

THE HAGUE COURT:

ITS CONSTITUTION AND POTENTIALITIES.¹

To speak on the Hague Court at a time when war is raging among the Powers of the Earth and law and order are being defied as hardly ever since the middle ages, may seem at first sight like mere trifling. In reality it is nothing of the kind. From the date of the creation of the Hague Court in 1899 to now, I have never ceased pointing out that neither it nor arbitration in the ordinary sense of the word could be regarded as capable of serving as a substitute for war in all cases. I mention this once more to prevent any misunderstanding as to the nature and objects of this paper. All I propose to do is to explain why the Court exists, its constitution and procedure, what it has already done, what it is capable of doing, and the reforms which have been suggested to give greater scope and effect to its work, a work quite useful enough to justify confidence in its future without expecting from it realization of any of the dreams of a millennium in which some of its more ardent apologists have indulged.

I.—ORIGIN OF THE COURT, ITS CONSTITUTION AND PROCEDURE.

The Hague Court owes its origin to the Peace Conference of 1899, but to understand its true nature and objects we must go back to an earlier period in the history of International Arbitration. International Arbitration means simply the reference of disputes between independent States to Arbitrators chosen by the parties themselves. It is this voluntary and agreed selection of the judges that distinguishes Arbitration from adjudication in disputes in ordinary Courts of Justice. Arbitration is no new thing in the settlement of disputes between nations, as anybody can ascertain for himself from Dr. Evans Darby's valuable collection of the different schemes which have been propounded and the different cases which have been decided by this method of adjustment. All these cases, however, down to the great one about which I shall speak presently, had been decided by an Arbitrator or Arbitrators without regard to any particular procedure and without any attempt to assimilate the forms of any national judicature. There was no question of deciding international differences as differences between individuals are decided in our Law Courts. It was due to the statesmen of the two great Anglo-Saxon communities that the first attempt was made to deal with international differences of the deepest gravity in accordance with the forms of national justice. Few among the audience to-day may remember what is known as the Alabama case; I am among those few. I well

1. A paper read before the Sociological Society, March 23, 1915.

remember the furious controversy which accompanied every stage in the development of the question of its settlement. In spite of the violent opposition of excited patriots the two Governments signed a Treaty at Washington in 1871 referring the Alabama and several smaller analogous cases to the decision of Arbitrators. The Alabama was a vessel built in British waters for use as a war vessel in the service of the Southern Confederates during the great American Civil War. That the vessel was being built for this purpose was notorious, and the attention of the British Government was called to this fact by the United States minister in London. The vessel was, nevertheless, allowed to sail and at the Azores she was equipped for active service in the then pending war.

For the first time in the history of Arbitration a system which has now become almost common practice was adopted. The Court was constituted of three foreign Arbitrators, viz., Count Sclopis, an Italian, M. Stoempfli, a Swiss, and Baron D'Itajuta, a Brazilian. Lord Chief Justice Cockburn sat on the Court on behalf of Great Britain, and Charles Francis Adams on behalf of the United States. Count Sclopis presided. This Tribunal met at Geneva in 1871, and after sitting for nine months delivered an award condemning the British Government to pay a sum of, in round figures, three and a quarter million pounds, as an indemnity for the damage done in particular by the Alabama in the capture of Northern or Federal ships for the benefit of their ultimately defeated adversaries, the Southern or Confederate States. The result eventually came to be regarded as highly satisfactory, and excited patriots were obliged to admit that high as the indemnity was, it was an infinitely better solution than submitting the question to the arbitrament of brute force; and we cannot at the present day but rejoice that the Government had the foresight to resist the combative instincts of those who regarded our acceptance of a peaceable settlement as the abdication of England's proud independence and an acceptance of foreign dictation in a matter governed by no then existing rules of international practice. So true is it that there were at that time no such rules that the Treaty of Washington had to lay down certain principles of law which were stated in the treaty not to be of general acceptance but only to have been adopted for the purpose of the case in question. These principles, however, in spite of the British reservation, have become the law of civilized nations, and are now incorporated as such in one of the Hague Conventions. The precedent of the Geneva Court, however, remained a solitary exception among the numerous arbitrations which followed it for thirty years.

Meanwhile, in both England and the United States, the idea that arbitration might some day become a standing international institution never ceased to occupy the minds of pacific reformers.

It became almost a commonplace to advocate the principle of arbitration in every case of international difficulty, and in 1895 Lord Alverstone, at a meeting of the International Law Association at Brussels, stated that "arbitration was now regarded as so fully recognized by all civilized nations that it had become unnecessary to argue in its support." Schemes of procedure were drawn up by different international bodies, and towards the close of the last century men began to talk seriously about general and standing treaties of arbitration and the possibility of a permanent Court for its application without that ironical under-current which until then had marked the expression of the practical man's feelings towards arbitration. It had, in fact, been made slightly ridiculous by the exaggerated hopes expressed by some of its more injudicious advocates. At length the idea of a standing treaty of arbitration struck the highly practical mind of the late Lord Salisbury as feasible, at any rate, between the United States and ourselves, and in 1896 he was personally directing negotiations for this purpose with the Department of State at Washington. The negotiations resulted, in 1897, in the signing of such a treaty for five years. I cannot help thinking that the principles of that treaty were full of wisdom. It did not attempt to do the impossible but only to meet different contingencies which could arise between two nations in the way best adapted to avoid national susceptibilities.

There were to be three classes of arbitration tribunals. For questions of indemnity up to £100,000, three arbitrators were to be necessary. When more than that sum was in dispute, five arbitrators were to be called in. For territorial or national questions of supreme importance the number of arbitrators was increased to six. In case of the arbitrators finding it impossible to form the required majorities, a friendly Power was to be called in to mediate. The chief clauses in the Treaty were Article VI and Article VII. Article VI was as follows:—

"Any controversy which shall involve the determination of territorial claims shall be submitted to a tribunal composed of six members, three of whom shall be Judges of the British Supreme Court of Judicature, or members of the Judicial Committee of the Privy Council, to be nominated by Her Britannic Majesty, and the other of whom shall be Judges of the Supreme Court of the United States, or Justices of the Circuit Courts, to be nominated by the President of the United States, whose award by a majority of not less than five to one shall be final. In case of an award made by less than the prescribed majority, the award shall also be final, unless either Power shall, within three months after the award has been reported, protest that the same is erroneous, in which case the award shall be of no validity. In the event of an award made by less than the prescribed majority and protested

as above provided, or if the members of the Arbitral Tribunal shall be equally divided, there shall be no recourse to hostile measures of any description until the mediation of one or more friendly Powers has been invited by one or both of the high contracting parties."

Article VII provided for decision by a tribunal similarly composed of all questions "of principle of grave general importance affecting the national rights" of either State, "as distinguished from the private rights whereof it is merely the international representative."

The essential point in this project was that for these questions of supreme national importance the arbitrators were to belong exclusively to the two contracting States. The idea which had prevailed until then in the constituting of Courts of Arbitration was that the arbitrator or umpire, if more than one, was necessarily a person who, by his independence and entire detachment from the interests involved, had the requisite impartiality for the pure and simple application of principles of justice. It was thought that nations could only apply as between themselves the same principles as regulate litigation between citizens. And indeed the assimilation is reasonable and perfectly practicable for questions of indemnity, which constitute the majority of international differences.

The use of the word "arbitration" in connection with this proposed mode of dealing with such vital issues is therefore to some extent misleading. The Court provided for in Art. VI of that treaty is called an "Arbitral Tribunal." In reality it is a "Joint Commission." This Joint Commission, then, was instituted to meet the difficulty of bringing grave national issues within the operation of the Arbitration Treaty in question. The draftsmen of the Treaty of 1897 knew that no Great Powers would dare to leave the decision of any vital issues between them to the hazard of any independent judgment, however great and unquestioned the impartiality of the judge. It has always been felt that such issues could never be committed to the decision of foreign arbitrators, or of a foreign umpire, an umpire being, for obvious reasons, necessarily a foreigner. The negotiators, therefore, provided that there should be neither outside arbitrators nor any umpire at all. Furthermore, to allay fears that any great national interest might be exposed to quixotic or unpractical views taken by any single judge, it was provided that, to be binding, the decision should require the concurrence against it of two out of three of the judges appointed by either party. This precluded, by a simple and practical method, for both countries, any danger of decisions contrary to the national feeling. The object of the two Governments was, manifestly, not so much to create a substitute

for war, as to provide a further stage of negotiation, and thus enable Governments to issue from any deadlock, into which they might have been drawn in the heat of controversy or by pressure of public opinion.

They consequently limited their efforts to the creation without the introduction of any third or independent element, of an automatic system, calculated to remove questions between the two States from irritating discussion by irresponsible politicians who can seldom be sufficiently conversant with the facts to deal efficiently with them. They hoped thereby to arrest the development of those vague hatreds, created by prejudice and ignorance, which grow no one knows how, and soon break away from their initial cause. Unfortunately this Anglo-American Treaty was not adopted by the United States Senate, although there was a majority of sixteen in its favour, owing to the fact that the United States Constitution requires a two-thirds majority for the adoption of a treaty. There were 42 votes for and 26 against it. Four more votes would have sufficed to ratify it.

At length came the Czar's famous rescript of 1898. Count Muravieff, his Foreign Minister, included among the subjects for discussion the establishment of a uniform practice in reference to good offices, mediation and facultative arbitration, but the proposal of a Court of Arbitration once more came from the representatives of the two Anglo-Saxon communities. It was more particularly, in fact, Lord Pauncefoot, the British Delegate, who had signed the Anglo-American Treaty when British Ambassador at Washington two years before, to whom the proposal of the Permanent Court was due.

II.—EARLY DISTRUST AND ITS EVENTUAL CESSATION.

There is something colossal in the very idea of a permanent Court of Justice for the decision of differences between States. One thinks of the graduation of our national Courts, of how our judicial organization provides an ever higher rank and greater function, as it ascends from rung to rung in the hierarchy, and yet the highest rung only deals with very small matters compared with the immense interests involved in the decision of an international issue. Our sense of proportion asks where we should find the judges great enough to inspire awe and confidence in the mighty litigants who are to sheathe their swords and humbly submit their differences to this highest jurisdiction of mankind.

We must therefore not be surprised if States shrank from making recourse to the new Court compulsory. In fact they repudiated the idea of compulsion in every provision of the Convention of 1899, and much to the disappointment of many of the more ardent votaries of arbitration, it contains specific warnings of

its purely optional nature. Thus the signatory Powers undertake, in case of grave disagreement or conflict, before appealing to arms, "as far as circumstances allow," to have recourse to the good offices or mediation of one or more friendly Powers, and, "as far as circumstances allow," the Powers may tender their good offices, and the exercise of this right can never be considered as an unfriendly act. Provision is made "as far as circumstances allow," and where involving "neither national honour nor vital interests," for international commissions of inquiry which are to have no binding character for the parties. Lastly is constituted the Permanent Court of Arbitration to which all questions may be submitted, which it has not been possible to settle by diplomacy, but everything again of an obligatory character in connection with it is most carefully eliminated.

The rules relating to the procedure of arbitration had already been drawn up and, as the Convention on the subject states, the object of the Permanent Court was to facilitate immediate recourse to arbitration for international differences which it had not been possible to settle by diplomacy. This Permanent Court of Arbitration was to be at all times accessible and to operate, unless otherwise stipulated by the parties, in accordance with the rules of procedure inserted in the Convention. The Conference, it is seen, left it to the Powers themselves to organize the Permanent Court, but it made a suggestion of what might be the composition of the Court failing direct agreement of the parties, viz. : that each party should appoint two arbitrators and that these together should choose an umpire.

It was also agreed that each signatory Power should select four persons of known competency in questions of international law and of the highest moral reputation to form a panel of members of the Court from which the Arbitrators could be selected. The panel was duly created, but for some time it seemed as if the Court was destined to remain a mere pious wish, if not an ironical demonstration of the absurdity of "pacifism," a term invented by the adversaries of pacific methods generally. For three years no recourse was had to the new institution. To the English judicial mind in particular it merely appeared as a sort of concession of the practical man to popular sentiment, even perhaps to popular ignorance which it would be safe to ignore. At length the United States and Mexico, less susceptible to the ridicule of the ignorant, gave it its first case, and the two great republics of North and Central America determined to cross the Atlantic and in the home of Grotius submit a difference between them to the new Court. As Baron Descamps, the eminent Belgian Senator and ex-Minister, who argued the case of the United States before the Court, said : "they gave a lesson to the old world."

The lesson had its effect. It was *le premier pas qui coûte*, and since then the Hague Court has had many cases. I do not say that they have all been cases which would not have been settled by arbitration without the existence of the Hague Court, but I do say that the existence of this Court has facilitated recourse to arbitration, that irritating discussion preliminary to the adoption of its procedure has been avoided, and that it has had a suggestive influence generally which has relieved states from any need of public justification of recourse to its peaceful agency. Its utilisation, moreover, may be the means, as we shall see, of proceeding further in the development of arbitration by the broadening of the area of its jurisdiction, so to speak, and by the adaptation of its methods to the varying requirements of international controversies.

International Law is not backed up with a police force to carry out its fiat. It depends for its observance upon the reasonableness of its rules. Diplomacy, the chief agency by which, in time of peace, International Law is applied, on the other hand, like the procedure of our domestic courts of justice, is largely a congeries of devices which have grown up to provide for requirements shown to exist, owing to the inherent intellectual shortcomings of the men who resort to law or even of those who have to apply it. In our domestic courts we distrust leaving irrevocable decisions to the judgment of one man: we distrust decreeing finality either to arguments or to evidence. And, to a great extent, circumstances have also led in diplomacy to the employment of many different forms to enable Governments in a similar way to avoid the calamity of deadlocks. Yet deadlocks do occur, and in recent times we have been more than once brought to the verge of war with powerful neighbours by practical deadlocks. Our diplomatic machinery, in spite of its arsenal of forms, failed for want of a further jurisdiction, which, by operation of law, without further discussion, should become necessarily possessed of the question at issue. We cannot disregard the natural weaknesses of mankind in the relations of nations with one another. Patriotism, ignorance, "bluff," improvisation, thoughtlessness, courage, love of excitement, conceit, conviction (right or wrong), misunderstanding, exaggeration, all affect the course of international questions, when public opinion is appealed to or allowed to take any part in their decision. This is the danger, and it is on account of this danger that so many great statesmen are agreed that, successful as our diplomacy usually is and admirably as it is recruited, we can no longer rely, in the circumstances of the present age—with a vigilant and enterprising press ruthlessly day by day dissecting every international incident, and a nervous, overstrained democracy which, especially in overcrowded cities, claims its say in all public matters—we can no longer, I say, rely on the quiet settlement of difficulties,

which the accredited diplomatists have not solved, without the aid of some further dilatory amicable procedure by which Governments can at least gain time.

Whatever difference of opinion may exist as to the mode in which arbitration can be best adapted to cover such and all cases of international difficulty, we have the great, if only, precedent of a general Arbitration Treaty between great Powers, the unratified Anglo-American Treaty of 1897. It cannot be denied that that treaty is based on a reasonable view of the difficulties which beset arbitration in the minds of statesmen, where national questions of vital importance are involved. It embodies, at any rate, as President Cleveland said of it, a "practical working plan" for bringing these delicate matters within a general treaty. On the other hand, the Hague Convention has dealt with all matters but this very class, which was excluded from the purview of the Conference, and as regards all others but this class, reference to the Hague Court is fast being made compulsory. Then what is wanted, to complete the work done at the Hague, is to graft upon it some such provisions as those contained in the Anglo-American Treaty, confining the choice of the arbitrators, where the question is of vital importance, to persons exclusively of the nationality of the States concerned.

III.—COMPULSORY ARBITRATION AND THE SCOPE OF ITS APPLICATION.

I have dealt with the first two great landmarks in the history of systematic arbitration, that is arbitration as a judicial method of adjusting international differences. The first was the Anglo-American Alabama arbitration at Geneva in which the forms and procedure of law courts were followed. The second was the constitution of a permanent court of arbitration at the Hague modelled more or less upon the principles of the Geneva arbitration court. I come now to the third great step in the story—the first standing treaty of arbitration, under which two great Powers determined to submit all differences of a judicial character to the decision of this court. That treaty was signed by Lord Lansdowne, the British Secretary for Foreign Affairs, and M. Cambon, the French Ambassador, on October 14, 1903, after an agitation lasting three years in which I had the honour of playing the part of leader, a treaty for ever memorable because it was the first of the series of agreements which consolidated the Entente between this country and France. This Anglo-French treaty provided as follows:—

Article I. Differences of a judicial order, or relating to the interpretation of existing Treaties between the two Contracting Parties, which may arise, and which it may not have been possible to settle by diplomacy, shall be submitted to the

Permanent Court of Arbitration, established by the Convention of July 29th, 1899, at the Hague, on condition, however, that neither the vital interests, nor the independence or honour of the two Contracting States, nor the interests of any State other than the two contracting States, are involved.

Article II. In each particular case the High Contracting Parties, before addressing themselves to the Permanent Court of Arbitration, shall sign a special undertaking [in French—*compromis*] determining clearly the subject of dispute, the extent of the arbitral powers, and the periods to be observed in the constitution of the Arbitral Tribunal, and the procedure.

The terms of agreement as adopted by Great Britain and France became a sort of common form, and in the course of a few years there were but a few states in the world which had not concluded with each other similar treaties. The Hague Court, in fact, was now universally recognized as an international institution with a definite function, and the self-dubbed "practical man" ceased to regard it as a mere concession to popular prejudice and ignorance.

To understand, however, the full bearing of the Anglo-French treaty I must ask you to revert again to the Hague Conference of 1899, and remind you of a fact which has probably been forgotten by most people by this time. It was that the Russian original project of a general treaty of arbitration provided that it should be obligatory. The then famous Article 10 of that project provided as follows:—

From the ratification of the present Act by all the signatory powers, arbitration is obligatory in the following cases, in so far as they do not affect either vital interests or the national honour of the contracting states:

1. In cases of difficulty or contention relating to pecuniary damage suffered by a state or its citizens, in consequence of illegal acts or negligence of another state or its citizens.
2. In cases of difference relating to the interpretation or application of the treaties or conventions herein mentioned.
 - (a) Treaties and conventions relating to posts and telegraphs, railways, protection of submarine cables; prevention of collisions on the high seas; navigation of international rivers and inter-oceanic canals.
 - (b) Conventions relating to copyright and industrial property (patents, trade marks, etc.); to money and weights and measures; to sanitary and veterinary matters and the phylloxera.
 - (c) Conventions relating to successions, cartel and mutual judicial assistance.

- (d) Conventions relating to boundaries, in so far as of a purely technical and non-political character.

To the first class in this enumeration some exception was taken, but the conference was practically agreed on the general principle of the article—viz., that the signatories should oblige themselves to refer to arbitration all matters not involving a vital interest or the national honour. After recasting the Russian project to meet different objections of detail, the idea of making reference to arbitration obligatory, even on these minor matters, had to be abandoned. One Power alone, but a very great Power, refused to agree to obligatory arbitration in any case whatsoever. That Power was Germany, who “did not consider that she could enter into any treaty binding herself beforehand to submit new cases to arbitration.”

At the time it seemed as if this opposition on the part of a leading state on an essential point would make the whole work of the conference in reference to arbitration a mockery, and there was general disappointment, not confined to those who had hoped that, though the Russian Emperor's original idea of disarmament had not found favour with any of the chief participants in the conference, at any rate some sort of obligatory arbitration would be adopted which would largely compensate for its rejection. Obligatory arbitration, in fact, had become for many the chief object of the conference, and it seemed to them as if without it no headway in the cause of peace would have been made at all. When the conference came to an end the stormy petrels of the press and magazines were jubilant at this apparent failure of the conference to do anything but put in the form of an agreement the rules already practised. They pointed out with derision that the objection raised to the obligatory character of Art. 10 had been translated into every article of the Convention. Every step forward was attended by a step backward by the addition of the proviso: “as far as circumstances allow.” This had been the price of Germany's adhesion to the Peace Convention. Well, nevertheless, one of the earliest treaties based on the formula of the Anglo-French treaty was one between Great Britain and Germany.

The effect of this new Anglo-German agreement was that Germany thereby withdrew her opposition, so far at any rate as regarded Great Britain. This was a point of considerable significance. Germany appeared to have changed her attitude towards standing treaties of arbitration, and had now become by the new treaty an active party to the promotion of the prestige of the Hague Court. There could be little doubt that thenceforward the statesmen of the Western nations intended to treat the Hague Court seriously and, with a recognized Court to

apply it, there was no longer anything utopian in the idea of a code of international law. But we see the still more important fact of general application, viz., that by the adoption of the permanent court of arbitration and by the obligatory reference to it, through the conclusion of numerous treaties, of all the very cases which were proposed in the furthest-going scheme submitted at the first Hague Conference, the then "wildest" of schemes had now become the "mildest" of commonplaces. For all cases of a judicial character the Hague Court had become as much the appropriate jurisdiction as any national court for similar cases. We heard no more about the futility of a Court which had no means of enforcing its decisions. Universal public opinion afforded the necessary sanction. Although as many as thirteen cases have now been decided by the court, and two at the outbreak of the war were still pending, and the powers which have submitted differences to it number seventeen, including some states which have even been regarded as unruly,¹ not a single instance has occurred of a state showing even the slightest disrespect for the decision given.

We must, however, remember a point which is often overlooked. It is that the parallel in national justice to an international court of arbitration is a civil not a criminal court, and that the complaints of critics of arbitration assume that the advocates of arbitration propose to give powers of punishment to a jurisdiction which is essentially a court for the decision of points of law and the assessment of damage. Whether we are likely ever to reach a stage in which such a court can deal with any but questions of judicial right is the next point we shall have to examine.

IV.—"VITAL INTERESTS" AND MORAL POTENTIALITIES.

You will have observed that the Anglo-French treaty contained the proviso that it should not apply to questions involving vital interests, the independence or the honour of either state. This was the class of questions which in the Anglo-American treaty corresponded to questions of "grave general importance affecting the national rights" reserved for a joint commission as distinguished from a court of arbitration. This exclusion of the very matters which seem the only kind capable of inflaming public opinion to a dangerous point shows the limit to which in both America and Europe statesmen are prepared to go so far as arbitration is concerned. What is a vital interest?

"Vital," I venture to suggest, means some difficulty which can

1. The States which have agreed to references are as follows: Great Britain, France, Russia, Germany, the United States of America, Japan, Mexico, Spain, Italy, Belgium, the Netherlands, Sweden, Norway, Portugal, Turkey, Peru, Venezuela.

only be solved by reversion to the *status quô ante* or the reversal pure and simple of the act committed. If, for instance, the English port authorities had declined in time of peace to allow a French man of war to leave Gibraltar until a case arising out of a collision were tried, France would probably have refused to submit the question of the detention to arbitration, but might have agreed to the determination by arbitration of the liability of the vessel and assessment of the damages. The freedom of movement of her vessels of war she would have considered as a vital interest, the other as a difference of a judicial order. We may understand what is a vital interest from this example.

The determination of what is a question involving "national honour" is less easy. An insult to an ambassador or to the national flag may be regarded as examples. Though an indemnity may be paid by way of damages, it is obvious that no state would willingly agree to an arbitration in which it might be competent to the tribunal to declare that no damages were payable or would allow a third party alone to assess the payment which would repair an insult. It is only where there may be a doubt whether a certain act is an insult or not that conceivably arbitration would be accepted by a state which felt some doubt itself. On the other hand the over-heated discussion of any question or the difficulty of receding from an erroneous or one-sided view of a question may be regarded as involving a national honour conspicuously absent in most such cases from the controversy. In short the Hague Court is for the trial of civil causes—a court which can have no punitive character, which decides between the judicial rights of the litigant parties, and which can only deal with precise points submitted to it or assess the amount of damages payable when required to do so in the protocol of reference signed by the parties.

It has been proposed by the United States Government that the court should be assimilated even in its composition to a national court, that judges as in the case of national judiciatures be appointed and sit in rotation, and that a special selection of arbitrators *ad hoc* should become unnecessary. An exhaustive scheme was submitted by the American delegates at the conference of 1907 for the purpose of creating this "Court of Arbitral Justice." Out of the panel forming the court three judges were to be selected to form a special delegation, and three more to replace them if the former were unable to act. They were to meet in session once a year on the third Wednesday in June, the session to last until all the business on the agenda had been transacted. The difficulty of an annual selection by all the powers involved might no doubt be overcome and probably the scheme of the United States with some minor modifications will some day bring the court into a closer harmony with existing judicial systems.

What then are the potentialities of the Hague Court? Since it came into existence in 1899 there have been six wars—the South African, the Russo-Japanese, the Turco-Italian, the Turco-Balkan, the Inter-Balkan, and the present gigantic conflict. In none of these cases has there been matter for arbitration. They have all been wars of conquest, deliberately undertaken with a view to conquest. In the Turco-Italian and the present war no time was left after the declaration of war for any mediation which might have led to arbitration, if there had been, in either, any arbitrable matter. In the Inter-Balkan war the hostilities broke out without even a declaration of war. In the Turco-Balkan war even the disguise of a grievance was dispensed with, and in the South African war in which grievances were alleged and there was time for arbitration, it was firmly declined.

It is obvious that where one of the parties is decidedly in the wrong, he will not agree to arbitration. We may therefore eliminate from among the potentialities of the Hague Court all recourse to it where one of the parties to the difference has an unavowed object or an avowed object which according to the principles of justice would have to be condemned. In the Turco-Italian war, Italy frankly admitted that her object was to occupy and annex the Tripolitana and Cyrenaica. Had the matter been submitted to arbitration she could but have been declared in the wrong. If, in the present war, Germany had agreed to arbitration she could not have hoped to obtain by an award either any part of Belgium or of the Baltic provinces of Russia. If England had agreed to arbitration with the Boer Republics the question of a South and East-African dominion would have passed out of realization and the Republics, with the assistance of Germany, would have finally blocked the road between Egypt and the Cape.

Then it is evident that arbitration, in none of these cases of war since the Hague Court was instituted, could have saved the states in question from war. The rôle of the Hague Court, therefore, is just that which it has played since its creation. It is a court for the determination of cases in which there are disputed questions of right and damages, questions in which rules of law and justice are applicable, and in which the parties seek in good faith an honest solution.

And yet there are powers which might be given to it, even in cases like the present terrible war, in which the bulk of the nations of the earth are engaged in a life or death struggle while only the weaker nations are neutral. It might sit as a sort of court for grievances before which all alleged violations of international treaties or usages might be laid; by which all cases of futile cruelty might be judicially examined. It might not only condemn such violations of law and humanity but it might offer recommendations

and help to prevent the growth of illegality which marks the progress of the present war.

It may be a dream but I wonder whether, some day, out of the Hague Court and its further developments, some institution may not be evolved in which men of different nations may be elected by civilized mankind to possess in common the citizenship of all nations and relinquish patriotism or political attachment to any one of them, an institution entitled to express its opinions and give its advice with all the sanctity of the oracles of antiquity. Or perhaps a special state may, some day, be created like the District of Columbia, created to fulfil the purpose of securing independence among the United States of Europe, or it might be a special college of jurists having an existence as independent as the Vatican. In any case some such body of "supermen" who have nothing to gain and nothing to lose might come to wield a power over the minds of mankind not unlike that at present wielded by the Holy Father at Rome or by the Caliph over Mahommedans. It may be a mere dream, as I say. Certain it is, however, that the world needs some great moral force to guide and uphold it amid the ambitions of sovereigns and statesmen, to protect men against their own cruel and rapacious instincts and to set a higher tone of human sympathy and fraternity among mankind generally.

THOMAS BARCLAY.