A declaration of peace by the United States with Germany, independently of the treaty and without reference to it, might have been regarded by the Powers associated with the United States in the war as a relinquishment of the rights which the treaty recognized that the United States was entitled to as one of the Principal Allied and Associated Powers in the war against Germany. It was doubtless for this reason that Congress included in the resolution this reservation showing that it was not intended to waive or relinquish these rights, so that the Allied Powers would not feel at liberty to dispose of the assets of Germany and arrange their commercial and financial relations with Germany without regard to the rights of the United States.

CHANDLER P. ANDERSON.

THE PERMANENT COURT OF INTERNATIONAL JUSTICE

The immediate task of the Peace Conference at Paris having been to terminate a general war upon terms dictated by the victorious Powers and to impose upon the vanquished necessary penalties as the consequence of their aggressions, the occasion was not well adapted for the organization of permanent institutions for the preservation of the future peace of the world. The reasons for this are obvious. Peace having been imposed upon the Central Powers by military force, a military organization was necessary for its execution. The Covenant of the League of Nations was designed to fulfill this purpose, and was therefore framed in the spirit of a military alliance between its members and was at least temporarily directed against a vanquished enemy. Founded thus upon the idea of force, the terms of the Covenant prescribed the conditions upon which force would, if necessary, be applied. It was primarily a military compact.

That the peace of nations, to be secure, must rest upon some deeper foundation than military power was evident even to those who proposed this compact. Provisions were, in consequence, introduced into the Covenant for the voluntary arbitration of international disputes and for conciliatory influence on the part of the Council. Farther than this it did not seem to the Supreme Council of the Allied Powers expedient at the time to go. When the Covenant was presented for ratification in the United States, it was justly urged that there was

in it no provision for a judicial settlement of differences through which a nation might assert its legal rights in lieu of war, and that there was in the Covenant no declaration of the existence of any rights which could be successfully vindicated against an aggressor by any other means than war.

This failure to make provision for determining judicially any one's rights left the Covenant open to the objection that it not only made no advance upon the status created by the Hague Conventions, but by ignoring the results of these efforts to establish international justice and the two hundred treaties of arbitration which they inspired, in effect virtually repudiated all the progress toward a judicial remedy for the violation of rights which had been attained during the last quarter of a century.

The explanation of this is evident. Had the Conference at Paris been a judicial rather than a political undertaking, it would have begun with a recital of the offenses committed by the Central Powers in violating the Hague Conventions and would have taken up the further development of the movement that led to the adoption of those agreements. It would then have become evident that the Second Conference at The Hague had carried that movement forward to a point where nothing was needed for its success but a disposition on the part of the Powers to regard themselves as responsible for defending and enforcing their own agreements.

The weakness and temporary failure of the movement resulting in the Hague Conventions were not owing to any defects in those compacts as efforts of jurisprudence, but to the lack of the political courage on the part of the signatories to assert the rights and assume the obligations which they implied.

At Paris political questions were of necessity in the foreground. The jurists were overshadowed by the political protagonists who occupied the center of the stage. There were present neither the forces, nor the motives, nor the atmosphere for establishing an institution of justice.

Looking at the situation dispassionately and in a purely historic spirit, it is incontrovertible that political adjustments and not the creation of any institution of justice were the main purpose of the Conference. From the nature of the circumstances jurisprudence could not be the controlling influence in its procedure. The utmost that could be conceded to it was that it might eventually have its day.

Accordingly, in Article XIV of the Covenant it was provided that

> The Council shall formulate and submit to the members of the League for adoption plans for the establishment of a permanent court of international justice. The court shall be competent to hear and determine any dispute of an international character which the parties thereto submit to it. The court may also give an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly.

Not to have made this provision would have subjected the Conference to just condemnation as wholly reactionary, rather than merely improgressive in the cause of international justice. The Second Hague Conference had actually elaborated a plan for such a court, and the majority of the nations had approved it. Even those Powers that secretly were opposed to it professed to favor it, and confined their obstruction to inspiring and emphasizing the difficulties raised ostensibly by the small states regarding the selection of judges. Even in 1907 no nation was inclined publicly to oppose the project of a permanent court of international justice.

The proposal embodied in Article XIV of the Covenant is clearly less committed to the conception of imperative justice than the Hague Conference of 1907. In that conference it was, in effect, conceded that an international court should have jurisdiction over all "justiciable" cases, a previous agreement being made as to what disputes should be recognized as having this character. Article XIV, on the contrary, attempts no discrimination between justiciable and non-justiciable differences, limiting the jurisdiction of the court to "any dispute of an international character which the parties thereto may submit to it"; although "the court may also give an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly."

There is, then, no provision in the Covenant of the League of Nations, even prospectively, by which a weak nation can find a judicial remedy for an injury inflicted by a strong nation, unless the alleged aggressor consents to an adjudication.

It is perhaps expecting too much to imagine that a group of victorious Great Powers, preocupied with the conclusion of a successful struggle with a powerful adversary, would be mentally or morally adjusted to the refinements of jurisprudence. The time and the circumstances in which the Covenant was conceived did not permit of that.

It would be equally untimely at present to start a discussion regarding all the difficult and delicate problems connected with the nature and jurisdiction of a permanent court of international justice. It will rejoice every jurist who is a friend of peace that the necessity of such a court was recognized even in the midst of political anxieties, and that the Council of the League of Nations, in fulfilment of that promise, has already assembled a competent body of jurists to consider dispassionately the problem of creating a real court of international justice as distinguished from a tribunal of compromise.

At the time of this writing the commission designated by the Council to perform this important task is already in session. A most noteworthy observation is that it is in no sense a political body. Its members, all of them persons familiar with international law as a science, and in most cases of international reputation, have been chosen because of their eminent attainments and large experience as jurists, and are not to be specially identified with merely national interests. The auspices for a successful result of their labors could not be more promising.

Perhaps the most promising of them all is the selection by the Council of the Honorable Elihu Root to represent American jurisprudence in the commission. Other members of it are understood to have been named by their own governments as their most capable representatives. Mr. Root represents no government, but jurisprudence pure and simple, having been invited to sit on the Commission solely because of his knowledge, experience, and intellectual eminence as a jurist. His presence there is the highest honor that could be bestowed on him or on his country. He will propose nothing, and he will accept nothing, that is not internationally just and at the same time compatible with the institutions and the honor of the United States.

It is in this combination of qualifications that the significance of the selection of Mr. Root lies. He has not hesitated to criticise severely the juridical deficiencies of the Covenant of the League of Nations. On the other hand, he has insisted upon reservations on the part of the United States if this country is to become a member of the League of Nations. In view of these two attitudes of Mr. Root, the invitation extended to him to participate in the formation of the plan for a court to be submitted to the League is pregnant with meaning. On the one hand it is the highest possible compliment to his integrity

and his intelligence, and on the other it reveals a disposition to accept such a transformation of the original form and purpose of the League as may in time wholly alter its character, bringing its juridical function into the foreground, and thus providing a means for gradually extruding its military qualities.

It is impossible at this point to pass over in silence the position taken by Mr. Root on the improvement of international law and reliance upon it, supported by the public opinion of the civilized world, rather than upon military force, as an influence for peace.

After the first draft of the Covenant of the League of Nations was published in the United States, Mr. Root proposed an amendment, which was endorsed by a committee of eminent members of the American Bar and by the Executive Council of the American Society of International Law, reading:

> The Executive Council shall call a general conference of the Powers to meet not less than two years or more than five years after the signing of this convention for the purpose of reviewing the condition of international law, and of agreeing upon and stating in authoritative form the principles and rules thereof.
>
> Thereafter regular conferences for that purpose shall be called and held at stated times.

This proposed amendment was sent to Paris through the Department of State, but no action was taken upon it by the Conference.

The perfect reasonableness of this proposal renders it difficult to understand why, if it was ever laid before the committee on revision, no notice was taken of it. The adoption of the amendment would have gone far to show that the conception of the Covenant was not chiefly military, but in part at least juristic. It raised the question, still unanswered, whether the effect of the League would be to suppress purely legal methods and to base its action on arbitrary decisions.

The subject of the future of international law is closely connected with the establishment of a permanent court; for the court, if it is to be a court of justice, must be guided by the law, while at the same time its decisions will tend to constitute the law.

It would be untimely here to open a controversy over the question whether international law is likely to be most improved by fresh conferences and further codification on the one hand, or by a sequence of judicial decisions on the other. But, without raising this question, it is evident that the aversion to judicial decisions in international disputes is based quite as much on the inadequacy, the ambiguity, or

the positive imperfections of the law as upon the incompetency or prejudice of judges. A clarification of international law, from whatever source it may come, would go far, in the first instance, to secure obedience to its provisions, and in the second place to create confidence in the justice of the decisions of an international tribunal.

Indisputably, however, the first step to take is to establish a permanent court the end of which shall be justice and not mere temporary expediency. A determination of what class of cases can be brought before it will be, perhaps, the next step; but its final triumph must await the further development of the law.

When the nations have the wisdom and the courage to stand by the law and realize their obligation not only to obey but to support its enforcement, it will become more clearly apparent that the world's peace does not rest upon a combination of military forces pledged to protect territorial possessions and pretensions, but upon the opportunity to vindicate a right and redress a wrong by an appeal to a tribunal whose aim and whose glory consist in the fearless pursuit of justice under accepted law.

DAVID JAYNE HILL.

THE RIGHTS OF MINORITIES UNDER THE TREATY WITH POLAND

It has been neither difficult nor unpopular to pick flaws in the settlements which have been negotiated to wind up the World War. Nevertheless, the great mass of such treaty provisions have been in accord with the conscience and the sense of justice of the Allied and Associated Powers, rather than with their mere material interests. Relatively the flaws are trifling.

Amongst the provisions necessary to a stable and enduring future for the newly formed states, is the just treatment of those minorities which by reason of race or religion might suffer discrimination. We recall the repeated efforts of Prussia to stamp out language and spirit of nationality in her Polish subjects, and still more those of Russia. Are the tables now to be turned? The treaty which creates Poland is a sample of the working of the new spirit. For as Clémenceau declares in his letter on the subject of the treaty to M. Paderewski, referring to Article 93 of the German treaty, "This clause relates only to Poland, but a similar clause applies the same principles to