EDITORIAL COMMENT

SECRETARY BRYAN'S PEACE PLAN

As the JOURNAL has devoted two editorial comments to Secretary Bryan's peace plan—that is to say, the conventions negotiated by him as Secretary of State with foreign countries, providing for commissions of inquiry to pass upon international disputes which may arise between them—it is not necessary to restate the terms of the treaties or the advantages which are expected to flow from their ratification and application in practice. The JOURNAL, however, is pleased to print the following list of countries, chronologically arranged, which have indicated

acceptance in principle of the peace plan up to June 29, 1914, furnished by the courtesy of the Secretary of State:

1. Italy
2. Great Britain
3. France
4. Brazil
5. Sweden
6. Norway
7. Russia
8. Peru
9. Austria-Hungary
10. Netherlands
11. Bolivia
12. Germany
13. Argentina
14. China
15. Dominican Republic
16. Guatemala
17. Haiti
18. Spain
19. Portugal
20. Belgium
21. Denmark
22. Chile
23. Cuba
24. Costa Rica
25. Salvador
26. Switzerland
27. Paraguay
28. Panama
29. Honduras
30. Nicaragua
31. Persia
32. Ecuador
33. Venezuela
34. Greece

The following is likewise an official list, furnished by the Secretary of State, of countries, chronologically arranged, which have entered into treaties endorsing the principles and details of the peace plan up to July 24, 1914:

1. Salvador	August 7, 1913
2. Guatemala	September 20, 1913
3. Panama	September 20, 1913
4. Honduras	November 3, 1913
5. Nicaragua	December 17, 1913
6. Netherlands	December 18, 1913
7. Bolivia	January 22, 1914
8. Portugal	February 4, 1914
9. Persia	February 4, 1914
10. Denmark	February 5, 1914
11. Switzerland	February 13, 1914
12. Costa Rica	February 13, 1914
13. Dominican Republic	February 17, 1914
14. Venezuela	March 21, 1914
15. Italy	May 5, 1914
16. Norway	June 24, 1914
17. Peru	July 14, 1914
18. Uruguay	July 20, 1914
19. Argentina	July 24, 1914
20. Brazil	July 24, 1914
21. Chile	July 24, 1914

Treaties with France and Great Britain have been agreed upon and will, it is expected, be signed in a few days. It is thus seen that twenty-one treaties have actually been signed, and on July 24, 1914, twenty of these were laid before the Senate for its advice and consent. As the Senate Committee on Foreign Relations has already approved them in principle, it is believed that they will shortly be ready for ratification. The treaty with Peru, owing to delay in transmission, will be sent to the Senate later.

The provisions of the treaties differ, although the principle is invariably the same, and through the courtesy of the Secretary of State the JOURNAL is enabled to give the text of what Mr. Bryan regards as representative of the entire group, namely, the convention between The Netherlands and the United States of December 18, 1913. The preamble states—and the preamble is true in this case—that the United States and Her Majesty the Queen of The Netherlands are "desirous to strengthen the bonds of amity that bind them together and also to advance the cause of general peace." It would be a waste of time to comment upon this simple sentence, for since the Jay Treaty of 1794, which introduced arbitration into the modern practice of nations, the United States has been a leader, as well as a pioneer in the peaceful settlement of international disputes, and since the meeting of the First Peace Conference at The Hague in 1899 Holland has been and is the center of international development. It is perhaps not too much to say that the little city of The Hague has become the unofficial capital of the society of nations.

It may be permissible to quote, in support of these views, a passage from an address of Mr. Frederic R. Coudert, introducing His Excellency Mr. Loudon, then Netherland Minister to the United States, but now Minister of Foreign Affairs of his country, who in his present capacity authorized the Netherland Minister to negotiate the treaty in question with the United States:

> There is in Europe one country—I was going to say a little country, but that is not the word, because if bigness consists of high principles, if it consists of altruism, if it consists of spiritual power, if it consists of standing for the right and for fairness among men, then Holland is a great country, and always has been. It was great in the days when the military ideal stood high, and, if I remember rightly, none other than Hollanders were accustomed to carrying brooms at their mastheads in a certain historic channel. But times pass along, and having excelled in the ideals of the Middle Ages, they left them to excel in the ideals of modern times.[1]

[1] Proceedings, American Society of International Law (1913), pp. 265–266.

But to the treaty. By its first article

> The high contracting parties agree that all disputes between them, of every nature whatsoever, to the settlement of which previous arbitration treaties or agreements do not apply in their terms or are not applied in fact, shall, when diplomatic methods of adjustment have failed, be referred for investigation and report to a permanent international commission, to be constituted in the manner prescribed in the next succeeding article; and they agree not to declare war or begin hostilities during such investigation and before the report is submitted.

It is believed that this article defines in the clearest and most unmistakable language the relation of the international commission to arbitration, for it is expressly stated that diplomatic methods shall have been used to produce agreement and that they have failed; that arbitration is not rejected in favor of a commission, because the disputes to be submitted to it are either those not covered by a treaty of arbitration, or, if included, are not actually arbitrated. That is to say, disputes of whatsoever nature, not included in arbitration treaties, are to be submitted to the commission, so that the new agency is to supplement the defects or shortcomings of such treaties and to bring to discussion all matters of controversy between the two countries in excess of the obligation assumed in treaties of arbitration.

As will be seen in Article III, the two countries do not confuse the proceedings before the commission with the consequences of arbitration, because the commission reports; the arbitral tribunal decides. The contracting parties believe, and it would appear properly, that a report based upon careful investigation is tantamount to a settlement, and it is to be hoped that this belief will be justified by the facts. It will be noted that the concluding clause of Article I provides that war shall not be declared or hostilities begun before the report of the commission is submitted. While war between The Netherlands and the United States is unthinkable, such an agreement is far from useless. Its very presence is an invitation to other nations, with which war is not unthinkable, to investigate before they fight, or rather to investigate instead of fighting. Its presence in many instruments of this kind will reinforce its influence in this one, and it will be harder in the future than in the past to refuse the reasonable demand of a foreign nation to submit a controversy such as the blowing up of the *Maine* to an international commission of inquiry.

The next article deals with the composition of this important body:

The international commission shall be composed of five members, to be appointed as follows: One member shall be chosen from each country, by the government thereof; one member shall be chosen by each government from some third country; the fifth member shall be chosen by common agreement between the two governments, it being understood that he shall not be a citizen of either country. The expenses of the commission shall be paid by the two governments in equal proportion.

The international commission shall be appointed within six months after the exchange of the ratifications of this treaty; and vacancies shall be filled according to the manner of the original appointment.

In the first place, it is to be observed that the commission is to be permanent (Article I); that, although each country is to be represented in it by a citizen or subject of its choice, the other members, including the fifth, who may probably be chairman, are to be foreigners, so that control of the national element is excluded; for, say what we will, a citizen or subject remains in international matters a citizen or subject. His presence in a commission of this kind, however, may well be helpful rather than detrimental, because the report, as will be seen in Article III, is not binding upon the governments. This article is very important, because it contains an obligation on the part of the governments and vests the commission with the initiative, if the governments do not themselves lay the dispute before it. But it will be well to quote the article in full before commenting upon it:

In case the high contracting parties shall have failed to adjust a dispute by diplomatic methods, they shall at once refer it to the international commission for investigation and report. The international commission may, however, spontaneously offer its services to that effect, and in such case it shall notify both governments and request their co-operation in the investigation.

The high contracting parties agree to furnish the Permanent International Commission with all the means and facilities required for its investigation and report.

The report of the international commission shall be completed within one year after the date on which it shall declare its investigation to have begun, unless the high contracting parties shall limit or extend the time by mutual agreement. The report shall be prepared in triplicate; one copy shall be presented to each government, and the third retained by the commission for its files.

The high contracting parties reserve the right to act independently on the subject-matter of the dispute after the report of the commission shall have been submitted.

The first sentence should be construed with Article I, for standing alone, it might seem that arbitration was to be excluded. By so doing it appears that, if there be no treaty of arbitration covering the dispute, or if the duty to arbitrate has not been complied with, diplomacy is not to drag on interminably, for upon its failure the governments agree to

refer the dispute "at once" for investigation and report. It may happen, however, that one of the governments may be unwilling to do this and, were it not for the second sentence of Article III, we would have, as it were, a deadlock. This sentence, however, allows the commission on its own initiative—"spontaneous" is the word in the text—"to offer its services," and the second paragraph of the article apparently binds the contracting parties to furnish the commission "with all the means and facilities required for its investigation and report" as fully as if the reference were with the consent and upon the motion of the two governments. There would seem, therefore, to be no escape from arbitration, on the one hand, if a treaty exists, or from the investigation and report of a commission, whether the government will or no. Herein lies the great importance of the treaties, for investigation must in many cases amount to settlement; for no nation, however powerful, can in the long run withstand public opinion, and public opinion will no doubt be created by this article.

It will be observed that the provision found in some of the treaties not to declare war and begin hostilities within a year, absent in express terms from this treaty, is nevertheless read into it indirectly, for the commission has, by Article III, a year after the beginning of its investigation to prepare its report. The advantage of such a provision is too evident to need comment.

The concluding paragraph of Article III is hardly less important than the power of the commission to act spontaneously—that is, on its own initiative—and this although it does not attach any obligation on the part of the governments to put into effect the conclusions of the report. Indeed this seeming defect is its crowning glory, for we know from every-day experience how unwilling we are to do that which we are bound to do, and how often we do voluntarily what we do not need to do. There is no escape from the investigation, for, if the governments are recalcitrant, the commission itself may step in, and it is interesting to note that in public documents "may" is not permissive, but mandatory. If therefore the case is before the commission, and its submission does not depend upon the two governments or upon their national representatives, for they are a minority of two in a body of five, a report is inevitable, supposing that the foreign members are set upon a report, and it is believed that compliance with the report is inevitable, because of the pressure of public opinion which will be in this case enlightened.

For the sake of completeness Article IV is quoted, although the last two paragraphs of it deal with its signature:

> The present treaty shall be ratified by the President of the United States of America, by and with the advice and consent of the Senate thereof; and by Her Majesty the Queen of the Netherlands; and the ratifications shall be exchanged as soon as possible. It shall take effect immediately after the exchange of ratifications, and shall continue in force for a period of five years; and it shall thereafter remain in force until twelve months after one of the high contracting parties have given notice to the other of an intention to terminate it.
>
> In witness whereof the respective plenipotentiaries have signed the present treaty and have affixed thereunto their seals.
>
> Done in Washington on the eighteenth day of December, in the year of our Lord nineteen hundred and thirteen.

The treaty, it will be noted, is concluded for a period of five years, but in reality it is for six years, as it remains in force for a twelvemonth after one or the other party may have given notice of an intention to terminate it.

From this brief analysis of the convention, it is evident that it does not interfere with any existing agency of peace, because the nations are always free, through the channels of diplomacy, to adjust their disputes by direct negotiations or by some other means, if they so desire. Arbitration is expressly reserved, so that the present treaty supplements, but does not modify, a duty to arbitrate. It does bind the nations, however, to submit their other disputes without reservation to the investigation and report of a permanent commission, which can act upon their mutual request, or indeed without their request, and Mr. Bryan is to be congratulated upon having secured the discussion of all disputes between the contracting parties, not otherwise provided for, by the apparently simple yet effective device of an investigation and report, which is believed to be tantamount to settlement.

THE AMERICAN-JAPANESE DISCUSSIONS RELATING TO THE LAND TENURE LAW OF CALIFORNIA

The question of the California land tenure law as it affects the subjects of Japan has recently again been brought into prominence and in a way to attract as much as possible the attention of the public in the two countries. It seems that, after the exchange of diplomatic notes last year between the Secretary of State and the Japanese Ambassador