an embarrassing situation...

Lammasch's pacifism was closely related to the concept of neutrality. States that did not want to be involved in a specific war or in wars in general had the right to stay neutral. In an essay entitled "The Right of Neutrals to Mediation"³⁹ he stood up for a loose "Alliance of Neutrals" composed of peace-loving nations. Membership in the Alliance may vary depending on the attitude of states to a particular war. However, to be effective it would be necessary that the Alliance had a permanent core of neutrals consisting of states like Switzerland, Belgium and the Scandinavian countries. It would, of course, also be desirable that at least one of the big powers join the states constituting the core. In Lammasch's opinion the United States would

³⁷ Die Fackel, No. 508-513 (April 1919) pp. 81-82.

³⁸ Ibid. pp. 103-104.

³⁹ Das Mediationsrecht der Neutralen, in: Österreichische Zeitschrift für Öffentliches Recht, II, 1915, pp. 205 et seq.

supposedly be a good candidate not least with regard to the Monroe-doctrine. In any case, the Alliance should have the authority and be strong enough to persuade parties to a conflict to postpone the actual hostilities until the mediators have presented their proposals for the peaceful settlement of the actual dispute. The Alliance should make it clear to the parties to the conflict that it is determined to treat differently the party unwilling to comply with the moratorium and the recommendations of the mediators.⁴⁰

Lammasch at the Hague Peace Conferences of 1899 and 1907⁴¹

At the Hague Peace Conferences of 1899 and 1907 Lammasch served as assistant delegate and legal adviser of the Austro-Hungarian Delegation. For him it was a great chance and particular challenge to implement his scholarly skill in the drafting of conventions. He was in the company of such outstanding colleagues as Antonio Sanchez de Bustamante (Republic of Cuba), José de la Rica y Calvo (Republic of Ecuador), Cecil Hurst (Great Britain), Frédéric de Martens (Russia) and Max Huber (Switzerland).

The champions of the international peace movement set their hope on Czar Alexander II, who had initiated the convening of the Hague Conferences. The Czar's intention was to promote disarmament and to set up an international mechanism of peaceful settlement of disputes between states. The peace movement expected that by making such procedures compulsory international peace and security could be preserved. Though the movement had strongholds also in Germany and Austria, its reputation in governmental circles was little. From the very outset, the German delegation strictly refused any proposal of disarmament. After the Franco-German war of 1870-71 Germany considered France its genuine and dangerous enemy forcing the Imperial Government to strengthen their army. At the same time Germany was to engage in a large-scale development programme of its naval forces risking thereby an unprecedented arms race with Great Britain. With this policy the German government ran the risk of being isolated. The Austro-Hungarian delegation initially was inclined to follow a more moderate policy. After massive pressure by the German ally however it changed its attitude and joined the German position.

Bertha von Suttner welcomed Czar Alexander's initiative. She attended both Hague Conferences. She had hoped that her old friend Lammasch would be able in his position as legal adviser to exercise his influence on the delegations in order to promote the idea of lasting peace. However, Lammasch disappointed Bertha von Suttner's expectations⁴². She complained that his "legalistic approach" rather impeded than promoted the goals of the peace movement.

One of the items of the First Hague Peace Conference of 1899 proposed by the Russian Foreign Minister Count Mouravieff⁴³ was the "acceptance, in principle, of the use of good offices, mediation, and voluntary arbitration in cases where they are available, with the purpose

⁴⁰ Ibid. Quoted by. Verosta, op.cit. pp. 279-280. See also „Das Völkerrecht nach dem Kriege" op.cit. pp. 191 – 195.

⁴¹ Rosenne, Shabtai: The Hague Peace Conferences of 1899 and 1907 and International Arbitration, Reports and Documents, The Hague 2001.

⁴² Hamann, op.cit. pp. 264 et seq.

⁴³ See Russian Circular Note of 30 December 1898 reprinted in: Rosenne, op.cit. pp. 24 - 26.

of preventing armed conflicts between nations”.⁴⁴ It is worthwhile to note that in the Explanatory Note Concerning Article 5 of the Russian Draft the Russian delegation referred to the interest of neutrals requiring “that mediation should be proposed by them not only to end a war already begun, but above all to *prevent* the outbreak.”⁴⁵ The note also underlines that “The theory of international law, as shown by its most highly respected representatives, such as Travers Twiss, Phillimore, Pradier-Fodéré, Martens, and others, has for a long time considered mediation as a *duty on the part of neutral States*. The Peace Conference will perhaps deem it useful to proclaim this duty before all humanity, so that mediation will be given the value of a powerful instrument of peace”.⁴⁶

The British delegation submitted another proposal to the same item supported by the delegation of the United States.

The question actually was referred to the Third Commission. The Commission constituted a special Committee of Examination. Heinrich Lammasch was a member of the Committee together with Baron Descamps of Belgium serving as chairman, T.M.C. Asser of the Netherlands, Baron d’Estournelles of France, F.W. Holls of the United States, F.F. Martens of Russia, Edouard Odier of Switzerland and Ph. Zorn of Germany.⁴⁷ The Committee held its session from 26 May to 21 July 1899. According to the Committee’s mandate they had to draft a convention for the pacific settlement of international disputes. The task assigned to the Committee was an ambitious one since it was for the first time that rules regarding the peaceful settlement of international disputes were to be adopted on a multilateral scale. The work in the Commission demanded a lot of diplomatic skill, legal authority and creativity from those engaged in the drafting. The most controversial issue of the negotiations was the question whether the jurisdiction of the planned Court of Arbitration should be compulsory or voluntary. Again, it was the German delegation which refused to accept the compulsory jurisdiction. Since according to the rules of procedure decisions had to be taken unanimously, the Committee had to defer to the German wishes. At the end, the experts adopted a Draft Convention for the Pacific Settlement of International Disputes which was submitted first to the Third Commission and later on to the Plenary of the Conference⁴⁸. The Conference adopted the Convention unanimously without vote. Lammasch was disappointed with the results of the Conference. As a member of the Austro-Hungarian Delegation however he had to stick to his instructions even though he did not always agree with them.

At the Second Hague Peace Conference in 1907 four Commissions were established. The First Commission had three items on its agenda: a) improvements to be made to the provisions of the Convention relating to the pacific settlement of international disputes, b) international commissions of inquiry and questioned relating thereto and c) questions relative to maritime prizes. Lammasch - member of the Permanent Court of Arbitration since 1900 - worked under the authority of this Commission. His situation was difficult. Even though he enjoyed the highest esteem on behalf of his fellow delegates, he was not free to speak out his personal views. Among other things, he could not plead as strongly as he wanted to for the obligatory

⁴⁴ Item 8.

⁴⁵ See Rosenne, op.cit. p. 96.

⁴⁶ Ibid. See also Lammasch: Das Völkerrecht nach dem Kriege, op.cit. pp. 191-195.

⁴⁷ Rosenne, ibid. p. XVIII.

⁴⁸ Report to the Conference from the Third Commission on Pacific Settlement of International Disputes, reprinted in: Rosenne, op.cit. pp.29 – 129.

mediation and arbitration. He was bound to his instructions. At some point he even offered his resignation to the head of his delegation.

The Second Peace Conference eventually adopted a new convention on the peaceful settlement of disputes which however did not bring about major changes in the text.⁴⁹

At this juncture, mention should also be made of the endeavours undertaken by some delegations to adopt a project recommending the creation of a “Court of Arbitral Justice”. The Conference could only agree on a recommendation containing the principle of compulsory arbitration. The recommendation had its follow-up in a “voeu” of the Christiania Session of the Institute of International Law in 1912. Lammasch was the rapporteur of the document which regarded it highly desirable that the recommendation of the Second Hague Peace Conference in favour of the establishment of a court of arbitral justice be implemented.

Lammasch considered the outcome of the Hague Conferences to be rather theoretical than practical. What he criticised most was the voluntary nature of both, mediation procedures and arbitration. To make use of them or simply to ignore them remained within the discretion of states. As he put it, the implementation of those procedures was at the “bon plaisir” of the contracting powers.⁵⁰ He therefore believed that it would be necessary 1) to make mediation and arbitration compulsory, 2) to provide sanctions for states refusing them and 3) that sanctions should be imposed by an association of states sufficiently large to be effective.⁵¹ Otherwise the Hague rules for preserving peace would remain dead letters.⁵²

Lammasch at the Permanent Court of Arbitration

The Permanent Court of Arbitration came into existence on 19 September 1900. As already mentioned, Lammasch had been a member of the Court from the very beginning. He served as arbitrator in four cases and held the chair in three of them.

In the dispute between Venezuela on the one hand and Great Britain, Germany and Italy⁵³ on the other the latter states claimed compensation for damages caused to their nationals and their property. In 1903 the parties eventually agreed to submit the case to a court of arbitration composed of members of the Permanent Court of Arbitration. The arbitral tribunal consisted of the judges Mourawieff, F. de Martens and Lammasch. In the award rendered on 22 February 1904 the tribunal confirmed the obligation of Venezuela to pay preferential compensation to the claimants to the extent of 30 % of the customs revenues received at the harbours of La Guayra and Puerto Cabello.

⁴⁹ “Report to the Conference from the First Commission Recommending the Creation of a Court of Arbitral Justice” and “Report to the Conference from the First Commission on the Revision of the Convention of 1899 for the Pacific Settlement of International Disputes”, both published in: *Rosenne*, op.cit., pp. 169 - 399.

⁵⁰ *Die Fackel*, Ibid. p. 9.

⁵¹ Ibid. p. 10.

⁵² Ibid. p. 8.

⁵³ Steiner, Otto: *Venezuela-Streitigkeiten*, in: *Wörterbuch des Völkerrechts*, vol. 3, Berlin 1962, pp. 486 – 487.

In the Muscat Dhows case⁵⁴ Britain claimed that the issuing of documents by France to subjects of the sultan of Muscat authorising their use of the French flag promoted slave-trading activities and therefore ran counter the 1890 General Act of Brussels on the Suppression of Slave Trade. In the compromise of 13 October 1904 Britain and France agreed to submit the case to the Permanent Court of Arbitration. The arbitral tribunal chaired by Lammasch rendered its award on 8 August 1905. In the view of the tribunal "it belongs to every sovereign to decide to whom he will accord the right to fly his flag and prescribe the rules governing such grants". Therefore the authorization given by France constituted "no attack on the independence of the sultan". However Art. 30 of the Brussels General Act provided that the right to fly the flag of a signatory state should in future be restricted to its subjects or to persons protected by the flag state. In the meantime the freedom of a state to permit a ship to fly its flag has been limited by Art. 91 of the 1982 UN Convention on the Law of the Sea calling for a genuine link between the State and the ship.

Lammasch was also engaged in the Orinoco Steamship Co. arbitration composed of the members of the Permanent Court of Arbitration Lammasch, Bernaert and Quesada with Lammasch as chairman. The decision taken by the tribunal came to considerable fame as a milestone in the development of international arbitration⁵⁵. The arbitral tribunal was established following an agreement between the United States and Venezuela in 1909. The United States previously refused to accept the award of the American-Venezuelan Arbitral Commission, which in its judgement applied the municipal law of Venezuela in a number of questions contrary to the protocol of compromise of 1903. The United States held that the Commission made important errors of law and of fact. The Arbitral Tribunal annulled in part the award and obligated Venezuela to pay an additional amount of \$ 64.000 to the Orinoco Steamship Co. It was for the first time that an arbitral tribunal declared void part of an international arbitral award.

In the Newfoundland Fisheries Dispute⁵⁶ between Great Britain and the United States the parties signed a special agreement on 27 January 1909 to the effect that seven questions arising out of the dispute concerning the convention of 20 October 1818 between the two States should be submitted to the arbitration of a tribunal selected from the panel of the Permanent Court of Arbitration.⁵⁷ The Tribunal was composed of A.F.de Savornin Lohman, Dr.Luis M. Drago, Judge George Gray, Sir Charles Fitzpatrick, and Heinrich Lammasch who chaired the Tribunal. The Tribunal announced its decision on 7 September 1910. In answering the questions put to it the Tribunal confirmed the inherent right of Great Britain to regulate the exercise of the liberty to fish on certain parts of the coasts of Newfoundland without violating the convention. According to the Tribunal citizens of the United States have the right to employ as crew members of their vessels persons not being citizens of the United States. The citizens of the United States should not be subjected either to certain formalities or to light, harbour or other dues and that they shall be allowed under the convention to enter bays and harbours on the non-treaty coast for the purpose of shelter, of repairing damages or purchasing goods and of obtaining water supply. The decision furthermore asserted the right of those fishermen to take, dry or cure fish on or within three marine miles of any of the

⁵⁴ P.Seidel: The Muscat Dhows, in:Encyclopedia of Public International Law (EPIL), vol. 3, 1997, pp. 484-485.

⁵⁵M. Höpfner: Orinoco Steamship Co. Arbitration, in:EPIL, vol. 3, 1997, pp. 834 - 835.

⁵⁶ F.Münch: North Atlantic Coast Fisheries Arbitration, EPIL, vol. 3, 643-646.

⁵⁷ G.H.Hackworth: Digest of International Law, vol. I, Washington 1940, pp. 786 seq.

coasts, bays, creeks or harbours of the United Kingdom's Dominions in America and the liberty thereof of fishing in the bays, creeks and harbours of the Treaty coasts of Newfoundland and the Magdalen Islands. Finally the Tribunal affirmed that the inhabitants of the United States whose vessels resort to the fishing grounds are entitled to the commercial privileges in those coasts accorded to United States trading vessels "provided the Treaty liberty and the commercial privileges are not exercised concurrently".

The carefully worded decision of the arbitral tribunal which put an end to a long lasting dispute between the United States and Great Britain was considered satisfying and just by both parties. The award contributed significantly to the development of the law of the sea, in particular of the legal status of bays. It was generally praised as a moderate, wise and durable solution of the controversy.

The Carnegie Foundation for International Peace expressed its appreciation by inviting Lammasch to the Advisory Council of its European Organisation and to its Executive Board. On his return from The Hague, Lammasch was honoured by a gala dinner organized by a Committee of politicians and scientists. Ambassador Kerens of the United States and the British chargé d'affaires Hon. Theo Russel were among the prominent guests attending the meeting.

In preparation of the Third Hague Peace Conference, Lammasch published an article in the „*Frankfurter Zeitung*“ of 22 March 1914⁵⁸. Referring to the wars on the Balkans, he expressed the view that the first war was inevitable since Turkey had been unable to replace its rigorous military regime by a civil administration. On the other hand he thought that the second war could have been avoided. Despite the two wars Lammasch maintained that it was incorrect to talk about the bankruptcy of international law. He rather considered it a challenge for the theory and practice of international law to further develop existing institutions helping the international community to avoid similar "sins" in the future.⁵⁹ The pessimistic thoughts about the efficacy of international law very much remind us of similar arguments coming up regularly in times of international crises like World War I and World War II or even more recently in the aftermath of the terrorist attacks of 11 September 2001 against the World Trade Center in New York and the Pentagon in Washington D.C., when some writers urged the reconsideration of established rules of international law.

Lammasch, the Politician and Last Prime Minister of the Austro-Hungarian Monarchy

Lammasch's political experience dated back to 1889 when he became a member of the Austrian Upper House (Herrenhaus) in Vienna. He belonged to the political group of Christian Socials. In his political views he was conservative, faithful and supportive to the Monarchy, which in his eyes was the only guarantor of the unity of the Empire. He was convinced that the Monarchy could only survive if peace is preserved. Lammasch therefore raised his voice against war propaganda already long before the outbreak of World War I. He felt deep distrust of those in the highest military and political circles in Berlin and in Vienna who claimed that war was inevitable. Throughout the war Lammasch consistently spoke out for peace. In his

⁵⁸ Verosta, op-cit. p. 438.

⁵⁹ Verosta, ibid. pp. 438-439.

famous three “Peace Speeches” delivered in the Upper House in 1917 and 1918 he courageously confessed his commitment to the cause of peace.

On 21 June 1917, the Prime Minister of the Empire, Count Clam-Martinitz resigned. Emperor Charles I looking for his replacement attempted to persuade Lammasch to take the burden of the office, but Lammasch did not accept. In his stead Dr. Ernst von Seidler was appointed Prime Minister who remained in office for over a year.

In February 1918 a “Conference of Professors” took place in Switzerland. Lammasch attended the conference as an informal spokesman of the Emperor. On that occasion Lammasch approached the “US representative”, Professor George D. Herron, suggesting President Wilson to make a public declaration on the promising announcements recently made by Austria which showed that the Dual Monarchy is on the way towards granting “self-determination” to its peoples. However, Lammasch’s initiative failed to the extent that Herron played the ball back by proposing that Austria should make the first step and announce a programme of national autonomy.⁶⁰

On 27 July 1918, parliamentary intrigue forced the “care-taking” Prime Minister von Seidler to resign. His successor Hussarek tried his best to save the Empire. Upon his initiative the Emperor issued a Manifesto on 16 October proclaiming the conversion of Austria into a multinational federal state. The idea behind was to build a “federation of free peoples” based on the principle of self-determination. Each nation within the Monarchy should have its own national government and its own legislation. Yet, the Manifesto came too late. The Czech National Council in Paris was the first to declare on 16 October the independence of the Czechoslovak State. The German part of Austria was next to do the same on 21 October.

In October 1918 the Austro-Hungarian Monarchy was in agony. After the Seidler-Hussarek cabinet had offered its resignation, Emperor Charles eventually succeeded to win Lammasch for the office. Lammasch was appointed Prime Minister and took office on 27 October.⁶¹ It turned out to be the last of the Monarchy. In the public opinion Lammasch was considered to be unworldly and devoid of any political experience. In view of his reputation and personality, however, he appeared to be the right man in the right place to initiate peace talks.⁶² In fact, the new government was unable to change the course of events. It was too late for keeping things under control.

Particularly eminent members of Lammasch’s cabinet were Redlich and Seipel. Josef Redlich, politician and one of Lammasch’s companions in the Meinl-group, became Minister of Finance, Ignaz Seipel, catholic priest, professor of moral theology, leader of the Christian Social Party and chancellor in the nineteen-twenties took over the Ministry of Welfare.⁶³ The Lammasch cabinet did not last long. Events happened thick and fast. On 28 October the last K.u.K. Foreign Minister Count Gyula Andrassy sent a message to US Secretary of State Robert Lansing asking him to mediate an armistice and to accept separate peace talks. On 8 November Lammasch and his cabinet members offered their resignation to the Emperor at

⁶⁰ Brook, Gordon-Shepherd: *The Last Habsburg*, New York, 1968, p. 136 footnote.

⁶¹ Brook-Shepherd, *op.cit.* p. 179; *Robert A. Kann*, *A History of the Habsburg Empire 1526-1918*. pp. 493-494.

⁶² Hantsch, Hugo: *Die Geschichte Österreichs*, vol. II, Graz-Wien-Köln 1962, p. 540.

⁶³ *Ibid.*

Schönbrunn. Although the emperor refused to dismiss the cabinet this time, Lammasch ultimately resigned on 11 November, the day when the Emperor stepped down and accepted in advance the decision of German-Austria on the form of government.

Lammasch and the State Treaty of St. Germain-en-Laye

As the legal expert of the Austrian delegation at the peace negotiations with the Entente at St. Germain-en-Laye Lammasch supported the foundation of the League of Nations. As a matter of fact, the Covenant contained most of the ideas advocated by Lammasch in the years before.

According to Art. 12 Members of the League agreed that in case of dispute they will submit the matter either to arbitration or judicial settlement or to enquiry by the Council and that they will “in no case to resort to war until three months after the award by the arbitrators or the judicial decision, or the report by the Council”. Art. 14 provided the creation of a Permanent Court of International Justice. The Court was competent “to hear and determine any dispute of an international character which the parties thereto submit to it” (Art. 13). The Members further agreed to carrying out “in full good faith any award or decision that may be rendered, and that they will not resort to war against a Member of the League which complies therewith”. Pursuant to Art. 16 in case that any Member of the League should resort to war in disregard of its covenants under Articles 12, 13 or 15, it shall *ipso facto* be deemed to have committed an act of war against all other Members of the League.

Thus the Covenant obliged the member states to seek peaceful settlement of their disputes even though it did not abolish the right to war completely. In so far the Covenant even followed Lammasch’s more modest concept of preserving peace within the limits of what appeared to be reasonable and possible at the time.

The Covenant undoubtedly was a milestone in the development of modern international law that could not have been achieved without the painful experience of World War I. Lammasch seemed to be quite satisfied with the progress made by the adoption of the Covenant as showed his essay on “The League of Nations”⁶⁴ published a few months before his death. The State-Treaty of St. Germain, however, brought the era of which Lammasch undoubtedly was a prominent representative to an end.

Erich Kussbach: Heinrich Lammasch – un grand juriste international et homme d’État autrichien

Heinrich Lammasch (1853-1920), professeur de droit pénal et de droit international public à l’Université d’Innsbruck d’abord et à l’Université de Vienne dans la suite, était membre du Sénat du Parlement autrichien et dernier Premier Ministre de la Monarchie en 1918. Après la Première Guerre mondiale Lammasch participa aux négociations du Traité de St. Germain-en-Laye en sa qualité de conseiller juridique de la délégation autrichienne.

En tant qu’érudit du droit international public, Lammasch publia plusieurs essais et livres célèbres tels que «Chrétienté, droit des gens et préservation de la paix» (1915), «L’alliance

⁶⁴ Der Völkerbund, 1919.

future de paix » (1916), « Qui est le premier pacifiste ? » (1917) « Le Droit des gens après la guerre » (1917), « Les Chances d'une paix durable » (1917), « L'Alliance de paix des États » (1918) et « L'Onzième heure de l'Europe » (1919). En 1887 Lammasch fut élu membre de l'Institut de Droit International.

En 1899 et 1907 Lammasch fit partie de la délégation autrichienne auprès des Conférences Internationales de la Paix à La Haye. Membre de la Cour Permanente d'Arbitrage dès le début, Lammasch présida la Cour dans les affaires « Boutres de Mascate », « Pêcheries des côtes septentrionales de l'Atlantique » et « Compagnie des bateaux à vapeur 'Orinoco' ». En outre, il fut arbitre dans « l'Affaire du Droit de préférence réclamé par les Puissance bloquantes au Venezuela ».