certainly never been surpassed. Thus, in a letter written in December, 1879, to the Universal Peace Union, General Grant said:

> Although educated and brought up as a soldier, and probably having been in as many battles as any one, certainly as many as most people could have been, yet there was never a time nor a day when it was not my desire that some just and fair way should be established for settling difficulties, instead of bringing innocent persons into the conflict, and thus withdrawing from productive labor able-bodied men, who, in the large majority of cases, have no particular interest in the subject for which they are contending. I look forward to the day when there will be a court established that shall be recognized by all nations, which will take into consideration all differences between nations and settle by arbitration or decision of such court these questions.

To be the worthy successor of Washington and Grant is an honor vouchsafed to but few men.

STATEMENT BY THE PRESIDENT OF THE TRIBUNAL THAT THE NORTH ATLANTIC FISHERIES AWARD WAS A COMPROMISE

In an interesting article entitled "Formation of the Hague Court of Arbitration," published in *Das Recht* on March 10, 1911, the well-known Austrian publicist and arbitrator, Professor Lammasch, says:

> Already experience has shown that almost without exception the persons called to act as judges of the Hague Court either possess a distinguished name in the theory of public law or belong to the highest magistracy, and that in the matter of awards, some contain keen and penetrating holdings of a juridical nature. Especially was this the case in the three awards in which the writer of this article was President of the Tribunal: the Mascat case between Great Britain and France, the Orinoco case between the United States of America and Venezuela, and the Newfoundland and Canadian Fisheries case between Great Britain and the United States of America. *To be sure the judgment in the last named case also contained elements of a compromise for which, however, the Tribunal had received special and exceptional authorization.*

It is not the purpose of this editorial to comment upon this admission of the learned president of the tribunal, who speaks with full knowledge of the circumstances attending the award, but to call attention to it and the grounds upon which it is sought to be justified. The general arbitration treaty of April 4, 1908, between Great Britain and the United States[1] pledges the contracting parties to refer to the Permanent Court

[1] Printed in SUPPLEMENT, 2:298.

of Arbitration at The Hague "differences which may arise of a legal nature or relating to the interpretation of treaties existing between the two contracting parties and which it may not have been possible to settle by diplomacy" (Article 1). Under this general obligation, Great Britain and the United States submitted the North Atlantic Fisheries dispute, which diplomacy had notoriously failed to settle, by a special agreement or *compromis,* dated January 27, 1909.[2] The first article of this important document sets out the fisheries article of the Convention of October 20, 1818, and then proceeds — "And, whereas, differences have arisen as to the *scope* and *meaning* of the said article, and of the *liberties* therein referred to, and otherwise in respect to the rights and liberties which the inhabitants of the United States have or claim to have in the waters or on the shores therein referred to: It is agreed that the following questions shall be submitted for decision to a tribunal of arbitration, constituted as hereinafter provided," etc.,

That is to say, the scope and meaning of the said article, conferring or recognizing the liberty, were to be interpreted by the tribunal. The question was a question of law and the contracting governments, unable to agree as to its interpretation, instituted the special tribunal in order to secure an authoritative interpretation of the article in question. Compromise would seem to be excluded, diplomacy had proved unavailing for the better part of a century, and resort was had to a court of law for a legal interpretation of the instrument and the rights and duties arising under it. A careful rereading of the special agreement fails to disclose evidence of the special and exceptional authorization mentioned by the president as justifying what he admits to be a compromise. The truth seems to be that arbitration is ordinarily understood as merely a prolongation of diplomatic proceedings and slips insensibly and perhaps unconsciously into compromise. This may be an admirable method of adjusting political differences or controversies in which the legal element is comparatively slight and unimportant, but controversies of a strictly legal nature, such as the Fisheries Question, should be adjudged by a court of justice in the technical sense of the word. That such a court, composed of permanent and professional judges, may shortly be instituted is the hope of those who see in the regular and orderly administration of justice the surest and most approved means for the peaceful settlement of international disputes.

[2] *Id.*, *3*:168.