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THE PEACE NOTES — THE ARMISTICE — THE SURRENDER

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The three most important recent world events, from the viewpoint of International Law, are the peace notes that passed between Germany and the United States, the armistice that was concluded on the 11th day of November, 1918, and the complete surrender of Germany.

I. *THE PEACE NOTES.*

On October the 7th a note was received from Chancellor Maximilian of Germany wherein the president of the United States was requested to take a hand in the restoration of peace, to acquaint all belligerent states of this request and to invite them to send plenipotentiaries for the purpose of negotiation. It was also stated that the German government accepted the program set forth by the president in his message to congress on January 8th, 1918, and in his speech of September 27th. This meant the acceptance by Germany of the well-known fourteen propositions the president had announced as necessary conditions precedent to any peace negotiations. This note also requested a conclusion of an armistice on land and sea.

On October 8th, the reply of the president was forwarded to the German government. In this reply it was stated that, before answering the note of the chancellor, the president felt it necessary to assure himself of the meaning of Germany's note on these two points:

First: Does acceptance of the terms of the message of January 8th and of the subsequent addresses of the president mean an unconditional acceptance, and will the object of entering into a discussion be only to agree upon the practical details of the application of the fourteen propositions?

Second: Is the chancellor speaking merely for the constituted authorities of the empire that so far have conducted the war, or is he also speaking for the German people?

This reply also emphasized the fact that an armistice was out of the question as long as German armies are on the soil of the nations associated with the United States in this war, and that good faith must be shown by the central powers in immedi-

ately withdrawing their forces everywhere from invaded territory.

On October the 12th the German chancellor answered this reply of the president, this answer containing, in substance, these statements:

1. The German government accepts the terms of the message of January 8th and the object in entering into a discussion will be to agree upon the practical application of these terms.

2. Germany agrees to evacuation and suggests that a mixed commission be appointed to make the necessary arrangements therefor.

3. The government making this proposal has been formed by conferences in agreement with the great majority of the reichstag.

4. The chancellor speaks in accordance with the will of this majority and in the name of the German government and of the German people.

On the 14th day of October, 1918, the president closed this peace correspondence by his ultimatum, the salient points and effects of which were the following:

FIRST: That the present German government has accepted, unqualifiedly, the terms under which peace will be possible, as announced by the message of the president to congress on January 8th, 1918, and amplified and accented in subsequent addresses of the chief executive of the United States. This means the unreserved acceptance of the well-known fourteen propositions. By this statement, the president had foreclosed all quibbling on the part of the German government as to what had in fact been accepted as the basis for peace negotiations.

SECOND: That by reason of such unqualified acceptance the president is now justified to make a frank and direct statement of his *decision* with regard to the peace proposal. "*Decision*" here, as in every case, means that the last word has been spoken, no more discussion will be allowed, negotiations are at an end. Either accept or reject. It was the ultimatum on the proposition of peace by negotiation at that time.

THIRD: That the conditions of an evacuation of allied territory held by the German army and the freeing of the high seas from submarine piracy cannot be left to a "mixed commission," on which Germany would be represented, but must be left to the military advisors of the United States and her allies, that is, to

Foch, Petain, Pershing, Haig and Diaz. To appoint a mixed commission, on which representation of Germany was implied, would mean that the common enemy of mankind could assist in determining the terms of its own punishment, or, at least, of its own partial atonement.

FOURTH: That any armistice to be considered at all must be absolutely and satisfactorily safeguarded and guaranteed so as to maintain the present military supremacy of the armies of the United States and of her allies. In other words, Germany must admit defeat, practically, must unconditionally surrender. Germany must confess that the greatest military machine of the ages has stripped its gearings.

FIFTH: That no proposition of an armistice will be entertained by the United States and her allies as long as the armed forces of Germany continue the illegal and inhuman practices, in which they still persisted—such as the wanton devastation of territory of the allies on being evacuated, the sacking and destruction of cities and villages on being abandoned, the looting and plundering of the property of non-combatants, the carrying away and practical enslaving of old men, women and children, when forced from French and Belgian soil, the accented “frightfulness” of submarine piracy in sinking passenger ships without notice and the added barbarity of firing upon and torpedoing the life boats in which the passengers and crews of sinking ships were clinging to the last straw for safety. The mere recital of these atrocities seemed to compel, as the only condition for an armistice, unconditional surrender.

SIXTH: That the cardinal condition of peace is the destruction of the arbitrary power which can separately, secretly and of its single choice, disturb the peace of the world, or, if not destroyed, be rendered innocuous. The present German dynasty is such power and it is within the choice of the German people to rid themselves of this power, or, at least, to make it harmless. The Hohenzollerns must go.

SEVENTH: That this last condition is a fundamental condition precedent to peace because the governments associated against Germany must know beyond a peradventure with whom they are dealing. We shall absolutely refuse to treat with a power that proclaims that “military necessity” knows no law, human or divine, and has consistently and persistently for more than four years cruelly practiced what it preached.

EIGHTH: That the president will make a separate reply to the peace proposal of Austria-Hungary. Such reply, since made, contained much less drastic demands than the reply to Germany. There were very good reasons for this difference in our attitude to this more or less deluded vassal of the German empire. Austria in its conduct of the war has been much less cruel and frightful than Germany. Nevertheless, for the awful company Austria has been keeping during the last four years, she must make reparation.

Nothing was said about the application of Turkey for peace, because we had never declared war against the Ottoman empire.

The fourteen propositions announced by President Wilson in his message of January 8th, 1918, are, in substance, these: (1) Open covenants, openly concluded, with no ensuing secret treaties; (open and public diplomatic negotiations). (2) Freedom of the seas in peace and war, except as closed by international action for the enforcement of international covenants. (3) Trade equality among the nations consenting to the peace. (4) Reduction of armaments. (5) Impartial adjustment of colonial claims, the inhabitants to have a voice in such adjustments. (6) Evacuation of all Russian territory, with assurances that her political and economic developments shall be unhampered. (7) Evacuation and restoration of Belgium. (8) Evacuation of French territory and restoration of Alsace and Lorraine. (9) Readjustment of Italian frontier along lines of nationality. (10) Autonomy of Austria-Hungary, (changed by the reply to Austria's request of peace because the United States had recognized the belligerency of the Czecho-Slovaks and favors the desire for nationality of the Jugo-Slavs). (11) Evacuation and restoration of Roumania, Serbia and Montenegro, with access to the sea for Serbia, and the relations of the other Balkan states to be determined by a friendly conference. (12) Sovereignty for the Turkish portions of the Ottoman empire, with autonomy for other nationalities now under Turkish rule, and the permanent freedom of the Dardanelles. (13) An independent Poland, with access to the sea. (14) A league of nations to enforce specific covenants.

No one would have believed, previous to July, 1918, that Germany would accede to these drastic propositions as a foundation for international peace. So to accede meant that she would surrender all of the advantages she had gained, up to the time

mentioned, by force of her, what then appeared to be, unconquerable military machine. Yet, it will be noted that in the first note of Chancellor Maximilian it was stated that the German government accepted these fourteen propositions.

In this connection, it is well to recall the fact that during 1916, President Wilson attempted to bring about peace between the then belligerent nations of Europe. Under date of December 18, 1916, he caused to be forwarded to all belligerents for consideration, and to all neutral governments for their information, identical notes, signed by Secretary Lansing, in which he tentatively suggested peace negotiations. In these notes it was said: "The President suggests that an early occasion be sought to call out from all the nations now at war such an avowal of their respective views as to the terms upon which the war might be concluded and the arrangements which would be deemed satisfactory as a guaranty against its renewal or the kindling of any similar conflict in the future as would make it possible frankly to compare them. He is indifferent as to the means taken to accomplish this. He would be happy himself to serve or even to take the initiative in its accomplishment, in any way that might prove acceptable, but he has no desire to determine the method or the instrumentality. One way will be as acceptable to him as another, if only the great object he has in mind be attained. * * * The president is not proposing peace, he is not even offering mediation. He is merely proposing that soundings be taken in order that we may learn, the neutral nations with the belligerent, how near the haven of peace may be for which all mankind longs with an intense and an increasing longing. He believes that the spirit in which he speaks and the objects which he seeks will be understood by all concerned, and he confidently hopes for a response which will bring a new light into the affairs of the world."

Under date of December 26, 1916, the German government responded to this note as follows: "The Imperial Government has accepted and considered the friendly spirit which is apparent in the communication of the president, the noble initiative of the president looking to the creation of bases for the foundation of a lasting peace. The president discloses the aim which lies next to his heart and leaves the choice of the way open. A direct exchange of view appears to the Imperial Government as the most suitable way of arriving at the desired result. The Imperial Government has the honor, therefore, in the sense of its declara-

tion of the twelfth instant, which offered the hand for peace negotiations, to propose the speedy assembly on neutral ground of delegates of the warring states. It is also the view of the Imperial Government that the great work for the prevention of future wars can first be taken up only after the ending of the present conflict of exhaustion. The Imperial Government is ready, when this point has been reached, to co-operate with the United States at this sublime task."

Practically identical notes were received from Turkey and Austria-Hungary. In regard to the reference made in this note to some proposition under date of December 12th, it is sufficient to say that on that day the governments of Germany, Austria-Hungary, Bulgaria and Turkey had sent, what was claimed to be, a peace proposition to the Department of State of the United States for the purpose of transmission to the entente powers, and which note was so transmitted. In this joint note it was claimed by the central powers that the struggle was forced upon them, but yet they were ready to enter into peace negotiations. To this alleged peace proposition the entente powers, under date of December 29, 1916, replied and declined to consider the proposition, chiefly for the reason that the proposition from the central powers contained the statement that the war was forced upon them, throwing the responsibility of the beginning of the world war upon the allies, and also because the German note boasted and proclaimed the victory of the central powers.

Coming back to the note of the United States under date of December 18, 1916, in which it was proposed to take soundings and find out whether peace then was possible. The proposition to enter into a negotiation for peace at that time was declined by the entente powers in a joint note under date of January 10, 1917. The reason given for declining to enter into negotiations at that time was most fully stated in a separate note by Great Britain, under date of January 13, and this reason was that the central powers, having ruthlessly begun the war, indulged in such methods of brutality in waging the war, designed not merely to crush those with whom the central powers were at war, but to intimidate those with whom they were still at peace, that even considerations of humanity urged to bring about peace then must be disregarded. Among other things, it was said: "If then the central powers succeed, it will be to methods like these that they will owe their success. How can any reform of international relations be based on a peace thus obtained? Such a

peace would represent the triumph of all the forces which make war certain and make it brutal. It would advertise the futility of all the methods on which civilization relies to eliminate the occasions of international dispute and to mitigate their ferocity. Germany and Austria made the present war inevitable by attacking the rights of one small state, and they gained their initial triumph by violating the treaty guaranties of the territories of another. Are small states going to find in them their future protectors or in treaties made by them a bulwark against aggression? Terrorism by land and sea would have proved itself the instrument of victory. Are the victors likely to abandon it on the appeal of neutrals? If existing treaties are no more than scraps of paper, can fresh treaties help us? If the violation of the most fundamental canons of International Law be crowned with success, will it not be in vain that the assembled nations labor to improve their code? None will profit by their rules, but powers who break them. It is those who keep them that will suffer. Though, therefore, the people of this country share to the full the desire of the president for peace, they do not believe peace can be durable if it be not based on the success of the allied cause."

In view of this attitude of the allied powers, the tentative movement for world peace by President Wilson in 1916, necessarily failed. It was on account of this failure, no doubt, that the president in his note of October 14th, 1918, to the German government, insisted that that government, before any proposition for an armistice would be even entertained, should absolutely and satisfactorily safeguard and guarantee the then military supremacy of the armies of the United States and of her allies. It is for this same reason, in all probability, that in the same note the president insisted that the arbitrary power which had separately, secretly and of its single choice disturbed the peace of the world, that is, the German dynasty, be destroyed before any proposition for an armistice would be entertained.

It is well known that after these peace notes had been exchanged representatives of the United States and of those nations associated with her in conducting the war against the central powers, met at Versailles to discuss and determine the detailed terms of the armistice to be submitted to Germany for acceptance or rejection. Meanwhile, Austria and Turkey kept suing for peace and finally an armistice was concluded between those countries and the countries with whom they were at war.

This armistice, the terms and the results thereof, will not be herein discussed.

2. THE ARMISTICE.

After the peace notes, just discussed, had passed between the United States and Germany, the world was intensely interested in the result that might follow. As it was generally expected, the result was the signing of the armistice by the plenipotentiaries of Germany. It was to be expected that after a cruel war of over four years, the terms and conditions of the armistice would be rather drastic. The civilized world would not have been satisfied with anything less.

Broadly speaking, an armistice means a suspension of hostilities, a stopping of active warfare. A distinction is sometimes made between an armistice and a truce in that an armistice, especially for a long period of time, is generally concluded by the governments of the belligerents, while a truce may be concluded by the commanders of the hostile armies. There is, however, no practical advantage in taking into account this theoretical difference.

Under the rules of International Law, the object being temporary, everything at the end of an armistice should be in the same position as it was at the beginning, and during an armistice each army must refrain from repairing or strengthening works or making disposition of troops which would be to its advantage, should hostilities be resumed. Thus, the besieged can not repair a breach and the besiegers can not push troops to unoccupied points. In other words, everything military must remain in *statu quo*. While these are the general rules governing armistices, yet it is for the contending parties to settle the terms of the suspension of hostility.

The modern conception of an armistice can be gathered from recent practices of belligerent nations in this regard. Thus, preliminary to the Treaty of Portsmouth, in 1905, Russia and Japan agreed to the following terms of an armistice: 1. A certain distance shall be fixed between the fronts of the armies of the two powers in Manchuria and at other points. 2. The naval forces of one of the belligerents shall not bombard territory belonging to or occupied by the other. 3. Maritime captures will not be suspended by the armistice. 4. During the continuance of the armistice re-enforcements shall not be dispatched to the theater of the war.

One of the conventions concluded at the second Hague Conference made provisions for rules governing armistices, the substance of which were, that an armistice suspends military operations by mutual agreement between the belligerent parties and that it rests with the contracting parties to settle the terms thereof. In fact, the provisions on this point in said convention are very few and brief and in no way changed the rules on this point that had previously existed under International Law.

The armistice that was signed on November 11th, 1918, is the most drastic and comprehensive international document ever executed within the history of the International Law. Its terms, accepted by the representatives of the German government, are conclusive proof of the complete defeat of Germany. They are concise and sweeping, and are like the terms which Prussia imposed upon France in 1871, but much more severe and humiliating. It can not be denied that the acceptance of these terms was an unconditional surrender on the part of Germany. This armistice makes it utterly impossible for Germany to avoid acceptance of the terms of peace that will be dictated by the United States and the powers associated with her. While Germany will be represented at the peace conference and her rights considered and protected, she will no longer be in the position of a dictator, which would have been the case if a peace conference had been called in 1916 when German armies were victorious everywhere.

It is not purposed here to give the details of the terms of this armistice. Germany has agreed to give up 5,000 guns, 25,000 machine guns, 2,000 airplanes, all her submarines, sixteen ships on the line, all war ships in the Black Sea, and other military and naval instruments, equipment and supplies, sufficient to render her defenseless. Certain fortresses on the Rhine, with adjacent territory, will be occupied by the troops of the allied countries as a guaranty of the execution of the armistice.

This armistice repairs the great wrong of 1871, by requiring Germany to evacuate Alsace and Lorraine as invaded territory. It compels the evacuation of Belgium, Luxemburg and France, and orders the retirement of Germans from Russia, Roumania and Turkey, and requires that all German instructors, prisoners and civilian agents be recalled from Russia. The treaties of Bucharest and Brest-Litovsk intended by Germany to fasten her control upon Roumania and Russia, are abrogated. Germany

must make reparation for damage done. All civilian populations must be repatriated, and gold, silver, bank deposits, stocks and other valuable property must be returned. Germany is required to reveal mines and other destructive agencies, poison and polluted wells, which they have left behind, thus being compelled to admit her infamous methods of warfare.

It is hard to see how, from a military or a humanitarian standpoint, anything has been overlooked in the terms of this armistice. While the suspension of hostilities is to continue for but thirty days, yet, it is provided that an extension of this time may be had by the consent of the parties. It is more than probable that this time will be extended, because it is impossible to have a meeting of the peace conference within the period named. This point is of little importance now since by the signing of this armistice Germany has rendered herself absolutely impotent as a disturber of world peace.

3. *THE SURRENDER.*

By the signing of the armistice in the early hours of November 11th, 1918, Germany completely surrendered, a surrender as complete as though all her armies had actually capitulated. It was understood by all parties concerned that the signing of this armistice was merely a preliminary step to the signing of articles of peace in the near future. Hence, the question whether peace will follow is no longer debatable. We are now most directly concerned in the results that will follow the signing of the armistice. These results, from the standpoint of International Law, will be briefly suggested.

In his message to congress, on the afternoon of November 11th, President Wilson made this significant statement: "With the fall of the ancient governments, which rested like an incubus upon the peoples of the central empires, has come political change not merely, but revolution, a revolution which seems as yet to assume no final and ordered form, but to run from one fluid change to another, until thoughtful men are forced to ask themselves with what governments and of what sort are we about to deal in the making of the covenants of peace? With what authority will they meet us and with what assurance that they abide and sustain securely the international arrangements into which we are about to enter? There is here a matter for no small anxiety and misgiving. When peace is made, upon whose promises and engagements, besides our own, is it to rest?"

Previous to November 11th, the German empire was composed of twenty-six states, more or less sovereign. At this writing, fourteen of these states have declared themselves republics. Emperors, kings, and reigning dukes have abdicated as rapidly as fear for their personal safety permitted them to do. If the turbulent and violent elements of the central European nations secure control, the autocracy of the mob will succeed the autocracy of militarism. Between the two there is little choice. If there is any, it is in favor of militarism, because that at least produced quiet and order, although it may have been the quiet and order of a political cemetery.

It will be remembered that this country has repeatedly and solemnly declared that the reason for our entering the world war was to make democracy safe in the world. This international promise we must keep, and we will keep. But in making this promise we assumed large responsibilities, because if the peoples of the central European nations show by their conduct that they have confused license with liberty and have chosen anarchy in place of autocracy, it becomes our solemn duty to assume control of their affairs and teach them the ways of peaceful and orderly self-government. This does not mean that we shall assume the attitude of a policeman, or even of a traffic cop, but does mean that we will have to take the attitude of a big brother who seeks to lead these misguided peoples into the orderly ways of democracy, but, if mere leading is not sufficient, we will not hesitate to employ the strong arm of correction, where necessary.

There is another great danger, internationally, in the situation as it has already been developed and is developing in Europe. Attention has already been called to the fact that there are twenty-six little nations in what was formerly the German empire. Russia has already been divided into Finland, Ukraina, Courland, Lithuania, Esthonia, Levonia and the Caucasus. In addition to these, we have Poland, Czecho-Slavia or the northern Slavs, Jugo-Slavia, or the southern Slavs, Dardanellia, Armenia, Palestine, Arabia, and Persia restored. If small nations, crowded together in limited territory with difficult frontiers, work for international trouble, the situation just referred to is full of dynamite. In addition to all this, the small nationalities just referred to are further rendered full of high explosives because of minority nationalities found in each of them. Czecho-Slavia has its German minority, Poland its Russians and Jews, Jugo-Slavia its Italians, Dardanellia its Turks, Armenia its Turks. All

these little nations will have their representatives at the peace table and their rights must be determined at the peace conference, not only determined, but steps taken to protect them. All of them apparently have adopted democracy as the panacea for all their ills. The countries associated with the United States in this world war, Great Britain, France and Italy, are exhausted by the four years' contest and will have all that they can do to rehabilitate themselves. The United States is the only large nation that has come nowhere near exhaustion, with its great resources practically unimpaired and its manpower, not only virile, but practically in full force. Hence, the task of teaching all these nations, large and small, the ways of democracy, rests upon us alone, and if we should fail, then democracy again will become a dream. While the war against autocratic militarism is over, the contest to make democracy safe and workable has but just begun.

THE LAWYER AND THE WAR*

The nineteen months which have passed since America drew her sword and joined the hosts of freedom have been months of intense effort and of no small achievement, prophetic of a greater future. A great urge has come upon us, marking the swelling tide of America's purpose. The farmer has bent with renewed energy above his furrow; the miner has redoubled the blows of his pick; the shipwright has made the air tremble with the sound of his hammer, and the inventor has given us machine guns for our army, depth bombs and detectors for our navy, tractors for our artillery and engines for our airplanes. Even the artist and the painter have put their peaceful talents to war-like use and have created a new art of disguise for men on land and ships at sea. Whether it has been of men or money, of labor or loyalty, of service or sacrifice, no draft has been made that has not been fully honored. "The heart of the citizen is a perennial spring of energy to the state," and the hearts of Americans are in this war.

I need not argue that in this turmoil of action and achievement the lawyer has fully played his part. To him, as to others, has come the call to arms, and he has gone freely and willingly,

* Revision of an address delivered by Solicitor General John W. Davis, before the Kentucky Bar Association, July 2, 1918.