had penetrated into South Germany would likely become extremely critical, as they would find their line of retreat most seriously threatened from the north.

There is no need at all for any specially intricate and difficult movements of the German army. It would be chiefly a question of properly distributing the forces and regulating the extent of the retrograde movement of the left wing. That must never be allowed to go so far as to expose the lines of communication of the German right wing. The pivot of the movement, which might be fixed somewhere in northern Lorraine and Luxemburg, must be vigorously held, too. People have therefore often thought of turning Trier into an army fortress, and the idea of fortifying Luxemberg is also partly based on similar points of view. These reflections show, at any rate, the prominent importance of the fortress of Mainz. It would be, further, advisable to hold a strategic reserve in a central position, ready for reinforcing, in case of need, either the right or the left wing.[1]

GERMANY AND INTERNATIONAL PEACE

The position of Germany at the Second Hague Conference on the subject of arbitration has been much discussed and no little criticized. At a session of the Reichstag held April 28, 1914, the Director of the Foreign Office, Dr. Kriege, German delegate to the Second Hague Peace Conference and to the London Naval Conference, explained and defended the attitude of Germany in 1907, and in the course of his remarks made some very interesting observations, not merely concerning arbitration and the judicial decision of international difficulties, but concerning the meeting and labors of a Third Peace Conference, in which Germany would be represented, and from which he expected great results.

The first paragraph of this address [2] aims to show that Germany is friendly, not merely to treaties of arbitration, but to the arbitration of concrete difficulties; that it has negotiated two treaties of arbitration—one with Great Britain, which has been twice renewed, and the other with the United States of America, which, however, has not become effective—and that it has inserted the arbitral clause in a series of commercial treaties. Dr. Kriege calls attention also to the fact that Germany proposed the creation of an International Prize Court at the Second Hague Conference, and that at the last Hague Conference on Bills of Exchange, the German delegation advocated the creation of an international court of appeal to decide conflicts of private international law. He further calls attention to the treaties between France and

[1] Von Bernhardi's *War of Today*, authorized translation by Karl von Donat, pp. 328–329.

[2] The translation of Dr. Kriege's remarks is made from the text as contained in the "Zeitschrift für Völkerrecht," Vol. 8 (1914), pp. 460–462.

Germany concerning the Morocco question, and the presence of an arbitral clause to settle disputes arising from the Moroccan situation, and finally, he mentions the two controversies which Germany submitted to the Permanent Court of Arbitration at The Hague: the well known Venezuelan preferential case and the Casablanca case. This part of Dr. Kriege's speech follows:

> The idea has gone abroad that Germany has but little sympathy with the idea of settling difficulties through arbitration. But this is not at all so, In 1904 Germany concluded a general arbitration treaty with Great Britain which it has renewed twice since. A similar treaty had been concluded with the United States of America, but owing to the opposition of the American Senate, it was not ratified. In a series of more recent commercial treaties arbitration clauses were included so that all disputes regarding tariff questions are to be laid before special arbitration courts. At the Second Hague Peace Conference Germany proposed the institution of an International Prize Court, and this proposition was accepted. At the last Hague Conference upon the Laws of Exchange the German delegation moved to consider the institution of an international court of appeals which would be competent to decide disputes in the field of private law arising from international treaties. But above all, into the important treaties which it has concluded with France for the settlement of the Morocco question, Germany has inserted a non-reserving arbitration clause, as a result of which any and all disputes arising from its application should be submitted to the decision of an arbitration court. Nor has Germany in distinct cases hesitated to consent to have disputes of primordial importance decided by the Hague Arbitration Court, such as the Venezuela and Casablanca disputes.

Dr. Kriege's statement as to the rejection of the arbitration treaty by the Senate of the United States is not quite accurate. It is true that the treaty was signed and that it was laid before the Senate for its advice and consent. It was amended by the Senate by striking out the expression "special agreement" and substituting therefor "special treaty," so that the *compromis*, to use a technical term, or the submission of the case to arbitration, would require the approval of the Senate. Mr. Roosevelt, then President, was unwilling to accept the amendment and dropped the whole matter. However, later, when Mr. Root was Secretary of State, the United States tried to negotiate a treaty of arbitration, in which the right of the Senate was reserved to approve the *compromis;* but Germany refused to conclude such a treaty.

Dr. Kriege next proceeds to state the attitude of the German delegation toward arbitration at the Second Hague Conference, and the two paragraphs devoted to this are here quoted:

> If the German delegation delined to assent to the world arbitration treaty proposed at the Second Hague Peace Conference, it took this stand because it felt convinced

that such a treaty would not be serviceable to the cause of peace. In accordance with this proposition, all controversial legal questions, especially those in reference to the application and interpretation of international treaties, were to be submitted to arbitral decision with the condition, that neither the vital interests nor the independence, nor the honor of either of the parties in dispute should be in conflict therewith. In its delimitation, in its execution and its effects, such a treaty would be so unclear, so uncertain and so doubtful that it could not but lead to the greatest difficulties and disputes between the treaty states. Limitation of the treaty to legal questions is necessary because mere questions of interests cannot in their nature be submitted to arbitral decision. But no way could be found to separate in a clear manner the legal questions from the question of interests. The further matter of excluding disputes of secondary importance from the arbitral decision in reference to the time and expenses connected therewith, the Conference was unable to settle. It is even more difficult to insert the so-called clause of honor, that is, the right of each Power to decide independently whether in a particular case it would decline to accept an arbitral decision in reference to its vital interests, independence or honor. This clause, whose need was justly recognized by the Conference, would indeed have rendered the treaty illusory, because it would merely have been a treaty with the clause "si volo." An appeal to this clause is furthermore of such a nature as to further embitter the dispute between the parties, because in so doing the suspicion might be entertained that the opponent is not acting in a *bona fide* manner, but that realizing that he is wrong wishes to avoid the arbitral decision. And it is furthermore doubtful as to what effect an arbitral decision might exercise upon the judicial or the legislative authority of a treaty if one of these authorities, through the violation of international obligations, has brought about the dispute. In such cases, shall the judicial authority or the legislative authority be compelled to take the arbitral decision into account, or shall these authorities remain sovereign in respect of the arbitral decision? There was complete difference of opinion at the Conference with regard to this matter, so that in adopting the treaty, the uniformity of the intentions of the treaty would from the first have been absent.

The aforesaid considerations at the Conference brought it about that, not only Germany, but several of the other great Powers and a number of smaller states disapproved of the universal arbitration treaty. In fact the experiences that various Powers would have encountered with an arbitration treaty such as we have been considering, could only have strengthened the uncertainties pointed out.

The objections to the proposed arbitration treaty are indeed forcibly stated, but it would have been possible to prepare a draft which would have been free from most of these objections, if the German delegation had shown itself willing to co-operate rather than to criticize. Indeed, the Conference was much encouraged by the seemingly frank acceptance of the principle of arbitration by the first German delegate, Baron Marschall von Bieberstein, who stated, on behalf of his delegation: "We are ready to examine conscientiously and impartially the propositions which already have been made and those which may yet be presented on

this subject." (*Deuxième Conférence Internationale de la Paix* (1907), *Actes et Documents*, Vol. II, p. 288.)

Admitting for the moment that Germany's objections to the various proposals were well founded, it would have been possible for the delegation to have proposed a form which would have obviated these objections, but this was not done, and it may be said in no unkindly spirit that Germany's attitude on the entire subject was negative, not constructive. The last paragraph of the quotation is likely to lead to some misunderstanding, if a word of explanation be not added; for, however faulty the final draft may have been, it was nevertheless approved by thirty-two delegations, nine opposed it, and three abstained from voting. Dr. Kriege's remarks would lead the casual reader to believe that several large Powers voted against it, whereas, as a matter of fact, only Germany and Austria-Hungary voted against it, and Italy, which is known to be strongly in favor of arbitration, abstained from voting. It seemed to the delegates at the time that Germany's influence in the Triple Alliance had made itself felt. The character of the opposition is best seen by enumerating the states which voted against the proposal: Germany, Austria-Hungary, Belgium, Bulgaria, Greece, Montenegro, Roumania, Switzerland, and Turkey. The three states abstaining from the vote were Italy, Japan and Luxemburg. The delegations of all the other states voted in favor of the general treaty, so that it is fair to say that, notwithstanding the imperfections of the projected treaty, the overwhelming majority of the states represented at the Conference expressed themselves in favor of it.

However, it is no small encouragement to the partisans of general arbitration to learn from Dr. Kriege's carefully worded remarks that, whatever his scruples may be against the arbitration of political questions, or controversies in which the clashing interests of the countries are involved, he, and presumably his country, are in favor of the arbitration of legal questions. It may be indeed difficult to separate the purely legal from political disputes, and yet this must be done, and it is believed that, if the Third Hague Conference would negotiate a treaty for the peaceful settlement of legal disputes, preferably by means of an international court in the technical sense of the word, Germany would be a party to such treaty, and the cause of peaceable settlement would be greatly advanced. Indeed, there is much to be said for the proposal which Dr. Kriege makes, and it is believed that it is possible to draw the line between legal questions and questions of a political nature, even although it is difficult.

In another paragraph Dr. Kriege states the readiness of his government to ratify the Declaration of London, which supplies the law which the International Prize Court is to apply under Article 7 of the Prize Court Convention, and he also states the willingness of his government to co-operate in the establishment and operation of the International Prize Court which, it should be said in passing, the German delegation proposed at the Second Hague Conference. Dr. Kriege's language on this point is so clear and decided as to merit quotation:

> The Hague agreement regarding the establishment of an International Prize Court and the Declaration of London in reference to the laws of naval warfare had in time been signed by the states most directly concerned in the matter, and Germany among them. Germany is ready to ratify both treaties at an early date, and the more so in view of the fact that she was the proponent of the proposition to establish the International Prize Court. The difficulties encountered in the realization of the two great international treaties came from England, not from the British Government nor indeed from the House of Commons, but from the House of Lords, which had declined to accept both treaties. The British Government endeavors to remove these difficulties by trying to secure an authentic interpretation of certain provisions of the Declaration of London through negotiations with Germany and other great Powers. We have tried to meet the British Government in this matter as far as this was possible, and we have indeed reason to believe that these negotiations will attain the desired end, so that the British Government will ere long be in a position to lay the treaties anew before its Parliament with the prospect of a successful issue. As regards the meeting of the Third Hague Peace Conference, Germany is indeed in sympathy with that object, although she may believe that the most important results of the former Conference should first be realized, that is, the two great treaties referred to should be ratified. If it were intended to take up without interruption the discussion of new international problems, before those hitherto discussed have been brought to realization, these Conferences would soon lose the worth attaching to them. The Second Hague Peace Conference has expressed the wish that such a program should be elaborated by an international commission, and then be submitted for the approval of the governments. In regard to the composition of this commission, negotiations had at the proper time been entered into, but they have not as yet led to any definite conclusions.

Finally, Dr. Kriege states his desire, and doubtless the desire of his country, for a Third Hague Conference, and expresses the belief, in the following passages, that the Conference, which we all hope will meet in the near future, will render great services to the cause of peace:

> Meanwhile the Foreign Office is already at work preparing the propositions with regard to the program to be offered by Germany, because that office, in view of its organization and experience, is best able to judge those international questions whose solution needs to be considered by the Conference. All the other departments of the government having any relation to these matters and eminent teachers of international law have of course been called upon by the Foreign Office to participate in this work.

The hope that the Third Hague Peace Conference may take place rests on well founded grounds, and Germany, well prepared to take up this work, will take part in that Conference. Germany feels convinced that through the solution of important international problems the Conference will exercise great influence in settling disputes and she will therefore deserve well of the cause of peace.

Dr. Kriege is a sincere, upright, and honest man. He expresses his opinions freely and without reserve, whether those opinions are agreeable or displeasing to his audience. He possesses the confidence of his government, and there is every reason to believe that the views expressed in the address from which the quotations have been made are the views which Germany has formed after great deliberation, and which Germany will be prepared to maintain at the next Hague Conference. That it may come soon; that the war which is plaguing mankind may soon cease; and that the nations may again meet at the little city of The Hague in the very near future and devise measures for the benefit of the nations of the world without exception is the hope of every lover of his kind.

A CARIBBEAN POLICY FOR THE UNITED STATES

An editorial comment in the July number of the JOURNAL[1] was devoted to the nature and the origin of the Platt Amendment, and it was suggested, without going into details, that the policy which dictated the amendment was capable of a larger application. It is the purpose of the present comment to take up this subject and to consider it from the larger point of view.

It may be stated in this connection that the amendment, although restricted to Cuba, contemplated the independence of the country to which it was to be applied, a republican form of government, assuring personal liberty and the protection of property in the sense in which these terms are used and understood in constitutional government, a solemn engagement on the part of the country covered by the amendment not to enter into any treaty or engagement with a foreign Power calculated to impair or to interfere with its independence, and that public debts should not be created in excess of the capacity of the ordinary revenues, after defraying the current expenses of the government, to pay the interest.

It is one thing, however, to undertake engagements of this kind; it is quite another thing to carry them out. A promise without performance would be a vain thing, and, as the United States intended to guarantee the independence of Cuba and as the provisions of the amend-

[1] Page 585.