between what the several members of the family of nations were, in his judgment, to be deemed to have accepted or acquiesced in as the law governing their mutual relations, and what did not appear in fact at the time to enjoy such approval. Nevertheless, his interest in the progress of the law of nations was profound. His participation in the work of the Advisory Committee of the Research in International Law of the Harvard Law School indicates that that interest remains unflagging.

The happy exercise of the judicial function upon a bench comprising numerous members depends in large degree upon the temperament and experience of the individual judge in dealing with men. In a tribunal such as the Permanent Court of International Justice, whose members, representing a variety of nationalities, have been trained in differing schools of thought and bred on conflicting traditions, oneness of mind and harmony of opinion are difficult of attainment. Oftentimes the vigorous exercise of the most excellent qualities possessed by the individual judges breeds conflict. Doubtless diversity of opinion in so far as it reflects the best contributions of a world-wide civilization, is a safeguard against error and a deterrent of prejudice. Nevertheless, it enhances the difficulty of agreement. Examination of the judgments and opinions thus far rendered by the Permanent Court of International Justice will reveal the seriousness of that difficulty. What the tribunal needs at the present hour is the cultivation of the art of welding together the precious and yet diverse and perhaps elusive offerings that it would and can make to the cause of international justice.

Mr. Hughes must, of course, be aware of that need; and he knows from personal experience how it should be met. To conciliate, as well as to convince and to persuade, constitute a task which he has oftentimes genially accepted, and of which he has long been a master. He brings, therefore, to the court to which he has been elected an understanding as well as an endowment which may prove to be a distinctive contribution to the usefulness of the tribunal.

The effect of the presence of Mr. Hughes on the Permanent Court of International Justice upon the minds of his countrymen is likely to be inestimable. That it will hasten the day when the United States becomes an adherent to the protocol accepting the Statute of the Court, is not to be doubted.

CHARLES CHENEY HYDE.

THE MULTILATERAL TREATY FOR THE RENUNCIATION OF WAR

From the draft of a bilateral treaty of perpetual friendship between France and the United States presented by the Minister of Foreign Affairs of France under date of June 20, 1927, has been developed a multilateral treaty, signed at Paris on August 27 by fifteen governments, including five great military Powers, to which a great number of others have since expressed

their intention to adhere. The process of this development is explained in detail in a public document on the "Notes Exchanged on this subject by the United States and other Powers from June 20, 1927 to July 20, 1928."

It is of interest to the readers of this JOURNAL to inquire, What precisely is the nature of this document?

Regarded merely as a document, this treaty is marked by extreme simplicity. In the preamble the purpose of the treaty is stated in part as follows:

> Persuaded that the time has come when a frank renunciation of war as an instrument of national policy should be made to the end that the peaceful and friendly relations now existing between their peoples may be perpetuated,

the signatories have decided to conclude a treaty.

The whole substance of this compact is expressed in two articles. Article I condemns recourse to war for the solution of international difficulties and renounces it as an instrument of national policy. Four observations are suggested by the terms of this article: (1) The contractants condemn and renounce war "in the name of their respective peoples," thus pledging not only the future conduct of the governments themselves but also the honor of the peoples whom they represent. (2) While war is condemned in principle and renounced as an instrument of national policy, there is no declaration as to the present or future legality of war. (3) This compact does not "outlaw" war. The renunciation of war affects only the signatories of the treaty in their relations to one another and only as far as specified. (4) The renunciation of war here pledged is not a renunciation of the use of armed force in all cases. It is specifically confined to war as an instrument of national policy. This compact therefore permits the defense of the national domain from invasion, and also allows of forceful intervention for the protection of the rights of citizens and national rights on the high seas, so long as a violation of them is persisted in without redress.

Any other interpretation than this would reduce this compact to a nullity. No nation can be expected to ratify so broad a covenant as this treaty without either a formal or a tacit understanding that this is what the treaty means. Governments exist for the protection of rights, and constitutions are attempts to organize such protection by supplying governments with the means of action; and no responsible state will renounce its right and disregard its duty to exercise the normal functions of government. Were it not, therefore, for the second article of this treaty, this compact might well be dismissed from serious consideration; for without a substitute for armed force for the vindication of international rights and the redress of international wrongs, the compact, by forfeiting all means of protecting rights, would imply a surrender of those rights and an abdication of the duty of defending them.

Article II pledges the contracting parties to the engagement that the settlement or solution of all disputes or conflicts, of whatever nature or of what-

ever origin they may be, which may arise among them, shall never be sought except by pacific means. It is this article which gives significance to this treaty. It saves it from the prospect of a war of words over such terms as "aggression," "defense," prior treaty engagements, and many other smoke-screens to conceal a violation of Article I.

No solution of a dispute or conflict is to be sought except by pacific means. What are these "Pacific Means"? Here it becomes evident what the next step must be. It is the further organization of "Pacific Means." This is not the time or place to enter into the discussion of this next step. But it is evident that the multilateral treaty will not be self-operating. It specifically points to something outside of itself—to law, to courts, to the arbitral process, to mediation and conciliation.

Are the existing "Pacific Means" equal to the requirements? As to Law, after hesitation regarding the proposed clarification and extension of international law, the whole subject has been sequestered. As to courts, there have been difficulties about adhering to a nominal court of justice possessing an advisory function, to be exercised at the behest of a political body, by which a nation may be adjudged a culprit without a process of law by the mere personal opinion of judges. The United States, having set the example in its Constitution of binding its own highest court by a law which controls its decisions, has not thus far been willing to abandon a successful experience for a political adventure. The whole subject of an international court of justice to be guided by definite law is now ripe for discussion, and the multilateral treaty in the process of ratification will necessarily afford an occasion for an examination of that subject.

The American Secretary of State has opened a vista of long perspective in transmuting Monsieur Briand's proposal of a bilateral treaty between the United States and France into the multilateral treaty. In doing so, Secretary Kellogg has been faithful to the traditional policy of the United States in wishing to be equally friendly to all nations. The multilateral treaty is not an alliance. It is the expression of a new conception of international relations. As such, it is liable to misunderstanding, and in some quarters this compact has already been misunderstood.

What, it is asked, is to happen to a contracting party if it violates the compact? Is the United States under obligation to bring it to task and punish it for its defection? Not at all. Such a delinquent will have proved its disloyalty to its pledged word, but the United States makes no pledge to improve its morals or to inflict upon it a penalty by making war upon it. The United States does not guarantee these signatures. It proposes a policy of voluntary peace. This policy is not identical with that of several European political and military combinations. Those compacts require the contracting parties to punish war with war. What then will be the probable action of the United States under this compact toward a military situation in another part of the world? It will first of all no doubt remind the de-

linquent signatories of their solemn engagement. It may properly call attention to the existence of Article II of the multilateral treaty and the obligations under it. But there is no enforcement clause in this compact.

The signature of this treaty marks a great advance in the cause of international peace. It also clearly indicates what is still necessary to give it effectiveness. The renunciation of war requires the further organization of peace. The historic forces are still in action and new issues are to be expected. To have agreed on so wide a scale to "condemn recourse to war" and to have renounced it "as an instrument of national policy" is to have laid a solid foundation for inaugurating a new era in the life of mankind.

DAVID JAYNE HILL.

WAR AS AN INSTRUMENT OF NATIONAL POLICY

The signing of the Kellogg-Briand multilateral treaty on August 27 is destined to become an event of first importance in the development of international law as well as an occasion of high moral significance in the progress of the nations towards the peaceful settlement of international disputes. It may indeed be conceded that from its lack of machinery for the execution of its promises the treaty adds no new sanctions to what may be called the procedural branch of international law. Yet this defect does not reduce the agreement to a mere gesture, a simple declaration of good intentions, a resolution to avoid war if it can be conveniently done. Such an interpretation, while warranted by a narrow examination of the obligations assumed in the treaty, does not do justice to the contribution which the treaty makes towards a definition of the place which war is henceforth to have in the scheme of international relations. Moreover it is entirely inaccurate to speak of the treaty as creating moral rather than legal obligations. The obligations may be vague and may present numerous loopholes of escape, but such as they are, being embodied in a formal international contract, they are legal.

The contracting parties declare that they "condemn recourse to war for the solution of international controversies" and that they "renounce it as an instrument of national policy in their relations with one another." Assuming that the first part of the declaration is not intended to be more comprehensive than the second part, the inquiry may be directed as to the meaning of war "as an instrument of national policy" and as to the extent of the reservations which attend its renunciation.

Prior to the year 1920 war had an accepted place in the procedure for the settlement of international disputes. It was not to be entered upon lightly, it could only be waged for a "just cause"; but as the determination of the gravity of the circumstances and of the justice of the cause was left to the individual state, war held its own as the final resort of the unsatisfied claimant, the *ultima ratio* in the adjustment of a deadlocked controversy. This place of war in the procedure of international law was severely restricted by