UNITED STATES CONGRESSIONAL PEACE RESOLUTION

The leading authorities on international law agree that peace can be reëstablished between belligerents in other ways than by a treaty of peace.

This question was under discussion in Congress in the recent debate on the peace resolution adopted in its final form by the Senate on May 15, 1920,[1] repealing the joint resolution of April 6, 1917,[2] declaring that a state of war exists between the United States and the Imperial German Government, and the joint resolution of December 7, 1917,[3] declaring that a state of war exists between the United States and the Austro-Hungarian Government.

The views of the majority were concisely expressed in the following extract and citations quoted from the report of the Committee on Foreign Affairs of the House on this resolution:

> The authorities on international law agree that there are three ways of terminating war between belligerent states: First, by a treaty of peace; second, by the conquest and subjugation of one of the belligerents by the other; third, by the mere cessation of hostilities so long continued that it is evident that there is no intention of resuming them.
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> > War may be terminated in three different ways: Belligerents may (1) abstain from further acts of war and glide into peaceful relations without expressly making peace through a special treaty, or (2) belligerents may formally establish the condition of peace through a special treaty of peace, or (3) a belligerent may end the war through subjugation of his adversary. (Oppenheim, International Law, vol. 2, p. 322.) . . .
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> > It is certain that a condition of war can be raised without an authoritative declaration of war, and, on the other hand, the situation of peace may be restored by the long suspension of hostilities without a treaty of peace being made. History is full of such occurrences. What period of suspension of war is necessary to justify the presumption of the restoration of peace has never yet been settled, and must in every case be determined with reference to collateral facts and circumstances. (Mr. Seward, Secretary of State, July 22, 1868, Dip. Cor., 1868, Vol. 2, pp. 32 to 34, cited Moore's International Law, Vol. 7, p. 336.)

The opposition relied chiefly upon challenging the constitutional authority of Congress to make peace by resolution, arguing that inasmuch as the Constitution expressly conferred upon Congress the power

[1] Text printed, *infra*, p. 419.

[2] Printed in Supplement to the JOURNAL, Vol. 11 (July, 1917), p. 151.

[3] *Ibid.*, Vol. 12 (January, 1918), p. 9.

to declare war and was silent on the subject of making peace, the latter power, by implication, was withheld from Congress. The majority view which prevailed was that having conferred upon Congress the exclusive power to declare war, the Constitution would likewise have conferred upon the treaty-making power the exclusive power to make peace, if that had been its intention, and that the silence of the Constitution on the subject of making peace unquestionably meant that it was not within the exclusive jurisdiction of Congress or of the treaty-making power, but could be dealt with by the Federal Government under its national war powers through either one of these agencies.

The President vetoed the resolution, but his objections to it were based on other grounds than those discussed above, and as the resolution was not passed over his veto, its political aspect has been eliminated, and it may be examined impartially from the point of view of international law.

By this resolution Congress not only repealed its earlier resolutions which formally established the existence of a state of war between the United States and the Governments of Germany and Austria-Hungary, but also declared that the state of war was at an end.

The material facts, which seem to have been chiefly relied on in support of the declarations of the resolution in relation to the war with Germany (the Austrian situation was ignored in the debate) were that actual hostilities had ceased for more than a year and a half; that Germany had been required to surrender most of its warships and military equipment under the terms of the armistice and was incapable of renewing hostilities, and in fact had capitulated; that the Imperial German Government, with which the United States had declared itself to be in a state of war, was no longer in existence, and Congress had never declared the United States to be in a state of war with the German people or the present German Government; that commercial intercourse between the two countries had already been resumed, and finally that Germany had formally and officially declared that so far as she was concerned the state of war with all the belligerent Powers had terminated because the Treaty of Versailles, which Germany had ratified and was bound by, expressly declared that upon its coming into force the state of war was terminated.

It would seem, therefore, that from the point of view of interna-

tional law, apart from any constitutional question, the legal grounds upon which Congress based its action in adopting this resolution might fairly be stated to be that, inasmuch as a status of peace had in fact already been resumed, a resolution of Congress recognizing and declaring the existence of this state of peace, and repealing the earlier resolutions declaring the existence of a state of war, was an appropriate and effective way and all that was necessary to complete officially and formally a state of peace on our part with Germany in conjunction reciprocally with the state of peace already declared on their part with us.

Another interesting declaration in the resolution from the point of view of international law is found in section 3, which provides—

> That until by treaty or Act or joint resolution of Congress it shall be determined otherwise, the United States, although it has not ratified the treaty of Versailles, does not waive any of the rights, privileges, indemnities, reparations, or advantages to which it and its nationals have become entitled under the terms of the armistice signed November 11, 1918, or any extensions or modifications thereof, or which under the treaty of Versailles have been stipulated for its benefit as one of the principal allied and associated powers and to which it is entitled.

This reservation addresses itself to the Allied Powers associated with the United States in the war, rather than to Germany, in view of the provisions of the Treaty of Versailles which relate to the pledging of all of the assets of Germany as security for the payment of Germany's obligations to the Allied and Associated Powers, and certain properties, such as ships and securities and gold deposits and colonies, which are specifically surrendered to the Principal Allied and Associated Powers, of which the United States is one.

The rights secured to the Allied and Associated Powers by the terms of the treaty were not made conditional, so far as each party in interest was concerned, upon its ratification of the treaty, but are recognized by the treaty as inuring to them on account of their participation in the war.

The legal position would seem to be that inasmuch as this treaty was made for the benefit of the belligerent Powers, the United States, as one of them, although not having ratified the treaty, and even though it may never ratify this treaty, is entitled to retain, if it so desires, the rights which inured to it as a member of the group to which Germany has surrendered and for whose benefit the treaty was made.

A declaration of peace by the United States with Germany, independently of the treaty and without reference to it, might have been regarded by the Powers associated with the United States in the war as a relinquishment of the rights which the treaty recognized that the United States was entitled to as one of the Principal Allied and Associated Powers in the war against Germany. It was doubtless for this reason that Congress included in the resolution this reservation showing that it was not intended to waive or relinquish these rights, so that the Allied Powers would not feel at liberty to dispose of the assets of Germany and arrange their commercial and financial relations with Germany without regard to the rights of the United States.

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THE PERMANENT COURT OF INTERNATIONAL JUSTICE

The immediate task of the Peace Conference at Paris having been to terminate a general war upon terms dictated by the victorious Powers and to impose upon the vanquished necessary penalties as the consequence of their aggressions, the occasion was not well adapted for the organization of permanent institutions for the preservation of the future peace of the world. The reasons for this are obvious. Peace having been imposed upon the Central Powers by military force, a military organization was necessary for its execution. The Covenant of the League of Nations was designed to fulfill this purpose, and was therefore framed in the spirit of a military alliance between its members and was at least temporarily directed against a vanquished enemy. Founded thus upon the idea of force, the terms of the Covenant prescribed the conditions upon which force would, if necessary, be applied. It was primarily a military compact.

That the peace of nations, to be secure, must rest upon some deeper foundation than military power was evident even to those who proposed this compact. Provisions were, in consequence, introduced into the Covenant for the voluntary arbitration of international disputes and for conciliatory influence on the part of the Council. Farther than this it did not seem to the Supreme Council of the Allied Powers expedient at the time to go. When the Covenant was presented for ratification in the United States, it was justly urged that there was