

Covenant of the League of Nations the following provision which appears as Article XXV thereof:

The Members of the League agree to encourage and promote the establishment and co-operation of duly authorized voluntary national Red Cross organizations having as purposes the improvement of health, the prevention of disease and the mitigation of suffering throughout the world.

The first meeting of the General Council of the League of Red Cross Societies was held at Geneva in March of this year.

CHANDLER P. ANDERSON.

#### THE MEETING OF THE AMERICAN BAR ASSOCIATION

The annual meeting of the American Bar Association was held at Boston in the first week of September last. The session was of interest in many ways and the attendance unusually large and representative. Lord Finlay, sometime Lord Chancellor, was the distinguished representative of Great Britain present, and Mr. Justice Riddell of the Supreme Court of Ontario was heard with attentive appreciation. It is necessary here, however, to confine ourselves to that portion of the proceedings having to do with international law.

First, the Standing Committee on International Law presented a report covering twenty-two printed pages. It briefly outlined the negotiations which resulted in the armistice between the Allied and Associated Powers and the Central Powers. It submitted an abbreviated summary of the peace treaty, spoken of as the Treaty of Versailles. It called attention to the division of opinion concerning it which had arisen and which tended toward party lines. It mentioned that the President had promised full explanations and deprecated untimely discussion (the report was filed by requirement in June) and it added: "The vast scope of the matters, the inconclusive state of the documents, the limits of publicity not wholly removed, and the request of the President, make it improper for your committee to do more than summarize the situation without assuming to express a conclusion or advise action."

The committee, however, expressed the ardent hope that the interests of the world in a stable peace might be reconciled with the security of the sovereignty and independence of the United States.

They called attention to the fact that this independence was declared in 1776 and had been maintained by six generations of our countrymen in glory and honor, unshaken and undiminished. In conclusion, they said: "May our generation, whose energy, courage, capacity and patriotic devotion, this great combat has tried and approved, may our generation hand on its heritage to those who come after, still unabated, undiminished, constant and secure."

They appended a "Table of Events" directly affecting our country in international matters during the year, with dates and references. This recorded one hundred and forty-two occurrences and covered seventeen printed pages.

This writer is advised by Lord Bryce, who has warmly commended these compilations, of a project in England to arrange for like annual reports by British students of international law.

The report was signed by Professor Theodore S. Woolsey, Professor Charles Cheney Hyde, Mr. Frederic R. Coudert and the writer. Dr. James Brown Scott, the only other member of the committee, was prevented from participating by absence in attendance at the Peace Conference.

A special committee of the Bar, appointed to report on a League of Nations, not to the Bar Association, but to the Executive Committee, made public in print a divided report of some sixty-four pages. The majority of the committee, consisting of Mr. William H. Wadhams, the late Mr. Frederick N. Judson, and Mr. Edgar A. Bancroft, presented an extended argument in favor of the League of Nations, taking the ground that its ratification involved no surrender of sovereignty on the part of this country. They recommended therefore its ratification without amendment and they declared reservations which made changes were in effect amendments.

Mr. Henry St. George Tucker, former president of the American Bar, and Mr. Charles Blood Smith, the other two members of this special committee, declined in writing to concur in the foregoing report.

Upon the divided report no action whatever was taken by the Association. Printed copies were sent by the Secretary of the Bar to each member of the Foreign Affairs Committee of the United States Senate endorsed as follows:

The within report of the Special Committee having been submitted too late for consideration, it was referred by the Executive Committee to the American Bar

Association itself without recommendation. The report has not yet been considered by the Association.

A statement was widely circulated through the press of the country that the American Bar Association had declared in favor of the League of Nations. It is respectfully submitted that the statement was erroneous and wholly without warrant in fact.

Two addresses of interest as to international questions, one by Honorable David Jayne Hill on "The Nations and the Law," and the other by Honorable Robert Lansing on "Some Legal Questions of the Peace Conference," require mention.

Mr. Hill supported, with wide learning and eloquent comment, the passion for justice according to law which was the chief support of civilization. He quoted President Wilson's words to show that we accepted the challenge of Germany in defense of our rights upon the seas under international law, which no modern publicist had ever questioned before. He called attention, however, to the fact that in the fourteen conditions of peace proposed by the President, there is "no reference to international law as having been violated, or as something to be vindicated and reestablished."

He said in the proposal of a League of Nations the restoration of the law of nations was not included among the five objects to be obtained in the peace. He pressed the desirability of having it understood that the United States had taken up arms solely to vindicate the law. He complained that the Covenant of the League of Nations contained no declaration that sovereign states as such possess any rights whatever. "We find," he says, "no provision of law by which their conduct to one another may be judged; no promise of a court before which their wrongs may be brought and their legal rights judicially determined."

He said, on the other hand, "matters of vital, material consequence are to be entrusted to the purely diplomatic decisions of the Council or the Assembly," and that "these bodies, not regulated by any law or rules of procedure, are charged with judicial functions"; that the Covenant not only makes no advance in international law, but wholly overlooks the status attained by it through the work of the great international congresses since the Congress of Vienna of 1815.

He added:

We have founded this nation upon principles of law, and upon the guarantees of individual rights under the law. That is our great contribution to civilization;

and if we are to be of use to other nations, old or new, our first thought must be to remain our own masters, to preserve our independence, to control our own forces as a nation by our own laws and to protect from any form of detraction that heritage of organized liberty which has given us peace at home and prestige abroad.

Honorable Robert Lansing, in a thoughtful and far-reaching address which was printed in full in our last number, attributed most of the criticism of the conclusions of the peace conference to "incomplete knowledge." He said that the war had given an impetus to internationalism, or what was more properly called "Mundanism"; that this was the enemy of nationalism which is the basis of world order as we know it. He had no doubt the final verdict would be for nationalism in democratic form. He said the treaty of peace made the nation the unit of responsibility and so showed the nationalistic idea was to be preserved; that this showed further that international law, and not world law affecting individuals, is to continue as the standard of intercourse between governments and peoples.

He insisted on one principle for the direction of international intercourse, and that was justice in the restricted sense of legal and not abstract justice. He declared that, when you go beyond that you enter the field of diplomacy, where concession and compromise are the chief agents; that in judicial settlement all nations are held equal, but inequality is recognized in diplomacy. He therefore appealed for the establishment of an international tribunal of justice, with the Hague Court as a foundation, and for the draft of a simple and concise body of legal principles to be there applied.

Mr. Lansing said that he presided over the Commission on Responsibilities, constituted by the Conference, and this had to consider what action should be taken against individuals responsible for the war and for violations of the laws of war. The trial of the Kaiser was especially considered. While the report of the Commission<sup>1</sup> declared that all "without distinction of rank, including Chiefs of States, who have been guilty of offenses against the laws and customs of war or the laws of humanity, are liable to criminal prosecution," Mr. Lansing said that to this the American members dissented on the ground, among others, that it submitted Chiefs of States to a degree of responsibility hitherto unknown to municipal or international law, and that the American representatives refused also to

<sup>1</sup> Printed in full herein, p. 95.

fully assent to the recommendation for the creation of a High International Court of Criminal Jurisdiction with authority to interpret and apply the law of humanity. Mr. Lansing expressed the belief that the provisions adopted by the Council of Four, for the arraignment and trial of the former German Emperor, create "not a court of legal justice, but rather an instrument of political power which is to consider the case from the viewpoint of high policy and to fix the penalty accordingly."

Mr. Lansing vigorously urged the maintenance of individualism between nations and within nations, declaring it the very life blood of modern civilization. He said, in closing:

If we Americans abandon individualism, we have bartered away our birthright, we have cast aside that for which our forefathers were willing to die. The same is true of individualism among nations. It must be maintained if the peoples of the earth are to possess patriotism, love of liberty, and that generous devotion to national ideals which have made nations great and prosperous.

Much that transpired at this great meeting was of legal and intellectual interest. Its omission here is solely due to the limits appropriate to a publication confined to international law.

CHARLES NOBLE GREGORY.

#### JURISDICTION OF LOCAL COURTS TO TRY ENEMY PERSONS FOR WAR CRIMES

Supplementing the literature which appeared in periodicals during the war on the competence of local courts to try and punish enemy persons for what are regarded as crimes against the recognized laws and customs of civilized warfare, it will be of interest to leave the forum of academic discussion of conflicting theories and systems of jurisprudence, and enter the realm of actually ascertained and applied law on the subject.

In the United States the principle that local courts have no jurisdiction to try a punishable crime committed by members of the invading army, either during or after the enemy occupation, has been declared by the Supreme Court to be a principle of international law. After the Civil War in the United States, the Supreme Court was called upon to decide a number of cases involving the criminal and civil responsibility of members of the respective military forces