

I neither overlook nor underestimate, because it is by reason of its defects and shortcomings that the new institution seems necessary. In doing so I have accepted the burden of proof that any one must accept who proposes a change in existing conditions, and in the course of the memorandum I have tried, in a fair and candid spirit, to state and to meet some of the most important objections that may be and indeed have been made to the proposed institution. But in advocating the newer court I have stated my sincere conviction that the present so-called court should be maintained, for it is no less useful, indeed necessary, than the proposed one although its field of activity is different. As Mr. Bourgeois pointed out in his admirable address at the Second Peace Conference, nations may and doubtless will wish to form special tribunals composed of arbiters of their immediate choice for the settlement of perplexing and grave disputes of a political nature; whereas the same nations may be willing to accept, for the decision of justifiable disputes, judges appointed in advance of their controversies, as in differences of the first category negotiation is expected, perhaps required; while in the second category the impartial and passionless application of principles of law and of justice is both expected and required.

In order to establish the Court of Arbitral Justice it is necessary to show that some powers are willing to bring it into being and I have, therefore, stated the agreement of Germany, the United States, France and Great Britain, reached at Paris in March and at The Hague in July, 1910, to constitute the court for a limited number of powers, by means of the composition of the Prize Court. This method of creating the Court of Arbitral Justice presupposed the existence of the Prize Court as it was evidently impossible to use the composition of an existing court that did not exist.

The Netherland Government was informed of these negotiations and I had the very great pleasure of delivering copies of the various agreements to your distinguished predecessor, Mr. van Swinderen.

As the failure of Great Britain to ratify the Declaration of London, upon which the establishment of the Prize Court seems to depend as far as Great Britain is concerned, makes the early constitution of the Prize Court problematical, I have endeavored to show in the memorandum that it is unnecessary longer to wait upon this court as the present proposal to form the Court of Arbitral Justice does not use its method of composition. I have thought it advisable, however, for the sake of completeness, to append the two agreements of March and July, 1910, to the memorandum, and I have also taken the liberty of appending a draft convention calculated to give effect to the present proposal.