

appointing the judges which would be acceptable to all the powers or to any large number of them, a difficulty due to the fact that all nations wish, and not unnaturally so, to be represented in a court which, to be truly international and to bind all nations by its judgments, must be created by all. There was a general agreement at the Second Peace Conference of The Hague in 1907 that the proposed court should be established and be permanently in session at The Hague by its delegation of three judges. Composed, as it would be, of judges appointed for a long period, namely, twelve years, it would have all the advantages of a court of justice and none of the disadvantages of a mixed commission, or of a special and temporary tribunal of arbitration.

The present proposal is more modest and its very modesty frees it from the difficulties involved in the formation of a universal tribunal in which all nations as such are to be represented, and raises the hope that, freed from these difficulties, the smaller and less ambitious court can be created for the powers that may be willing to create it at the present time. But however small the court may be, it should be understood and expressly stated in the convention constituting it that non-contracting powers may use it if they so desire, and that they may appoint judges for the trial and decision of their particular case or cases. A court of this kind, although primarily created by and for a relatively small number of nations would have the advantages and render the services of a truly international court, in which every nation that cares to use it is treated as an equal of every other state.

But it is not the purpose of this letter to outline the plan and to analyze its provisions in detail as this is done in the memorandum. It is rather to explain the *raison d'être* of the memorandum, and to justify its length, for it is, I fear, a somewhat lengthy paper. If it dealt solely with the proposed method of constituting the court, it would be much shorter than it is. It appeared advisable, however, on reflection, to state not merely the proposition, which is comparatively simple, but also the reasons which make the establishment of the Court of Arbitral Justice seem necessary both for the judicial decision of international disputes and for the development of international law. This method of treatment required some consideration of the present so-called Permanent Court of Arbitration, because if this institution is really a court in the strict and technical sense of the word, and if it performs the services of a court of justice, the creation of a new court of like nature seems unnecessary. I have, therefore, but I hope in no unkindly spirit, dwelt at some length upon the defects and shortcomings of the so-called court rather than upon its services, which, however,