

A PERMANENT COURT OF INTERNATIONAL JUSTICE *

A SUGGESTION FOR THE CONSIDERATION OF THE PROGRAMME COMMITTEE OF THE THIRD HAGUE CONFERENCE.

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A Permanent Court of International Justice—what does that mean? Not the creation of a new international court. We have one such court already and two more courts proposed. The first of these, called the Permanent Court of Arbitration, established at The Hague in 1899, has eleven decisions to its credit. The second, the Court of Arbitral Justice, the draft for which was accepted by the nations at The Hague in 1907, would be in service to-day, as an alternative to the first, if an agreement could have been reached as to a method of appointing its judges. The third, the International Court of Prize, also a measure of 1907, will be utilized when its judges are appointed, and when a naval war makes its services necessary. The projects of all three courts are monuments to a century of the steady progress of the nations in substituting law for war in the settlement of their disputes. These courts should remain substantially as they are, but should be properly related to one another in their respective jurisdictions, each being so organized as best to serve the purpose for which it is intended. The Permanent Court of Arbitration should be for the voluntary settlement of semi-political disputes, or for any controversies that nations are unwilling to submit to the Court of Arbitral Justice. The Court of Arbitral Justice, a better name

* While Mr. Tryon was engaged in writing a series of articles on The Hague Conference and related questions for the *YALE LAW JOURNAL*, he was interrupted by a request from Hon. Elihu Root, President of the American Society of International Law, who asked him to prepare an article on "A Permanent Court of International Justice," as an American suggestion for the Programme Committee of the Third Hague Conference. This article, read at the meeting of the Society last April, has been revised by the writer and is presented to our readers as one of the series which dated back to January, 1910. All rights reserved.

would be the Court of International Justice, like the International Prize Court, should have an obligatory jurisdiction and be strictly judicial in its procedure; but, for the sake of prompt and economical administration, both courts should be combined in one institution with two chambers.

Some changes should be made in the procedure of the Permanent Court of Arbitration. A system of orderly pleading is recommended by Mr. Dennis, the agent of the United States in the Orinoco Steamship Company case, and would seem to be needed. Case and counter case should be separated from argument. There should be a fixed order of arguments; evidence, instead of being introduced into them for the first time, should be confined to the case and counter case, or otherwise formally presented beforehand. It is suggested that provision should be made for interlocutory motions and for discovery.

Mr. Dennis also tells us that the arbitrators who are chosen to sit on a case should be required by the terms of submission to know the languages that are to be used in a trial. If a judge is ignorant of a language with which both he and his colleagues are expected to be familiar, he will be at a disadvantage, and, by causing extra translations to be made, will add to the work of agent and counsel, as well as to the expense of litigation. This suggestion would, therefore, seem proper for adoption.

The third or fifth member of a tribunal should be selected, not by the arbitrators already chosen, but by the governments themselves. The governments, with an ample knowledge of men at their command, and secretarial facilities to carry on correspondence, are in a much better position intelligently to appoint a proper umpire than the arbitrators, who, as a rule, do their work under considerable limitations.

The question has been raised whether nationals should ever again be allowed to sit on a tribunal of The Hague Court. Under the present rules, but one national is allowed to each litigant on a board of five judges, or on a board of three, which means considerable advance in the conception of the constitution of an international tribunal as compared with the past when commissions were made up entirely of nationals, sometimes with one of them as umpire. But with notable exceptions, such as the Fisheries and Grisbadarna cases, nationals, when used on arbitral tribunals, have shown a tendency to oppose decisions injurious to their country's interest. It was so in the Alabama case, from the

main decision of which Sir Alexander Cockburn dissented, in the Japanese House Tax case, from the decision of which the Japanese member expressed vigorous dissent, and in the North Sea inquiry, to the findings of which the Russian member took exceptions in some particulars. Mr. Ralston, who is positively opposed to the use of nationals, states that they showed bias in the cases tried by the Venezuela Claims Commissions and declares that the chief value of an arbitral tribunal in the development of law and justice is practically reduced to the views of its neutral members. Mr. Ralston also objects to the appointment of citizens of a subordinate state of a litigating nation, as they may favor the views of the statesmen at the head of their superior government, with whom they are likely to sympathize. It is also said that nationals when on a tribunal are apt to influence their neutral associates with whom they are in contact for the several days or weeks in which a case is being tried. They are inclined, on the whole, to act as counsel rather than as judges, and thus to bring arbitration as a legal proceeding into discredit.

What shall we say to these familiar criticisms as to the use of nationals, not only in arbitral tribunals generally, but also on those of the Permanent Court of Arbitration at The Hague? Nations, as a rule, have been unwilling to submit their disputes entirely to the judgment of neutrals. Neutrals are strangers, and are apt to be unacquainted with the laws of the litigating states. For example, questions came up in the Fisheries dispute in which knowledge of a system of law peculiar to the United States and Great Britain required the services of American and British judges. The matter of saving national pride may also to some extent enter into the problem of the constitution of a tribunal. Pride can perhaps better be saved by a national than by a foreigner. In a case like the Casablanca incident, nationals performed invaluable service in composing a difference over which there was sensitive feeling. If the Permanent Court of Arbitration were to be the only court of nations, it might be advisable to propose that nationals be finally excluded from its tribunal and used on outside boards of arbitration; but, if there is to be a Court of Arbitral Justice also, there is still, in view of the Fisheries and the Casablanca cases, so successfully tried under the present arrangement, an argument for continuing nationals on the present court when, for special reasons, they are desired.

In order to further eliminate partiality from the decisions of a tribunal, it is also proposed that the method of choosing neutral as well as national judges be revised. Neutrals are accused of taking the legal attitude of the power that appoints them and of having a sense of obligation to fulfill like the national himself when it comes to a matter of saving their patron's face. To remove this danger, it is suggested by Mr. Ralston that a litigant nation should have the right of challenging the appointees of its opponent without, however, being compelled to give reasons, as a disclosure of objections might lead to unpleasantness. Thus a litigating nation would have a right similar to that enjoyed by a jury lawyer when he challenges an incompetent, prejudiced or otherwise unacceptable juror. Again, to meet practically the same objection, it is proposed by Mr. McKenny that, where there is to be a tribunal of say five members, each side shall nominate a list of judges for it, then each side shall choose two from the other's list. It is argued that this method would prevent either party from gaining an influence over the appointees, who would thus be obligated to neither party, but rather would be the choice of both parties. And again to guard against undue influence, it is proposed that when the arbitrators are informed of their appointment they be first notified jointly by the litigating powers, or by the bureau at The Hague, as they are expected to be, and not by the litigating powers separately, lest an attempt be made to gain favor by sending the appointees messages of thanks. These suggestions as to amendments in procedure would appear to tend to impartiality, and might well be recommended for consideration.

If, however, the procedure in the choice of arbitrators is amended, it will still be a roundabout and time-consuming process, and the so-called Permanent Court of Arbitration will lack the convenience that could be secured by a really permanent court. It must always be remembered that the judges, instead of being ready to try a case, have to be summoned for it after it has come up, and must be brought together from far distant countries at great expense.

The expense of an arbitration, though it bears no comparison to a war, perhaps the very thing a litigation is designed to avoid, is almost a deterrent. The cost of organizing and maintaining the court, according to the present plan, is borne by the litigating nations. Each party not only chooses but pays its own judges. It is said, however, that a good percentage of the expense of the court is sometimes deducted from the award of an individual

claimant for whom the litigating state intervenes: but it is proposed that hereafter such deduction should not be made, as it is a hardship upon the individual. A court that is supported from a common international fund, just as municipal courts are supported by the funds of a State, and not by the parties at issue, is greatly to be desired.

Besides these considerations with regard to details in the administration of the court, there is the fundamental objection that courts of arbitration are partial because they follow the principles of diplomacy, instead of law, in the settlement of international disputes. The judges, taking the place of negotiators and splitting the difference, render a compromise decision, instead of giving a judgment based upon facts and law, according to the record before them. The Hague Court itself, the most highly developed court of arbitration ever used, has been subjected to the same criticism. There are, however, publicists who, while admitting that arbitration has in the past utilized the methods of diplomacy, deny that the present court has resorted to them, and maintain that it is legal in its methods. By The Hague procedure, this court does not require professional judges, but simply men who are competent in international law, many of whom, when the full list of appointees is examined, are found to be statesmen and diplomatists rather than jurists. It must be answered that the Permanent Court of Arbitration, whatever the legal attainments of its judges, cannot be impeached in respect to the legality of the great majority of its decisions.

The decision of the Casablanca case, though legal in respect to the points of international law that were passed upon, had about it such an appearance of restraint, and contained such ingenious expressions of opinion, as to make it in effect a diplomatic adjustment; but it saved the honor of both parties and made peace between them in a way that was mutually acceptable to themselves and of benefit to the world. But the fact that the decisions of the present court have on the whole been legal, that such a distinguished jurist as Professor Lammasch has insisted when under criticism that they have been legal, and that they have been pronounced by men who have been really selected for their high juristic standing, is an argument that the nations in their practical experience are ready for a long step forward in the development from arbitral to judicial methods.

But the best of arbitration tribunals, even those that sit at The Hague, are only temporary. They meet, and pass upon a case,

each one in an isolated kind of way, and it is believed that they make less science of law than would be made by a really permanent tribunal constituted of the same jurists all the time, growing in experience, blending divergent legal systems into a harmonious whole, publishing opinions with which their later decisions should agree, or from which they should develop new principles, assisted by a recognized bar of learned counsellors, especially qualified to serve an international court. It is believed, that if a court of nations could be established like the Supreme Court of the United States, or like other national courts held in high respect among governments, more cases would be attracted to it; war would the sooner pass away, and the gigantic armaments which now tax the financial resources of the people would begin to disappear.

But that the world is ready for a new court is abundantly evident in the accepted plan of the Court of Arbitral Justice. That is a court that is really permanent, that calls for judges by profession, that pays them out of a common fund, that has no place for diplomacy, that demands juridical decisions, that includes representation of the principal languages, and that recognizes all systems of procedure and law. However grateful we may be for the present court as a means of securing peace and justice, we ought to-day to reassert our faith in the court that has been proposed, and to insist that, as was intended, it shall be put into operation as an alternate court to the Court of Arbitration.

The questions, about which there were differences in 1907 with regard to the proposed Court of Arbitral Justice, were too difficult to be settled in the few weeks that were allowed for the Second Hague Conference, but since we of the United States believe in the juridical equality of nations, we are glad of the opportunity that we have had for further discussion of this topic. It has enabled us to take a larger view than we have ever had of the whole problem of the composition of the court. The principle is now made clear that, in the choice of a tribunal for the nations, none of the States should have a right to claim upon it an individual judge; each member of it should represent all of the affiliated States and be chosen from them at large. This is the juridical as opposed to the arbitral principle, and underlies the selection of the judges of the Supreme Court of the United States.

Had the Supreme Court of the United States, as we believe the most successful Federal Court in history, been organized under a plan that gave to any of the United States a claim to a perpetual representative on it, or even a representative by rotation, that tribunal would have been, in principle, not a judicial but rather a legislative or a diplomatic court, a court of arbitration like that of the old Confederation, of which each litigant chooses his own judges, which is the very kind of institution upon which we, like our forefathers, wish to improve. When we choose the judges for the Court of Arbitral Justice, let there be, as there is under the Constitution of the United States, where the Senate is given the right of confirmation, a uniform principle of selection in which each State shall have an equal voice, but let the judges be chosen for their fitness, for their learning in the languages, for their familiarity with the various systems of law to be used, and for their competence as professional judges. Let them not be chosen because of their nationality, or on any principle that makes for inequality among the States. If, however, there should seem to be a need of it, there might, as has been suggested, be a safeguarding provision that not more than one judge should be appointed from one nation at a time.

But how shall the tribunal be appointed? Nobody can yet suggest an acceptable plan, but it has been proposed, and it is submitted that there is merit in the proposal, that the judges be appointed by the President of the next Hague Conference with the approval of its members, or that they should be elected by the Secretaries of Foreign Affairs, with such ratification as may be required by the constitutions of the various nations.

This leads to the consideration of possible amendments to the proposed plan for the Court of Arbitral Justice. I hesitate to offer any. To do so may seem presumptuous, but I would venture to suggest that, if changes are to be considered, they be of a kind to make the court, even more distinctively than it is, a judicial court—a court of law and equity, instead of an advanced development of the institution for arbitration now in use.

First of all, it is submitted that the name "arbitral" might well be dropped from its title, as one that is better suited to the Permanent Court of Arbitration, and that the name "Court of International Justice" be put in its place, for it is justice, not arbitration, not compromise, that we want.

It is submitted that the number of judges be reduced. Fifteen judges, though only a fraction of the total number of the present court, might prove unwieldy, as well as expensive. There is danger, too, that with so many judges, they might take sides for or against a decision, and not act with proper independence. Would not a tribunal of nine, the size of the United States Supreme Court, be more suitable? A tribunal of five, the number in the Geneva and the Fisheries cases, the normal number of an arbitral tribunal to-day, has proved acceptable for the most important litigations which the nations have ever had. This, with a chief justice in addition, is the number with which the Supreme Court of the United States began its great work.

It is objected that the delegation of three of the members of the Court of Arbitral Justice to take cases between annual sessions is likely, owing to the less expense involved in making use of it, instead of fifteen judges, to lead to its too frequent use; but, if this danger be real, it is an argument for a smaller court as well as a court awaiting its case.

It is said regretfully that we are embarrassed by the requirement that the judges for the Court of Arbitral Justice should be, so far as possible, chosen from the list of men now serving on the Permanent Court of Arbitration; but, as several members of the Permanent Court of Arbitration have proved themselves to be acceptable international judges, and as the provision for giving preference is not absolute, it need not be removed.

It is pointed out with reason that the salaries to be allowed the judges of the Court of Arbitral Justice (about two thousand, four hundred dollars a year, as an honorarium, and forty dollars a day, when in session only, with an allowance for expenses), are too small to compensate highly skilled jurists. These men, in a position of such high responsibility, might be paid as much at least as are the judges of the Supreme Court of the United States, which is about twelve thousand dollars a year. The salaries of the judges ought to be paid regardless of sessions; for, when not holding court, they should give their whole time to gaining the vast legal knowledge which their duties will require. Besides, when judges accept service on the Court of Arbitral Justice, they are excluded from other government appointment, and for some of them this may mean a sacrifice.

The question arises with regard to the relation of this court to the International Prize Court, which is also a court of law and

equity, but of a type that is even more advanced than is the Court of Arbitral Justice. Why could not both courts be combined in one? If we may refer again to the system of this country, our Supreme Court acts as a prize court, and why could not the Court of Arbitral Justice so act in special session? We can find in our Supreme Court judges who, although they are not specialists, are competent, in matters of admiralty and prize law, and, if we have the whole world to draw from, there should be no difficulty in securing competent men to fill, as occasion may demand, the requirements of both international courts. Article 16 of the draft for the Court of Arbitral Justice prepares the way for the union of these courts by saying: "The judges and deputy judges, members of the Judicial Arbitration Court, can also exercise the functions of judge and deputy judge in the International Prize Court." But, to remove doubts in the minds of other nations as to the practicability of a single court with two chambers, one of them of specialist character, naval officers might act as assessors, sitting with the court on prize cases, but without a vote, which is what they are expected to do according to the convention for the International Prize Court, or they might be called as expert witnesses. Secretary Knox, who has honored the peace cause not only by assisting President Taft in the negotiation of the recent arbitration treaties, but by his enterprising advocacy of the new court, has endeavored to bring about a combination similar to that proposed, and it is significant that he reports progress in his undertaking. Such a combination would seem to be not only feasible, but in the line of economy and prompt administration. If we can get along with one court, and have that a court always ready for either kind of case, that arising in peace or that arising in war, as opposed to having two courts, one in actual operation and the other on paper, its members having to be specially summoned from all over the world when needed, entailing an extra charge on the nations for salaries and traveling expenses, why not do so? May we not then suggest this as a topic of discussion to the Programme Committee of the Third Hague Conference, and call their attention to the practical efficiency of the Supreme Court of the United States as an institution having several functions, one of them to adjudicate cases of prize?

Shall the jurisdiction of the Court of Arbitral Justice be obligatory or voluntary or both, and specified or unspecified? It is submitted that it would be well to give this court an obligatory juris-

dition of such controversies of the nations as may be decided by the principles of law and equity, provided there is no formulated code, definite rule of international law, or treaty to go by. It would then correspond to the jurisdiction provided for the Court of Prize, and, in spirit, would resemble the jurisdiction of the Supreme Court of the United States. If any category of cases be specified, we might include cases relating to the interpretation of treaties, pecuniary claims, and contractual debts, such as were proposed in the universal treaty of arbitration in 1907, or provided for in the Porter-Drago Convention. And besides cases of the first instance, we might send to this court cases of appeal where there has been essential error or denial of justice in international cases tried by national courts, by mixed commissions, or by the Permanent Court of Arbitration. Already we have seen in the Orinoco Steamship case and in the Pious Fund case, both of which had been previously adjudicated by international commissions, that the present Permanent Court of Arbitration may be successfully used as a court of appeal. It would be carrying the idea of appeal but a step farther to make the Court of Arbitral Justice a court of last resort. But, quite apart from a jurisdiction granted to the court in the instrument that creates it, there might also be left to it the large facultative jurisdiction which it now has, so that, by special treaties, nations could refer to it any kind of judicial case, according to their pleasure. We might then leave the Permanent Court of Arbitration substantially as it is, with its own large voluntary jurisdiction, in the hope that it might continue to prove useful to nations, who might take to it semi-political controversies, or cases like the Casablanca incident, which have a diplomatic character, and who might for any reason prefer the present court to the Court of Arbitral Justice.

It is desirable that the Court of Arbitral Justice should be adopted by all the nations of the world. In any event, however, provision should be made that, when a certain number of those who are ready for it express their willingness to adopt it, it shall go into operation, with the understanding that others may adhere to it later when they are prepared to abide by its provisions. It should not be possible for a few nations to obstruct a measure of so great importance to the world as a Supreme International Court of law and equity.

To some nations, judging by the recent action of the United States Senate in amending the arbitration treaties to protect the

Monroe Doctrine and other political ideas, it may seem necessary expressly to make some reservations, when joining the court, if it is given an extensive obligatory jurisdiction. If reservations are to be made, they might take the form of resolutions of interpretation or limitation, with the understanding that they must have the assent of all the other States that are parties to the court, or that such resolutions are notice of the political position of any given nation in regard to the scope and powers of the court.

Whether, at this time, there should be inserted in the scheme for the Court of Arbitral Justice a declaration of rights for the protection of individuals as well as of States is also a question that is worthy of consideration; for, in some way, these rights should be guaranteed. A legally limited judicial tribunal goes hand in hand with a conception of sovereignty resting with the people rather than in kings and parliaments, which is a European conception, the governments under the European system being themselves unlimited sources of power and law. It is feared that without proper safeguards these systems might clash, to the detriment of American institutions and to the unalienable rights of men; or on the other hand, work the overthrow of the European systems of government. For this reason it has also been proposed that the whole theory of arbitration be left on an advisory basis as being safest for this country, and most consistent with the institutions of other nations who could with propriety accept advisory, instead of compulsory decisions. This distinction raises a large question which we may not be called upon today to face, but is worthy of serious study by students of the science of government.

But what shall insure the success of an obligatory court if established? Shall we provide it with sanctions? There are those who believe that such a court can never be what it ought to be without the sanction of force, just as there are those who distrust international law itself because it is not imposed upon the nations by a superior power, and who, therefore, are loathe to recognize it as law at all, believing that law is only law when by physical force you can make people obey it. But neither the world as a whole, nor a judicial union of several nations, is ready for the authorized enforcement of the decrees of an international court by armies and navies, or even by an international police; for, though we might with great economy use an international police today in place of so many large and separate armies and navies of the

nations, we are not yet ready for that idea which, even more than the judicial court, implies international federation.

But it will be answered that municipal law has behind it in theory the police, the sheriff, the national guard, the regular army, and we see from time to time that it is necessary to protect with the militia an accused criminal in a jail when threatened by a mob; we also see that sheriffs and marshals sometimes have to be employed to enforce a process. But more than one hundred years of experience with the Supreme Court of the United States teaches us that, although that tribunal has behind it in theory the military power of the national government, the court itself has no army at its own command and no civil police of any consequence, and that with one exception, the case of the sloop *Active*, when a posse of two thousand men was organized to carry out an order of the court in the State of Pennsylvania, there has been no call whatever for it to have a large organized force at its disposal; nor is there ever likely to be one. Recalcitrant States are a thing of the past. They or their citizens now pay over their money or otherwise accede to the decrees of the court without ever a thought of constraint by force.

But what has so successfully carried along the Supreme Court of the United States, an international court first for thirteen and now for forty-nine sovereign States? Public opinion. But what has just as peacefully supported international arbitration courts and commissions in the several hundred cases, some of them of great magnitude, that have been tried in the past hundred years? Public opinion. And the nations need nothing else to compel their obedience to an international court than public opinion. "The force of law," says Mr. Root, "is in the public opinion which prescribes it." There is also a very powerful sanction in the agreement that, under the present arrangement, any two nations may make to submit a case to arbitration. The very submission of a question to a tribunal means an intention to comply with the terms of the award to be rendered, provided, of course, that it is in accordance with the protocol, and is based upon recognized principles of law and equity properly applying to the case. It is implied in The Hague Convention for the Pacific Settlement of International Disputes, which is applicable to the draft for the Court of Arbitral Justice, that the nations shall carry out the awards of arbitration in good faith. They are explicitly pledged to do so in the Convention relating to the International Prize

Court. Of equally great influence as a sanction would be the contractual agreement to be entered into by the nations in finally adopting the new Court of International Justice. The agreement of the American States to accept the terms of union in the Constitution of the United States, and with them the jurisdiction of the Supreme Court, has been one of the strongest sanctions in support of our Court.

But the objection is frequently made that international law is not only without sanction, but that it is vague, and the desire is expressed that there should be a code of law as a necessary adjunct to the court. Indeed, a code first and a court afterward, as was shown to be necessary in the case of the International Prize Court. This desire has associated with it a real effort in which we, of this country, have taken especial interest since the formation of the International Law Association forty or more years ago, and more particularly in one of the recent annual meetings of the American Society of International Law. It is noteworthy that international law tends to become codified, as witness, not only the Declaration of Paris, the Declaration of London, The Hague Conventions, but the rules of various international unions and congresses, such as those that deal with weights and measures, submarine cables, and the slave and liquor trade in Africa. It may seem wise for the publicists of America to recommend to the Committee on the Programme of the Third Hague Conference the appointment of a commission on the codification of the law of nations, or to advise that such commission be constituted as soon as possible, and set to work with a view of reporting to the Third Hague Conference a code for adoption; but, with or without a code, the proposed Court of International Justice should be instituted, and may act both safely and effectively, just as the highest national tribunals and The Hague tribunals have acted, administering international law as it is today, taking it from its many sources, formulated and unformulated, the statutory and the customary law of the society of nations, and declaring it in the confidence that if a decision is just it will meet with universal acceptance. In the words of Dr. Scott, our dauntless champion of the Court of Arbitral Justice, "The current of history is with us. Although the stream may be stemmed for a time, obstruction must needs be futile."

GENERAL NOTE.

The idea of a court of nations goes back at least as far as Henry IV, Eméric Crucé, Grotius, and William Penn; but, as outlined by them and their successors, the early schemes for an international court provided for an assembly of ambassadors acting as judges rather than for a tribunal of jurists. William Ladd, in his *Congress of Nations*, made a definite departure from the suggestions of all these writers by separating the idea of a court from that of a congress. In his plan, the congress was to codify the law of nations, the court to apply it. In the nineteenth century arbitration made great progress apart from the peace propaganda, as it was used by many of the governments, particularly the United States and Great Britain, for the pacific settlement of their disputes. This method of adjudicating international controversies, however, was open to the criticism that arbitral tribunals came to their decisions by compromise, the judges taking the place of negotiators and settling the questions before them by diplomatic adjustment. This method of arriving at a decision led to the fear of partiality, and prevented the submission of international questions, which might otherwise have been adjudicated had there been an international court of jurists acting upon known principles of law, and deciding their cases according to the records before them. This was pointed out in a memorable address, entitled "The American Sentiment of Humanity", by Hon. Elihu Root, at the New York Peace Congress of 1907; see report p. 34. Mr. Root, who was then Secretary of State, embodied the leading thought of his address in his Instructions to the American Delegates to the Second Hague Conference, with the result that they proposed the Court of Arbitral Justice, a judicial court based upon Mr. Root's idea. This court, adopted in principle by the nations, marks a steady advance in the conception of an international court from a diplomatic to a judicial body, Mr. Root having eliminated as an objectionable feature the idea of compromise. It will be seen, upon examination of the plans both of Mr. Ladd and Mr. Root, that they were influenced by the success of the United States Supreme Court, which is purely judicial in its character.

Among American publicists, the most voluminous and suggestive writer on the Court of Arbitral Justice is Dr. James Brown

Scott, who, as the technical delegate of the United States at the Second Hague Conference, elaborated and championed the scheme of the court. For his writings and addresses, see 2 *American Journal of International Law*, 772, the Reports of the Mohonk Arbitration Conferences since 1908; the Pennsylvania Peace Congress Report, 1908, p. 98; the Chicago Peace Congress Report, 1909, p. 234, ("Some Subjects Likely to be Discussed at the Third Hague Conference"); the New England Peace Congress Report, 1910, p. 83, "Oration on Elihu Burritt," and Dr. Scott's volume of *American Address at the Second Hague Conference*, published by Ginn & Company, 1910. See also his article on the International Court of Prize in 5 *American Journal of International Law*, 302, which is closely connected in organization and historical development with the Court of Arbitral Justice; and "The Evolution of a Permanent International Judiciary" in the April, 1912, number of the *American Journal of International Law*.

For The Hague Conventions and other action relating to the three courts, already established or projected at The Hague, see 2 James Brown Scott's *The Hague Peace Conferences of 1899 and 1907*, and A. Pearce Higgins' *The Hague Peace Conferences*. Introductory and explanatory matter will be found in 1 Scott's *Hague Peace Conferences*, and in Higgins' invaluable work. See also William I. Hull's *The Two Hague Conferences*, and Thomas J. Lawrence's *Principles of International Law*. Articles on these courts by the present writer are as follows: "The Proposed High Court of Nations", *YALE LAW JOURNAL*, January, 1910; "The International Prize Court and Code", *Ibid*, June, 1911; and "The Hague Peace System in Operation", *Ibid*, November, 1911. The latter article takes up the cases decided by the Permanent Court of Arbitration. The student of the subject will profit by reading discussions of these courts in the Proceedings of the American Society of International Law for 1908, 1909, and 1912. He will also find related topics in the development of international justice, treated in the Proceedings of 1910 and 1911, the latter for a code of international law especially. Valuable and inspiring sources of information and suggestion will be found in the reports of the American Society for Judicial Settlement of International Disputes for 1910 and 1911, in which are papers on the problem of a Court of International Justice, with helpful analogies to the Supreme Court of the United States. For continuation of the subject see the report on the session of December, 1912. See

generally the articles or addresses in the report for 1910, by Hon. Elihu Root, Hon. Henry B. Brown, Frederick D. McKenny, Alpheus H. Snow, Professor Eugene Wambaugh, Hon. Jackson H. Ralston, Hon. Andrew J. Montague, Hon. Simeon E. Baldwin, President Charles W. Eliot, and Hon. William Dudley Foulke. Mr. Theodore Marburg wrote a valuable summary of the thought of that conference, which should be consulted in order to get a consensus of American opinion. The pamphlets by the Judicial Settlement Society reproduce some of the addresses already referred to, but "An International Court of Justice the Next Step", by George Grafton Wilson, is newly printed. This is useful as marking the state of contemporary thought on the subject. For another article which brings the subject up to date see in No. 10 of the same series, "The Court of Arbitral Justice", by Dr. Scott. This contains an extract from the Procès-Verbal of the afternoon session of the Institute of International Law of August 28, 1912, showing the approval by that body and by Professor Lammasch of the proposed judicial court.

Other articles referred to in the text are as follows: "Compromise, the Great Defect of Arbitration", by Hon. William Cullen Dennis, 11 *Columbia Law Review*, p. 509; (Mr. Dennis thinks that, for the present, a code of procedure in international arbitration is an even more imperative need than a code of substantive law.) William Cullen Dennis, 5 *American Journal of International Law*, pp. 59-63; Thomas Raeburn White, "The Underlying Principles Which Should Govern the Method of Appointing Judges of the International Court of Arbitral Justice", Mohonk Arbitration Report, 1911, p. 102; Alpheus Henry Snow, "Legal Limitation of Arbitral Tribunals", 60 *University of Pennsylvania Law Review*, December, 1911. This article should be carefully compared with Mr. Snow's article on the "Development of the American Doctrine of the Jurisdiction of Courts Over States", 1 *Judicial Settlement of International Disputes*, 100.

For discussions of the problem of an international court of justice by delegates of The Hague Conferences, the best original sources are the proceedings which are in French. Brief resumes of these discussions in English will be found in 1 Scott's "Hague Peace Conferences", Higgins' "Hague Peace Conferences", and Frederick W. Holls' "The Peace Conference at The Hague".

For an official discussion of the problem of the relation of the Court of Arbitral Justice to the International Prize Court, see

identical circular note by Hon. Philander C. Knox, Secretary of State, in 4 *American Journal of International Law*, p. 102. The combination of these courts in one, which is suggested by the present writer, is also proposed by Secretary Knox with this difference, however, that the foundation of the plan of the Secretary of State is the International Prize Court, as that institution is already in a more advanced state of acceptance than the Court of Arbitral Justice, while the present writer's scheme makes the Court of Arbitral Justice the foundation. The plans further differ in that he first utilizes the scheme of judges already accepted for cases of prize, which permits nations to have individual representatives on the tribunal, while the second proposes that the judiciary be chosen from the nations at large, none of them to have the right to claim territorial representation by an individual judge.