

## 206 The Congress of Comparative Law at the Hague\*

By MELQUIADES J. GAMBOA

The Congress of Comparative Law was held at The Hague from August 2 to August 6, 1932. Before the Congress took place the opinion was expressed that it was destined to be unique in the history of international legal relations. It was in fact the first truly international conference of lawyers. A similar meeting was held in 1904 at the Louisiana Purchase Exposition in St. Louis but I understand the representation was mostly local. In the present case practically every nation of importance was represented.

The Congress was held under the auspices of the International Academy of Comparative Law. This Academy was founded at Geneva in 1925 and includes some eighty of the most eminent jurists of the world. Following are the regulations adopted by the Academy of Comparative Law to govern the first congress and future congresses:—

### Art. I.

In conformity with Resolutions passed by the International Academy of Comparative Law at Its Plenary Sessions in 1929, 1930, 1931, there will be held periodically an International Congress of Comparative Law, organized and directed by the said Academy. The first Congress will be held at the Hague from 2 to 6 August, 1932.

### Art. II.

Every second year the Bureau of the Academy will call together experts selected from different countries in order to formulate proposals for the next Congress.

### Art. III.

The *Bureau* of the Congress will consist of the Bureau of the Academy with the addition of eminent jurists of different countries, selected with a view to securing the representation of the chief legal systems of the world.

### Art. IV.

The Congress will be divided into Sections to be determined by the Bureau of the Academy, in such a manner as to distribute into groups the various problems for discussion. The presidents and other officers of each Section will be chosen by the Bureau of the Academy with a view to securing the representation of the chief legal systems of the world.

---

\* This is a portion of the report of Prof. Gamboa, who represented the University of the Philippines College of Law in the Congress of Comparative Law at the Hague, Aug. 2-6, 1932.

## Art. V.

The sections will meet simultaneously. A report of the proceedings of each Section will be made to a General Meeting at the close of the Congress.

## Art. VI.

The meetings of the Sections will be open to all Members of the Congress.

## Art. VII.

In addition to the Meetings of the Sections there will be two General Meetings, one at the beginning, the other at the close of the Congress.

## Art. VIII.

The official languages of the Congress will be English, French, German, Italian, Spanish.

## Art. IX.

The general reporters will read or summarise their reports. The maximum time allotted to each reporter will be three quarters of an hour.

A discussion will follow the reading of the general report pertaining to the same subject.

No speech shall exceed ten minutes. No one shall speak more than twice upon the same occasion without special leave.

## Art. X.

Every member of the Congress who has made a speech shall furnish the Secretariat of the Section with a written summary of his speech with a view to the preparation of the *proce-Verbal*.

## Art. XI.

A diploma admitting to the Congress will be issued by the Bureau on the payment of the subscription fixed by the said Bureau (twelve Dutch florins).

## Art. XII.

The proceedings of the Congress will be published in the *Acta* of the Academy. This publication will include the general reports and, so far as possible, the special reports.

## Art. XIII.

Nevertheless, the authors of the special reports prepared for the Congress retain the right to publish them on their own account in their respective countries. The Academy has the sole copyright in all reports published in the Proceedings.

The Academy could not have chosen a more fitting place for the first Congress than the Hague, the scene of many international conferences during the last few decades and the birthplace of many international institutions of utmost importance. All the sessions of the Congress except the opening and the closing ones were held at the famous Peace Palace. This

magnificent edifice accommodates the Permanent Court of Arbitration, the Permanent Court of International Justice, the Academy of International Law and a Library bearing on international and municipal law.

Various were the objectives in the minds of the persons responsible for the holding of the Congress. Some dared to hope that it might lead to the promulgation and adoption of an international civil code. This, in the humble opinion of the undersigned, is too idealistic—as impracticable as it is undesirable. Others saw in it a splendid opportunity for a world-wide permanent co-ordination of the legal profession. This was to be effected by the creation of an international law association to be known by some such name as the International Juristic Institute or, the International Federation of Jurists. Still others had in mind the establishment of an office of international documentation whose function would be to facilitate the exchange of information between different countries on the progress of the law. The rest of the promoters of the movements simply desired that all nations should cooperate in understanding the legal systems of each other by comparing and contrasting them, and improving them by an interchange of ideas.

More than 50 countries, including the Philippines, were represented at the Congress.

The accredited delegates and auditors numbered about 350. The following are a few of the internationally known jurists who were in attendance:

S. E. J. Donner, Ministre de la Justice, La Haye.

S. E. M. le Prof. A. S. de Bustamante, Membre de la Cour Permanente de Justice Internationale, President de l'Académie Internationale de Droit Comparé.

S. E. Mineiteiro Adatci, Président de la Cour Permanente de Justice Internationale, Membre de l'Académie du Japon.

S. E. Rafael Altamira y Crevea, Juge a la Cour Permanente de Justice Internationale, Doyen de la Faculté de Droit de l'Université de Madrid.

S. E. M. le Prof. Dionisio Anzilotti, Juge a la Cour Permanente de Justice Internationale.

The Rt. Hon. Lord Hanworth, K. B. E. Master of the Rolls, London.

M. le Prof. E. Heymann, Secrétaire perpétuel de l'Académie Prussienne, Berlin.

S. E. B. C. J. Loder, Ancien Président de la Cour Permanente de Justice Internationale, Conseiller de la Cour Supreme des Pays-Bas.

S. E. p. Matter, Membre de l'Institut de France, Procureur Général pres de la Cour de Cassation.

S. E. M. le Prof. Rodrigo Octavio, Président de la Cour Supreme du Brésil, Rio de Janeiro.

S. E. Alfredo Rocco, Ministre d'Etat, Professur a la Faculté de Dreit de l'Université de Rome.

S. E. M. le Comte Michel Rostworowski, Juge a la Cour Permanente de Justice Internationale.

S. E. M. le Prof. Walter Schucking, Juge a la Cour Permanente de Justice Internationale.

Prof. James Brown Scott, President of the American Institute of International Law, Secretary of the Carnegie Endowment for International Peace.

S. E. M. Francisco—José Urrutia, Juge a la Cour Permanente de Justice Internationale.

S. E. M. Wang Chung-Hui, Juge a la Cour Permanente de Justice Internationale.

Prof. John H. Wigmore, Northwestern University, Chicago.

M. Henry Lévy-Ullmann, Vice-Président de l'Académie Internationale de Droit Comparé, Professeur á la Faculté de Droit de l'Université de Paris.

Prof. R. W. Lee, D. C. L. Oxford.

Prof. Sir William Holdsworth, K. C., D. C. L. Oxford.

MM. Prof. E. Balogh, Secrétaire Général de l'Académie Internationale de Droit Comparé.

The opening and closing meetings were plenary sessions attended by all the delegates and auditors. The other meetings were sectional sessions. The Congress was divided up into 5 sections. Papers were read at these sectional meetings by general and special reporters. The reading of the report was followed by a general discussion. Section 1 which was known as the general section dealt with the various sources of law, their relation to one another in different systems; international documentation; the Roman and Germanic elements in modern systems of law; and the relation of law and religion in the State. Section 2 covered the field of Private Civil Law and Procedure and embraced such topics as the relation between Civil and Commercial Law in different legal systems; tortious responsibility in different jurisdictions; contracts; and declaratory judgments.

In Section 3 the subjects treated were those related to commerce and shipping; copyright and patents. One division under this section was devoted to newspaper copyright. Another division was devoted to limited liability companies; the voting shares of shareholders; the protection of minorities, etc. Still another division took up the subject of bank credits. The last, but certainly not the least division in this section, discussed the question of radio-broadcasting. Section 4 was confined to Public Law and Criminal Law. The reports read in this section treated of the responsibility of a state in its internal law; the advantages and disadvantages of administrative law; the unification of the rules relative to extradition; and the delicate question of the application of the criminal law of a country to criminal acts committed by foreigners outside its jurisdiction. Section 5 was devoted to International Law both Public and Private. Under this Section were taken up the subjects of the execution of foreign judgments; conflicts of laws relating to Civil Marriage, Religious Marriage and Marriage "de facto,"; the nationality of commercial corporations; and the methods of concluding international treaties.

The closing session like the opening one was held at the Hall of Knights, (Salle des Chevaliers, Binnenhof). At this session the results of the sectional meetings were summarized and reviewed.

As the sectional meetings were held simultaneously it was not possible for a member to attend all of them. One had to choose which section to belong to according to his personal interest and the problems of the institution he represented. The writer attended the meetings of Section 1 as a rule, going only to the other sections whenever it was more profitable to do so on account of the renown of the reporter or the special importance of the subject. The undersigned chose to devote more time to Section I than the others because in his opinion the question of the interaction of the Roman, the Common and the Mohammedan Legal Systems in the Philippines and their consequent blending is a very serious one and needs careful study.

There were no less than 62 general reporters (that is, those who submitted the principal papers) and 210 special reporters or delegates who submitted additional material. In addition to these specially prepared reports a great number of the delegates present at the various meetings contributed extemporaneous remarks or comments on the topics discussed. The variety of opinions exchanged was astounding. The keynote of

the deliberations may be found in the following words of one of the sectional chairmen in his presidential address: "We have come to this Hall from every quarter of the globe" said he, "and practically every civilized system of law has here its representative. 'Variety's the very spice of life, that gives it all its flavour' as the English poet Cowper has said, and much of the value and interest of our conference resides in the diversity of the views which its members can contribute. But while the nations to which we belong may be separated in space and in race, we have in our common devotion to the science of the law a bond which unites us all. Without that bond, which enables us to understand and share each other's problems and aspirations, our assembly would be as barren of achievement as the concourse of nations which gathered to build the Tower of Babel. The unity of creed which makes it profitable for us to meet and compare our legal doctrines lies in the faith which we all share that civilization cannot exist, far less progress, except in a society based on just laws justly administered." He continued by citing Viscount Hair who once declared "No man can be a knowing lawyer in any nation who hath not well pondered and digested in his mind the common law of the world."

In view of the tremendous bulk of the materials submitted at the sessions it is impossible to even just summarize all of them here. It is hoped that in due time the Academy of Comparative Law will publish a complete account of all the proceedings of the Congress. In the meantime let it suffice to include here only a summary of some of the most important papers. They may at least give an idea of the nature and trend of the deliberations.

Typical of the papers read and discussed in section 1 under divisions I and 4 was the report of Lord MacMillan, member of the Judicial Committee of His Britannic Majesty's Privy Council. His subject was "Scots Law as a subject of Comparative Study." There is so much similarity in the origin, development and character of Scots Law and Philippine Law that it is deemed profitable to embody in this report profuse excerpts from the said paper. "The history of Scots Law has still to be written" said the learned judge in the course of his address, "but I venture to say that few topics present a more interesting field of study in legal origins. Modern Scottish jurisprudence is remarkable in that it retains so few traces of primitive native custom, and furnishes an example of a system almost entirely imported from outside sources, and subsequently moulded

and developed to suit the national genius. The earliest importations were Anglo-Saxon; these were followed by Norman feudalism; while the Church brought with it the principles of the Canon Law. . . . As Scotland geographically and politically began to acquire a new and more definite status she sought to establish her own institutions and she preferred to seek her models on the continent rather than in England. She borrowed the organization of her law courts from Paris, as also the constitution of her Church Assembly while for substantive principles of her law she found in the system of the civilians, especially as expounded in Holland, a congenial source of inspiration. There was no formal adoption of Roman law in Scotland, but there was a steady infiltration of its influence which profoundly effected both the theory and the practice of Scots Law. Where the existing law failed to provide for any particular case the authority of the Roman Law was invoked, not as decisive but as persuasive, and generally prevailed. . . .

The contrast between the two systems (the English and the Scottish) is most instructive. Although in these modern times, when law is so largely the creature of statute and is so much more concerned with commercial and social questions on which the two countries have now a common body of legislation, the old distinctions have been much obliterated, the background of the two systems remains fundamentally different. To the study of comparative law an examination of this contrast could not fail to be illuminating, for the contrast is that between the two main schools of legal thought, the logical and the empirical. . . .

But while the civil law thus received the devout homage of the lawyers of the Scottish legal renaissance it would, as I have pointed out, in no sense be true to say that Scots Law either originally or at the present day, is a mere reflection of the law of Rome. . . . Transplanted doctrines developed modifications in their new habitat in accordance with the strongly marked idiosyncrasies of the people and the divergence increased as a resort to the continent diminished."

Perhaps what can rightly be regarded as the greatest accomplishment of the Congress was the gathering in an international confab at this time of acute economic depression of more than 300 delegates from all parts of the world among whom were some of the most illustrious jurists of the present age. This feat becomes the more remarkable when we stop to consider that it was purely an unofficial movement, that is, one

not promoted under governmental auspices. If the Congress has not done anything else but simply brought together those representatives of the various countries and made it possible for them to tell each other of their respective legal systems and current legal problems so as to discover, if possible, common principles of justice and find means of adjusting conflicts it would have more than fully justified its existence. Anybody who makes a study of comparative law cannot help but be impressed by the similarity of the problems of human relationship in different countries and the essential resemblance of the various national solutions. It is not an exaggeration to say that there was not a single delegate who attended the Congress who went home unenriched by the personal contacts he has made with other delegates and whose legal outlook has not been broadened by what he had seen and heard.

The impetus which the Congress gave to the general cause of peace and good understanding between nations cannot be over-estimated. In the words of H. G. Gutteridge, K. C., another link was forged in the chain of these international friendships which are likely to prove a much more potent factor in promoting goodwill among the nations than many of the efforts which are being directed at present towards that end." It was very inspiring indeed to see French and German, Chinese and Japanese, Greek and Italian delegates sitting together taking part in the deliberations with all earnestness but, whether agreeing or differing in their opinions, always in the spirit of true comradeship.

Whether or not the Congress has actually borne practical results in the sense of certain essential reforms being effected in some legal systems or of fundamental changes being brought about in international legal relationships time alone can tell. As already stated the Congress was not an official conference in which states or governments were represented but an academic meeting in which were represented educational and professional bodies. Its acts therefore took the form merely of expressions of opinion or recommendations.

This report would not be complete without a word at least on the hospitality of the Dutch Government and the Dutch people. At the opening of the Congress a telegram was received from Her Majesty the Queen of Holland welcoming the congressists and wishing them success in their undertaking. In the evening of the first day a reception was given by the Dutch Government in honor of the Congress. On the second day the

Municipality of The Hague was the host at another reception. On the 3rd day the Dutch Section of International Law Association invited the delegates to another reception. In the afternoon of the fourth day the Carnegie Foundation gave a thé in the gardens of the Peace Palace, and in the evening of that same day the members of the Congress were invited to one more reception given by the President of the International Academy of Comparative Law. These affairs had more than a merely social value for it was at these gatherings that one had the best opportunity of coming in close personal contact with the prominent members of the Congress.

His experience at the Congress leads the undersigned to recommend that the emphasis being given to the teaching of comparative law in our College of Law be continued. The course is given in the Graduate Course as a separate subject. In the undergraduate course if it is not possible to give it as a separate subject because of the fullness of the curriculum at least in teaching the various subjects in the present curriculum attention may be drawn whenever possible to corresponding principles in other legal systems. In this way we may not only broaden the legal outlook of the student but also train him in thinking in terms of common principles of justice.