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國際公法的將來

吳澤炎譯

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序

這個文件，提出了一個關於未來國際公法的報告。報告以若干對國際公法有積極興趣的美人士的共同意見爲根據，提議的原旨在於幫助『復活和加強國際公法』。(註一)與『爲公道與經久的世界和平樹立基礎，在這種和平之下各國皆有以法律爲根據的秩序』。(註二)在下面接着的引言中，詳記討論的情形和列載許多參加討論人士的姓名。卡內基基金會能將這種建設性的提議，貢獻給國際協調(International Conciliation)的讀者，深以爲幸。

白特勒(Nicholas Murray Butler)一九四四年三月十日紐約，

(註一)語出於一九三七年美國政府提出，並經若干其他政府核准的國際政策基本原則(Fundamental Principles of International Policy)的宣言。

(註二)引自一九四二年、一九四三年美國與比利時、中國、捷克、愛比西尼亞、英國、希臘、荷蘭、諾威、丹麥、蘇聯及南斯拉夫互助協定(Mutual Aid Agreements)的引言。

國際公法的將來

一 引言

一九四二年初，若干美國及加拿大人士開始討論，對於在戰爭結束時可以採取的增加國際公法効用的步驟，他們之間能否成立一致的見解。這種討論，引起了許多調查和一串試探性質的會議，舉行的時間地點如下：一九四二年四月二十四日在華盛頓舉行；一九四二年五月三十日至三十一日及同年六月二十七日至二十八日在紐約舉行；一九四二年七月二十六日在華盛頓舉行；一九四二年八月八日至九日在波斯敦舉行。

是後即提出了一個草案，經第二度列次會議的討論，舉行的時間地點如下：一九四二年九月二十日在紐約舉行；一九四二年十月十日至十一日在芝加哥舉行；一九四二年十月十七日至十八日在費城舉行；一九四二年十一月十四日至十五日在蒙特里奧 (Montreal) 舉行。

第二次的草案加了一個廣泛的註釋，又經第三度列次會議的討論，舉行的時間地點如下：一九四三年一月二十四日在波斯敦舉行；一九四三年二月六日至七日在紐約舉行；一九四三年二月十三日至十四日在費城舉行；一九四三年二月二十六日及同月二十七日至二十八日分兩組

在華盛頓舉行；一九四三年三月六日至七日在芝加哥舉行；一九四三年三月二十七日至二十八日在奧太哇舉行；一九四三年四月十日至十一日在綠杉磯舉行；一九四三年四月十六日至十七日在舊金山舉行；一九四三年四月二十三日至二十四日在但維爾 (Denver) 舉行。

出席會議的有各種不同的人士，但因有少數人士在每次會議中皆曾出席，所以會議的繼續性仍得維持。出席者大抵爲美國人及加拿大人，都是著名對國際公法有積極興趣的人。參加討論的人士幾近兩百人，其被邀參加，與他們的政治關係或他們的特殊見解無關。他們包括法官、律師、政府官吏和有特殊國際經驗的人士。

下面的報告，經徹底的和再三的商討而訂定，提出作爲共同的意見。報告中所以具有不同的特色，乃是因爲參加者提貢的意見有不同，有些人接受了基本原理和原則，但對於所有提議，卻未能全部贊同。這個報告就整體言，反映出大多數參加者的意見，但無論全文或一部分，並不代表參加討論的某個人的個別見解。

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