trate an issue when an adverse decision might weaken the outer approaches to the citadel of national defense. For defense, when carried out by each state in isolation must mean not only defense against an impending attack but the anticipation of conditions under which defense might be more difficult at some future time. It is this necessity of looking to the future and to more remote contingencies that has made it impossible under the system of individual defense to draw any practical distinction between defensive and offensive wars.

At the present moment a solution of the pressing problem of the limitation of armaments is being sought at the London Conference along lines of proportionate reduction for each state according to agreed ratios. No element of coöperative defense enters into the situation. The argument proceeds wholly along the line that no one nation is any the weaker if it reduces its navy to the same relative extent that the others of the group reduce theirs. It is not in the contemplation of the conference that each and every member of the group, whatever reduction it might agree to, would be many times stronger if it could count upon assistance from others in the event of attack by a state which has refused to submit its case to the public forum of the nations. Yet while it is true that the history of the development of law within national boundaries points to the fact that security must precede disarmament, it would seem that there is a reciprocal relation between the two situations, so that the agreement to limit armaments even in slight measure in turn creates a degree of mutual confidence without which plans of unrestricted arbitration and coöperative defense cannot be brought into effective operation.

C. G. FENWICK.

THE BOLIVIA-PARAGUAY DISPUTE

Since the editorial in this JOURNAL of a year ago on the Bolivia-Paraguay dispute,[1] the Commission of Conciliation, established under the protocol of January 3, 1929,[2] has been successfully functioning in Washington. It will be recalled that the commission was (1) to investigate, after hearing both sides, what had taken place, taking into consideration the allegations set

[1] See this JOURNAL, January, 1929, page 110.

[2] As to the history of the protocol of January 3, 1929, it may be said that the Conference of American States on Conciliation and Arbitration assembled at Washington, took notice of the Bolivia-Paraguay dispute and resolved, on December 10, 1928, to call to the attention of the parties that there were adequate and effective means and organs for the solution of disputes with the preservation of peace and the rights of states, and appointed a committee to report on a plan of conciliatory action. On December 14th, the committee proposed and the conference resolved to proffer its good offices to the disputants for the purpose of promoting suitable conciliatory measures. As a result of the exchanges thus initiated, the parties signed, in Washington, the protocol of January 3, 1929. Although the protocol was fathered by the conference which concluded the Treaty of Conciliation of January 5, 1929, and while it follows the spirit of that treaty, it was not, as a matter of fact, entered into under or by virtue of that treaty.

forth by both parties, and determine which of the parties brought about a change in the peaceful relations between the two countries; (2) to submit proposals and endeavor to settle the controversy amicably, under conditions agreeable to both parties; (3) if this should not be possible, to render its report setting forth the result of the investigation and the efforts made to settle the dispute; (4) in case a conciliation could not be effected, to establish the responsibility, which in accordance with international law, might appear as a result of its investigation.

After fulfilling the first duty of investigation, the commission endeavored to conciliate the parties, which was its second duty. As a result of its efforts, the commission succeeded in obtaining a conciliation agreement between Bolivia and Paraguay, as set forth in a resolution of the commission of September 12, 1929, by which they agree to the—

1. Mutual forgiveness of the offenses and injuries caused by each of the Republics to the other;
2. Reëstablishment of the state of things in the Chaco on the same footing as prior to December 5, 1928, though this does not signify in any way prejudgment of the pending territorial or boundary question; and
3. Renewal of their diplomatic relations.

Conciliation having been effected, it became unnecessary, in the opinion of the commission, to render their report and to establish the responsibilities of the parties. The commission, therefore, on September 12, 1929, resolved as follows:

1. To consider that conciliation of the parties has been effected in the terms stipulated by the protocol of January 3, 1929;
2. Likewise to acknowledge that the parties being conciliated, the commission, in accordance with the provisions of Article 6 of the said protocol, has not established responsibilities;
3. To record its satisfaction at the lofty spirit of concord which has been shown by the Governments of Bolivia and Paraguay in removing the difficulty which arose from the incidents of the month of December, 1928;
4. To recommend earnestly to the Governments of Bolivia and Paraguay that they carry out the conciliatory measures above set forth without delay; and
5. To ask the Government of Uruguay to be so kind as to designate two officers of its army to proceed, with the consent of the Governments of Bolivia and Paraguay, to Fortín Vanguardia and Fortín Boquerón, respectively, and to be present at the execution of the measures designed to restore the state of things which existed prior to December 5, 1928.

It seems then that the mutual forgiveness of the offenses and injuries, the reëstablishment of the *status quo ante*, and the renewal of diplomatic relations were the distinguished achievements of the commission's life, extending from March 13th, when the commission first met, to September 13th, when it expired. It is clear, however, as indicated in the resolution, that the

basis of the controversy, namely, the territorial or boundary question, was left untouched by the conciliatory action of the commission.

But it must not be thought that the commission had paid no attention to the boundary question. As early as May 31st, the commission sought to obtain a mandate from the disputants to submit a plan for a settlement of the boundary question. The two governments gave their consent to this procedure as an unofficial proposal. The commission thereupon, after a careful study of the matter with the assistance and advice of experts, made a suggested plan for a direct settlement of the boundary dispute. This plan, however, was seemingly not acceptable to the interested governments, and the commission reached the conclusion that it was not possible to reconcile the divergent viewpoints of the two countries through a formula for direct settlement. Therefore, in a note of August 31, 1929, the commission submitted to the parties a proposal for the arbitration of the question in the form of a draft convention of arbitration and a supplemental protocol.

The arbitration convention provided for the establishment of an arbitral court to be composed of five members, one national arbitrator and one non-national arbitrator to be selected by each party, and a fifth arbitrator, who should be president of the court, to be chosen by a special method. All of the arbitrators were to be citizens of the "Republics of America." The parties were to have three months within which to formulate a satisfactory agreement clearly defining the subject matter of the controversy, and, in default, such agreement was to be formulated by the court within the following three months. This agreement, whether formulated by the parties or by the court, should include the following points:

> (a) The territory adjudicated to Paraguay by the Award of President Hayes, is excluded from the province of the court.
>
> (b) In any case and whatever may be the arbitral decision, there shall be adjudicated to Bolivia the port of Bahía Negra, on the Paraguay River, and the territorial extent that the court may consider appropriate for the free use and protection of said port.
>
> (c) The court shall decide *ex aequo et bono* all those points which could not be decided by the express application of the terms of the agreement or of principles of law.

As to the voting of the court, Artícle XV provides:

> Should the court be unable to establish a majority of votes, the opinion of the president of the court shall prevail, but if the scattering of votes were to take place in connection with the decision referred to in Article IV [formula of special agreement] or in connection with the final award, a new vote shall be taken after the respective agents have been heard on the point at issue.

The supplemental protocol provided for extending the life of the Commission of Conciliation from September 13th until the installation of the court for the purpose of assisting in respect of differences which might arise between the parties in the interim. The protocol also provided, upon the issu-

ance of the award of the court, for a delimitation commission of three engineers to mark the boundary in accordance with the award.

In reply, both governments adhered to the theory of arbitration for the settlement of the dispute, but declared that the proposed plan was unacceptable to them for various reasons. Bolivia could not agree to the proposed convention because it was contrary to the bases of arbitration outlined by the "Argentine Observer" at the Buenos Aires Conference, and also contrary to Bolivia's reservation to the General Treaty of Inter-American Arbitration of January 5, 1929. The bases of arbitration formulated by the "Argentine Observer," Mr. Moreno, were as follows:

> 1. That the settlement of the controversy should be based upon the *uti possidetis* of 1810.
> 2. That, in the event that it proves impossible to arrive at a direct understanding, it will be necessary to determine the bases of legal arbitration.
> 3. That the advances that may have been made by either country have created a *de facto* situation that confers no right and that cannot be submitted to the arbitrator in order to support their respective contentions.

And Bolivia's reservation to the treaty of January 5, 1929, was the following:

> Second. It is also understood that, for the submission to arbitration of a territorial controversy or dispute, the zone to which the said arbitration is to apply must be previously determined in the arbitral agreement.

Paraguay replied with a counter-proposal of arbitration: a first arbitration to determine the specific matter of the controversy, namely, the zone in dispute, and a second arbitration to decide which country has the better right to that zone. She also made numerous other suggestions.

In an effort to adjust the opposing views, the commission suggested certain modifications of the arbitration convention aimed to meet the obstacles raised by the two parties, and reiterated the suggestion that the controversy be submitted to arbitration. The suggestions of the commission were forwarded to the respective governments, but the life of the commission expired on September 13, 1929, and no further action was taken by it.

The mutual forgiveness of offenses and injuries and the restoration of diplomatic relations had presumably placed the two countries in a position to negotiate for a direct settlement of the boundary dispute. Nevertheless, while the boundary question remains unsettled and while some fifty-two forts are facing each other in the Chaco, manned by large numbers of troops, there is still much danger of friction, if not hostilities. This fact was brought to the attention of Bolivia and Paraguay in analogous communications of October 1, 1929, by the five neutral governments represented on the Commission of Conciliation, and for this reason they suggested that a commission

be established to stand ready to lend its assistance should the direct negotiations not succeed or should obstacles arise during the course of them. On going to press, it appears that the Bolivian and Paraguayan answers to this proposal have not been made public, and that the proposed commission for the use of good offices has not been established.

It would seem, therefore, that the main obstacle to arbitration of the boundary dispute is still that Bolivia desires limited arbitration in that the zone to be arbitrated should be first agreed upon between the parties, whereas Paraguay prefers unlimited arbitration, that is, arbitration not only of the extent of the disputed territory, but of its sovereignty as well. This divergency of view between the two governments is confirmed by the recent utterances of their respective officials as reported in the press during the month of November. While such an attitude is of course within the right of each government to maintain, if it choose, yet it is an attitude which, if persisted in, will never lead to arbitration or other amicable settlement. Thus it would seem to be a case where the use of good offices not only should be respectfully proffered by a neutral Power or group of Powers, but should be cordially received by the disputants, in order that a common ground of arbitration may be arranged.

L. H. WOOLSEY.

THE NEW YORK SESSION OF THE INSTITUT DE DROIT INTERNATIONAL

The Thirty-Sixth Session of the *Institut de Droit International*, held under the Presidency of James Brown Scott, at Briarcliff Manor, from October 10 to 18, 1929, was a memorable event It was the first time the *Institut* had ever assembled in the New World. It was memorable for the results achieved in its week of assiduous labors. It was memorable because of the large attendance of sixty members representing many different nationalities and diverse schools of jurisprudence. The American members present were the honorary members of the *Institut*, Hon. Elihu Root and Hon. John Bassett Moore; Edwin M. Borchard, Philip Marshall Brown, Frederic R. Coudert, Hon. David Jayne Hill, Charles Cheney Hyde, George Grafton Wilson, and James Brown Scott.

The opening session was honored by the presence of Mr. Root, who presided with impressive dignity and expressed in his graceful introductory remarks most clearly and eloquently the elevated mission of the *Institut*. A formal welcome was extended to the members of the *Institut* by President Nicholas Murray Butler on behalf of the Carnegie Endowment for International Peace, whose generous subvention made possible this session in America.

The session was also memorable because of the Fourth Conference of Teachers of International Law and Related Subjects, held simultaneously at Briarcliff Lodge by invitation of the Division of International Law of the