

Thus it would seem that in addition to providing for the ultimate determination of international title to El Chamizal, the two interested powers have amicably arranged for the amelioration of conditions which for a long time have been a source of considerable annoyance not only to the different parties claiming ownership in the lands comprising El Chamizal tract, but to the two governments as well.

THE AMERICAN SOCIETY FOR THE JUDICIAL SETTLEMENT OF INTERNATIONAL DISPUTES

The American Society for the Judicial Settlement of International Disputes, organized at Baltimore February 6, 1910, has for its aim and purpose not merely the creation of a permanent tribunal for the judicial settlement of international controversies, but also the creation of public sentiment both at home and abroad in order to compel nations to submit their international disputes susceptible of judicial determination to a permanent international court.

The proposed international tribunal is to be permanent, composed of judges who have already had judicial experience or who are lawyers of standing and approved training. The court is to be established at The Hague and is to be permanent, that is to say, it is either to be permanently in session at The Hague, or so permanently composed that its judges may assemble in order to decide promptly and impartially any case submitted to its consideration of which it has jurisdiction, either by a general treaty of arbitration or a special agreement of the litigating nations.

The proposed court differs radically from the so-called permanent court of The Hague. It is not, however, the desire of the society to replace the alleged Permanent Court of Arbitration, but to advocate the creation in addition thereto of a truly permanent tribunal. The creation of the so-called Permanent Court of Arbitration at The Hague marked a great era in the world's progress, although it is merely a panel of judges from which a temporary tribunal may be created for the consideration of any particular case submitted. This panel of judges is composed of persons, often diplomats by profession, and consists of not more than four selected by each nation to serve for a period of six years. From the persons so selected a temporary tribunal of from three to five is constituted for each case submitted to its arbitration. The practical application of this method has developed several

serious defects. There are necessarily delay and expense in constituting a temporary tribunal for each individual case. However, the greatest objection is the diplomatic character of the judges for they naturally decide a question submitted to them according to the ethics of their profession and not from the purely legal standpoint. The decision is thus likely to be a compromise instead of the cold and passionless application of a principle of law to the facts involved in the controversy. This objection has been clearly pointed out by the Hon. Elihu Root in a letter, from which a quotation is made, to the organizers of the American Society for the Settlement of International Disputes:

I beg to say to your guests that I sympathize very strongly with their object and believe that the proposed organization is adapted to render a great public service. I assume that the new organization is to have a definite, specific object which may be indicated by emphasizing the word "judicial" in its title to indicate a distinction between that kind of settlement of international disputes and the ordinary arbitration as it has been understood in the past and is generally understood now.

I assume that you are going to urge that disputes between nations shall be settled by judges acting under the judicial sense of honorable obligation, with a judicial idea of impartiality, rather than by diplomats acting under the diplomatic ideas of honorable obligation and feeling bound to negotiate a settlement rather than to pass without fear or favor upon questions of fact and law.

The proposed permanent international tribunal is free from these objections, and has many positive advantages to commend it. In the first place, it is permanently constituted, whether or not the individual judges reside at The Hague or are summoned when a case arises. Secondly, it is composed of judges who bring to the determination of the case the standards of judges and the legal attainments of the bar. Thirdly, the expenses of the court other than the individual expenses of the litigants, are borne by the family of nations, not by the parties in controversy.

It is at once evident that a court permanently composed and permanently in session, if need be, will prove of inestimable service in the judicial development of international law, and that each decision will be regarded as a precedent for subsequent decisions, so that the common law of nations will be developed as scientifically and as unerringly as the common law of England has been developed by professional judges. There will thus be continuity in its decisions, which can not well be the case with a temporary tribunal whose decisions have no binding effect upon another and a distinct temporary tribunal composed of different judges.

The advisability, indeed the necessity for the establishment of such a permanent tribunal is too clear to need argument, and it is a source of gratification that the Secretary of State of the United States, the Honorable Philander C. Knox, recently proposed in a circular letter addressed to the powers, the establishment of such a tribunal,<sup>1</sup> and the responses to the circular letter have been of such a favorable nature as to justify the expectation that such a tribunal will be established and in operation at The Hague in the very near future. It is also a matter of pride that the President of the United States, the Honorable William Howard Taft, has given his hearty approval to this suggestion and addressed the following communication to the organizers of the American Society for the Judicial Settlement of International Disputes:

I have learned with interest of the plans to found an "American Society for the Judicial Settlement of International Disputes."

The leaflets which you propose to publish, together with the meetings of national scope which you are planning to hold from time to time, may have a very great influence on the development of public opinion on this important subject. If the proposed court of arbitral justice at The Hague becomes an accomplished fact there will still remain the task of securing the adhesion of a number of powers to the court, and the very important task of so cultivating opinion in various countries as to incline governments to resort to the court when occasion calls for it. There is no other single way in which the cause of peace and disarmament can be so effectively promoted as by the firm establishment of a permanent international court of justice.

The American Society for the Judicial Settlement of International Disputes is to confine itself strictly to the establishment of an international court of justice and to the creation of international opinion for the submission of international controversies to the court when established. Its aim and scope are thus clearly announced and defined. It will heartily cooperate with all of the peace and arbitration societies, and supplement their work by the establishment of a tribunal in which international controversies may be determined by judicial means.

The Society believes that arbitration can only be made acceptable to the nations at large and perform its great and beneficent mission by being made judicial.

The Secretary of the Society is Mr. Theodore Marburg of Baltimore, Maryland.

<sup>1</sup> The circular letter will be found in the SUPPLEMENT to this JOURNAL for January, 1910, p. 102. See also editorial comment on the same subject in the January number of the JOURNAL, p. 163.