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United States and Arbitration, 1899-1914.

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THE UNIVERSITY OF TENNESSEE

United States and Arbitration, 1899-1914

by

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"Teach Us the Strength That Cannot Seek
by Deed or Thought to Hurt the Weak" -

Kipling

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CHAPTER I

Introduction: Survey of the Policy of the United States Toward Arbitration Prior to 1899

The United States of America has exerted a potent influence upon the development of international law. The American people, though not essentially interested in international law, have developed a multiplicity of laws within the nation. The United States has become a nation of laws, law breakers, and jingoists who claim respect for law, but break them at will. The American citizen is incensed with a spirit of getting by the law and at heart laughs at the thousands of laws the common officer is supposed to know and enforce today. The laws have been written by enthusiastic lawyers until a chaotic weakness has appeared in the American system of private law. A law is broken, separately or mass, and public opinion repiningly accepts the consequences, apparently not interested in the event except as a casual change. However, the spirit of retribution is growing; justice fires out its lather to the unjust at times; and the print of simplicity and fewer laws is demanded by the few who understand the reckless movement of the American today. These factors have influenced the attitude of the American government toward international law, but have not

been of sufficient weight to determine the policy of the government of the United States toward international movements such as arbitration. The great mass of the citizenry of the country have little care for the peaceful, lawful and conciliatory movement of this government toward a sister government. International law is analogous. A distinction is to be drawn between this group and the clear thinking international minded men in Congress, the Presidency, and in other places of professional service, who have shown a respect for and have lead the American nation into a foremost place in her respect for the common law of all civilized nations. Men of this type have fortunately held the balance for the most part in an honorable way and gained for the United States a high degree of prestige for its attitude and regard for international law.¹ As one of the results, the United States early recognized the law of nations as binding upon the acts of this government in relation to other governments². This rather pronounced stand upon the principles of international law was noble, yet necessary, for the youthful and growing American republic to take. Without it, she would not have morally won her way

¹ Moore, J. B. American Conf. on Int. Arb., p. 181.

² Instructions to Amer. Delg. 1907, in For. Rel. of U. S. 1907, p.

into the hearts of mankind or been able to exist in the face of nations, who long have recognized the principles of Grotius as the legitimate rules of international intercourse.

Long has the United States maintained a tradition of peaceful living³. She has been influenced and governed by the militarist and diplomatist less than any other great nation in the world. They have had their influence, caused many shameful mistakes, are still with us, but they grow less dominant as this country feels its way into the international situation. Our growth has illustrated to the world that peace ought to abide as the cardinal principle of all institutions and relations of government; that progress and prosperity are the companions of the mind that is free of hatred and the warlike spirit. We have entered no secret entangling alliances, and for the most part have maintained a position of neutrality to belligerent powers in conformity to international law on neutrality. The people of the United States have been mindful that the war spirit has been loose in this country and other great countries of the world. This spirit in America has been suppressed; the pressure of public opinion has weighed heavily

³Annals of American Academy of Political Science, V. 60, p. 231.

against its culmination in conflict or war. Only once during the first hundred years of this government did the spirit of war overcome the best elements of American thought and action, and subject the American people to a selfish, shameful conquest against the neighbor of the South, Mexico, in lust for territory⁴. The United States desired an isolated peaceful life, and from a reclusive position threw out upon the world, and entered into them as well, principles and ideals for the peaceful and judicial settlement of disputes.

In the Articles of Confederation, 1781, the United States blazed the pathway for the judicial settlement of disputes between the states. Congress was to be the final resort in case disputes should arise between two or more states.⁵ The writers of the Articles of Confederation, obviously, had foresight to see that disputes would inevitably arise in a loose union of states such as the United States of the Confederacy. However, two means were available by which the states in dispute might settle their differences without Congress becoming the final judge of the conflict. The first means of settlement rested within the actions of the state, except, that Congress was to noti-

⁴The Mexican War of 1847-48.

⁵MacDonald, Select Documents, 1776-1861, p. 10-11.

fy one or the several states to constitute a court of commission favorable to each party for the hearing and final decision of the matter in dispute. The second alternative, in case of failure to agree, was federal in character. The initiative rested with Congress to appoint three commissioners from each of the thirteen states and from the list chosen, each state was to alternately strike out the persons until the number was reduced to thirteen. In the presence of Congress, the list was to be further reduced to a court of five members who were to have conclusive power in determining the issue in question. If a state should refuse to strike out the persons appointed, the Secretary of Congress was to function for the absent or refusing state. The court now determined was to decide the case presented or unrepresented by one or both states in dispute. The security and enforcement of the decision was to rest within an Act of Congress⁶. The plan presented above is an introduction of this government to the principle of friendly settlement of disputes by a resort to a judicial court. Further, this principle was written into the American Constitution of 1787 that "Controversies between two or more states" were to be determined by the Supreme Court

⁶Ibid.

of the United States.

Within the period of the first five years of the American government under the constitution, an opportunity arose for the use of arbitration in determining and settling certain differences with the mother country⁷. The Jay Treaty of 1795 may be regarded as the beginning of modern arbitration.

Relations between the two countries were strained because of the non-observance of the treaty of 1783 and certain conflicting interpretations of this treaty. The northeastern boundary was yet undetermined; claims due to confiscation of British debts by American states were in question; and losses aggregated by Great Britain's failure to respect laws of neutrality were yet undecided. These were the problems which John Jay called to the attention of Congress in 1785⁸.

John Jay, in his report to Congress on April 21, 1785, called the attention of the people of the United States to provisions which would settle all disputes with Great Britain by arbitration. A general plan was suggested to the effect that the Secretary of State be authorized to present the case to commissioners, appointed by both coun-

⁷ Moore, J. B., Principles of American Diplomacy, p. 307

⁸ American State Papers, V. 1, p. 94.

tries, whose decision should be final⁹. The Senate was, by February 1790, favorable to the idea of arbitral settlement of the disputes with Great Britian. The President, George Washington, was inclined toward the same means of settlement and did advise the Senate to act on the report of John Jay before negotiations were undertaken by the state department. The government of the United States was amicable toward Great Britain and did not desire agitations that would make impossible the friendly settlement of difficulties with the mother country. The Senate, on March 9, 1890, accepted the Jay Report of 1785 and authorized the President to negotiate with Great Britain in an attempt to settle the disputes¹⁰.

The Senate, by vote of eighteen to eight, on April 16, 1794, authorized the appointment of John Jay as Envoy Extraordinary to Great Britain¹¹. General instructions to Jay were issued by the Department of State [Edmund Randolph, Secretary of State], leaving him to draw to conclusive points the differences between the two countries. No mention was made as to the means of adjusting disputes that could not be decided upon through

⁹ Ibid.

¹⁰ Ibid, p.100.

¹¹ Ibid, p.470.

negotiations, but there was one inference in the instructions to Jay suggesting the possible use of arbitration. An attempt was to be made by the Commissioners of United States to have the question of debts to British creditors decided in the courts of the United States. In case this right could not be secured, Jay was to support his former public opinion on a basis of self-respect "without relaxing pretensions hitherto maintained." The Department of State, it seems, left the way clear for Jay to put into practise his recommendations to Congress in 1785.

Jay arrived in London on June 15 and by November 19, 1794, had concluded the Jay treaty of 1794 or the Treaty of Amity, Commerce, and Navigation with Great Britain. The treaty was submitted to the Senate on June 8, 1785, and was advised and consented to by it on June 24 with the reservation that Article 11 be suspended until further negotiations by the President¹².

Provision was made for three arbitrations under the Jay Treaty. The first of these was to determine the Eastern boundary of the United States, investigating the identity of the St. Croix River mentioned as the boundary line in 1783. The second related to confiscation of debts and impediments, which stood in the way of British subjects

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MacDonald 1776-1861, p. 114.

legally collecting their debts. The third related to the adjustment of American claims due to losses sustained through Great Britain's failure to respect laws of neutrality¹³.

By Article V of the treaty, a commission of three was appointed to determine the river St. Croix, mentioned in the treaty of 1783, as the northeastern boundary between the United States and Canada¹⁴. There was a joint agreement that the decision was to be final and never made the subject of a dispute again. The commission rendered its decision at Providence, Rhode Island on October 25, 1798, holding that the Schoodiac River was intended for the name of the St. Croix¹⁵.

The award was unsatisfactory to both parties and was eventually left to recur again in the Treaty of Ghent [1814]. The commission failed to agree and in accordance with Article V of the above treaty, a convention was determined upon in 1827 by which the boundary difficulty was to be submitted to some friendly power. The King of Netherlands was chosen to arbitrator and on January 10, 1831, his decision was submitted to both countries. The award was unfavorably

¹³ Malloy, Treaties and Conventions of the U. S., V. 1, p. 590-605

¹⁴ American State Papers, V. 1, p. 520-605.

¹⁵ Moore, J. B., Principles of American Diplomacy, p. 309.

received by the United States and though accepted by Great Britain, the latter was unwilling to alter it through negotiations¹⁶.

The Senate of the United States resolved in June 1832 that the award was not obligatory. The resort to arbitration was considered inexpedient. The Senate discounted the fair and impartial ethics of an arbitration agreement and the award by its refusal to abide by the decision of the arbitrator, lest their moral attitude be questioned or lessened in the eyes of the civilized world. The failure of the Senate to accept the principle of obligatory arbitration was a retrogression and the first black mark on the record of the United States in arbitration. The dispute was finally determined by the Webster-Ashburton Treaty of 1842¹⁷.

A second commission to determine the compensation or debts due British subjects met in Philadelphia on May 29, 1797¹⁸. They failed to agree and the American commissioners withdrew in opposition to an interpretation of a part of the treaty of 1783. The resolution of MacDonald, one of the British Commissioners, stating that the Treaty of 1783 did not grant independence of the United States, but merely recognized it as a condition existing from July 4, 1776¹⁹. The declaration was so offensive that the commission withdrew

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¹⁷Malloy, V. 1, p. 646-649.

¹⁸Malloy, V. 1, p. 657.

¹⁹Ibid, p. 318

¹⁹Ibid.

and Lord Grenville retaliated by the withdrawal of the British Commissioners. The final settlement of the dispute took place by the Convention of January 8, 1802, by which the United States was to pay to Great Britain the lump sum of 600,000 pounds sterling (\$2,664,000).

The question of American claims against Great Britain for violating laws of neutrality with reference to condemning and capturing vessels was referred to a third commission which met in London on October 10, 1796²⁰. The commission failed to agree and in protest to the British interpretation of the treaty of 1783, the commission was suspended. The debt question remained unsolved until 1802 when the United States received compensation to the extent of 1,317,361 pounds sterling or \$5,849,082.

The Treaty of Ghent, 1814, provided for three arbitrations as did its predecessor, the Jay Treaty of 1794. The first was to determine the ownership of islands in the Bay of Passamaquoddy and the Bay of Fundy; the second related to the determination of the northern boundary from the St. Croix River to the St. Lawrence River; the third pertained to determining the boundary from Lake Huron to²¹ the farthest point on the Lake of Woods. In 1818, refer-

²⁰American State Papers, V. 1, p. 521-22.

²¹Malloy, V. 1, p. 613-14.

ence was made to a misunderstanding of the meaning of Article I of the Treaty of Ghent, in which Great Britain was alleged to have carried off property and slaves after the signing of the treaty of 1814. The difficulty was referred to the Emperor of Russia and in a decision favorable to the United States, a commission was appointed to determine the amount of indemnity due the government of the United States. A second award was made by a commission acting under the claims convention of 1853 by which awards were made to American claimants amounting to \$32,973,116 and to the British claimants to the sum of \$27,710,288. In 1863, the claim of the Hudson Bay Company and Puget Sound Agriculture Companies were submitted to arbitration by the treaty of 1863. Awards were made against the United States on September 10, 1869, to the Hudson Bay Company to the extent of \$450,000 and to the Puget Sound Agriculture Companies for \$200,000²².

Article XXI of the treaty is of interest in our relations with Mexico and represented the first positive expression of good will toward our neighbor to the South. Article XXI of the treaty is as follows:

"If unhappily any disagreement should arise between the government of the two republics, whether with

²²Moore, J. B., *His. & Dig. of Int. Arb.*, V. 1, p. 268-69.

respect to the interpretation of any stipulation in this treaty, or with respect to any other particular concerning the political or commercial relations of the two nations, the said governments, in the name of those two nations, do promise to each other that they will endeavor, in the most sincere and earnest manner to settle the differences so arising, and to preserve the state of peace and friendship in which the two countries are now placing themselves,, for this end, mutual representation and pacific negotiations. And if, by these means, they should not be enabled to come to an agreement, a resort shall not, on this account, be had to reprisals, aggression, or hostility of any kind, by the one republic against the other, until the Government of that which deems itself aggrieved shall have maturely considered, in the spirit of peace and good neighborhood, whether it would not be better that such difference should be settled by the arbitration of commissioners appointed on each side or by that of a friendly nation. And should such course be proposed by either party, it shall be acceded to by the other, unless deemed by it altogether incompatible with the nature of the difference or the circumstance of the cases"^{22a}.

^{22a}

Treaty of Guadalupe Hidalgo in MacDonald, Select Documents, V. 1, p. 371-2.

Prior to the Treaty of 1848 claims conventions were established in 1839 and extensions were made until awards were paid to United States citizens against the Republic of Mexico²³. Consequently, there resulted by the treaty of 1853 and of greater consequence in the treaty of 1868, the agreement to establish a general claims commission. The commission closed its work on January 31, 1876, awarding to the United States \$4,125,622.20, and in favor of citizens of Mexico, the sum of \$450,498.41. The total amount claimed represented on the part of both countries over one-half billion dollars and aggregating 1017 American and 998 Mexican claims.

The Treaty of Washington 1871 is the greatest arbitration treaty to which the American government has been a party. The early background was wrought with difficulties and sore spots growing out of grievances during the Civil War. It is to be remembered that during the period of the Civil War that the interests of the world were upon slavery and war and not upon better international relations. The period, however, was not without its ill feelings and international problems. After the war the situation became rather tense between the United States and

²³Malloy, V. 1, p. 1104.

Great Britain. However, the four distinct arbitrations agreed upon evidence that arbitration certainly reached a high point in this period.

The difficulties were brought to an issue by a treaty of Washington, May 8, 1871²⁴. The United States was represented on the arbitration tribunal by Hamilton Fish, Robert Cummings Schenck, Samuel Nelson, Ebenezer Rockwood Hoar, and George Henry Williams; on the part of Great Britain, George Frederick Samuel, Earl de Grey and Ripon, Viscount Goderick, Baron Gratham, Sir Stafford H. Northcote, Sir Edward Thorton, Sir John Alexander, and Montague Bernard. The commissioners came together and as result of the treaty, four major differences were settled by arbitration. The San Juan boundary was determined through an award by the Emperor of Germany satisfactory to the claims of the United States²⁵. Claims were awarded citizens of both countries [other than Alabama claims] for injuries and losses sustained during the Civil War. Compensation to the extent of \$5,500,000 was awarded to Great Britain due to unjust grants of fisherman rights along the northeast coast. The case and the award of the

²⁴Ibid, p. 701.

²⁵Malloy, V. 1, p. 717.

Geneva Tribunal is the most important of the four arbitrations.

Investigations of the depredations of the confederate vessel, the Alabama, were made on the basis of three rules agreed upon in Article VI of the Treaty of Washington.²⁶ They were in effect the accepted law of neutrality concerning the use of vessels equipped in the ports of a friendly nation and used to impair and destroy the commerce of one of the belligerent powers. The British refused to accede that they had broken rules of international law, but did agree to the rules of neutrality which were to guide the arbitrator.

Demands of the United States embraced (1) direct loss due to capture or destruction of vessels with their cargoes, (2) heavy expenditure of the United States government in pursuit of the cruisers, (3) direct injury in the transfer of American marine to the British flag, (4) the enhanced payments of insurance, (5) the cost of the prolongation of the war. The award was made on Great Britain's failure to observe diligently her neutral obligations and failure to take any effective measures preventing the escape of the Alabama. The last four demands of the United States government were not regarded as sufficient for com-

²⁶Papers Relative to the Treaty of Washington. p. 8-9.

pensation under international law. However, in response to the demand for direct loss, the tribunal, which was the temporary court of arbitrations, by vote of 4:1, awarded in gold the gross sum of \$15,500,000 - the largest sum ever awarded by an arbitration tribunal²⁷.

The Behring Sea Controversy with Great Britain is the last of the great arbitrations of the 19th century. The question arose out of conflicting views of the prior rights of the United States in the Alaskan waters, and the rights of the United States outside of the ordinary territorial limits. The immediate cause of dispute was the killing of the fur seals, and the competitive conflicts that followed between the fishermen of both nations²⁸.

James G. Blaine called the attention of Great Britain to the number of seals being killed and that they would soon be extinguished unless an agreement should take place. With this matter in view, he submitted the two issues to Great Britain suggesting arbitration. Negotiations continued until February 29, 1892, at which time an arbitration treaty was signed with Great Britain.

The tribunal met in Paris and came to a distinct decision as to the points in controversy. The award as a

²⁷ Malloy, V. 1, p. 717.

²⁸ Foreign Relations, 1890, p. 476.

whole was unfavorable to the United States.

The differences with Spain, as early as 1795, were settled by arbitration except the final controversy of the Spanish American War²⁹. The most important arbitration with Spain resulted in negotiations of February 11-12, 1871, by which a claim commission was established and did not conclude its work until January 1, 1883.

With France disputes of a pecuniary nature have been disposed of through negotiation. But from January 15, 1880 to April 1, 1884, a joint claims commission sat in Washington hearing claims of the citizens of either country of injuries or losses sustained during the Civil War and the Franco-Prussian War³⁰.

A study of the important treaties entered into by the United States indicates that the general principle of arbitration has constituted one of the leading policies of the American government. It was her eminent statesman, John Jay, who introduced modern arbitration to the world. We have in great part through the various treaties to which the American government has been a party introduced and made use of systems of arbitration which have been the only means of adjusting disputes between diplomacy on the one hand

²⁹ Malloy, V. 2, p. 1648-49.

³⁰ Ibid, V. 1, p. 543-45.

and conquest on the other. The spirit and practice of arbitration has not been as rigid as it should have been, but the part played by the United States is indicative of a very commendable attitude toward a peaceful settlement of disputes before an arbitration tribunal.

Congress prior to 1820, was little interested in a policy of arbitration for the United States. There was practically no expression in favor or in condemnation of arbitration during the first sixty-one years of the history of the United States. It was assumed for the most part that the state department could handle the various situations that came up and in few instances, except the submitting to Congress of special treaties, was there action at all on arbitration. The articles relating to arbitration in the treaties were accepted in a spirit of goodwill and without reservation. Interest, however, was rather high during the last fifteen years of the half century.

The peace movement, which had its origin in 1809, was very aggressive through its various societies from 1838-53³¹. Memorials were presented to Congress on three occasions and in each instance, Congress declined to take any stand on the issue and in each instance the Foreign

³¹U. S. and Arbitration, World Peace Foundation, p. 487.

Relation Committee of the House asked that it be discharged from further consideration of the subject³².

The majority of the members of this committee had an ill-founded notion that the sword will "prove the surest guaranty of peace." They were fatalists in no adverse sense. War will come and each war will have its lessons, and increase the obstacles in the way of future war. The committee was not disposed to recommend to the House that they go on record as favoring a permanent international tribunal under the present conditions in the world. However, there was an agreement that the resort to friendly mediation of a third power was worthwhile and would soon become the "customary law of civilized nations." They further urged the memorialists to influence public opinion as far as they were able so that national differences might be settled without bloodshed³³.

The shifting of responsibility or failure to take a stand for or against arbitration was indicative of little interest in arbitration or recognition of its value to America at this early period in her history. It was rather natural to think that the mastery of the sword was the means of maintaining the future rights of the American

³²

³³Ibid.

Ibid.

States. We had not fully forgotten the new expression of American rights and liberties which came by the wars of the Revolution and of 1812. However, it is difficult to believe that the opinion of the committee represented the general outlook and interest of the majority of representatives in the House.

Congress up to 1874 was indifferent to concurring on a policy of arbitration. Indifference was the word, and nothing but the facing of an urgent crisis would have brought an expression of a policy, pro or con, on arbitration. There was still within Congress men of international minds who were very sympathetic with the people, or groups of people, against war. Senator Henry Stuart Foote, of Mississippi, and Senator Joseph R. Underwood, of Kentucky, were men of this type and were authors of resolutions which would have provided a constructive policy on arbitration. On February 5, 1851, Senator Foote reported the following resolutions from the Committee on Foreign Relations to the Senate:

"Whereas appeals to the sword for the determination of national controversies are always productive of immense evil; and whereas the spirit and enterprises of the age, but more especially the genius of our own government, the habits of our people, and the highest permanent prosperity of our republic, as well as the claims of humanity, the dictates of enlightened reason, and the precepts of our holy religion,

all require the adoption of every feasible measure consistent with the national honor and the security of our rights, to prevent, as far as possible, the recurrence of war hereafter; Therefore,

"Resolved, That in the judgement of this body it would be proper and desirable for the government of these United States, whenever practicable, to secure in its treaties with other nations a provision for referring the decision of umpires all future misunderstandings that cannot be satisfactorily adjusted by amicable negotiation, in the first instance, before a resort to hostilities shall be had"³⁴.

The resolution was adopted by the Committee of Foreign Relations unanimously and no difficulty was anticipated in the acceptance of it by the Senate. The resolution, however, died on motion of Senator Jeremiah Clemens that "it lie over", and it has done so to this day.

The Underwood Resolution of February 22, 1853, was in the nature of Senatorial advice to the President. The resolution was never debated on the floor of the Senate, but is of interest in the "what might have been history". It is as follows:

"Resolved, That the Senate advise the President to secure, whenever it may be practicable, a stipulation in all treaties hereafter entered into with other nations, providing for the adjustment of any misunderstandings or controversy which may arise between the contracting parties, by referring the same to the decision of disinterested and impartial arbitrators, to be mutually chosen"³⁵.

³⁴ Moore, J. B., Hist. & Dig. of Int. Law, V. 2, p. 2109-10.

³⁵ Ibid.

The advice and recommendation of the committee was sane and constructive. The resolution represented a challenge to the United States to proclaim to the world that she hated differences and desired to see them adjusted peaceably. However, some of the committee believed that the progress of the world in time would come to a point when all nations would unite in establishing a tribunal in which all international controversies would be adjudged and determined. They, at this time, were unwilling to present such a radical move. Though content with less, the stand by the Congress of the United States to settle differences with other countries by arbitration would have meant much to that age of the world. It would have foreshadowed the ultimate adjustment of all disputes before an "International Court of Justice." The "point of honor" would have been changed from a fiery hasty blow of arms to the "point of honor" by strictly adhering to treaties providing a means of settlement by arbitration. These, however, are only reflections on what could have been the "policy of this government toward arbitration" during this early period.

No evils would have resulted from agreeing to write in our treaties the referring of all disputes arising out of that treaty to arbitration for adjustment. If two nations are willing to throw the stakes of an issue on a

table and agree by treaty the means and procedure of adjusting their disputes, then surely since the major issues have been determined by the treaty itself, the only sensible thing to do in case of dispute is submission to arbitration for decision. If a principle of friendly adjustment is greater than the choice of war for the major issues, then surely conflicting interpretations or differences arising out of the treaty would require an extension of the principle of the adjustment of disputes by arbitration. If the advice of the committee had been accepted by the Senate, arbitration would have been definitely written into the foreign policy of this government.

An opportunity slipped by Congress to form a constructive attitude toward arbitration. The acceptance and carrying out of the resolution would have strengthened the cause of peace and made war less possible between this government and other governments of the world. Usually, it is the government that makes war and not the great mass of the people, and this fact makes it necessary that governments who exist for the governed act within justice and international law to settle their disputes. Interest was certainly strong at this time in favor of peace and adverse to war. The country was at peace and the interests of com-

merce, industry, science, and Christianity implored the government to arrest the environment of peace and suppress the odiousness of war. Congress failed to cooperate with the growing sentiments of the day, and passively passed up the resolution indifferent to the memorialists, principles of peace, and to her moral and political position in the world.

Fully, twenty years passed before Congress definitely pronounced itself on the question of arbitration with other countries. On May 31, 1872, Senator Charles Sumner introduced a resolution in the Senate on Arbitration. The concern of the resolution was to substitute arbitration for war in settling differences between nations. Arbitration was shown to be a growing factor in settling of disputes between individuals and nations alike, and the resolution recognized that the time was ripe for an expression of American attitude on arbitration. The House, in early June, 1874, had suspended their usual procedure and adopted without debate in each instance two resolutions of concurrent interest.³⁶

The resolution of June 17, 1874, was accepted in the House without debate, and though a concurrent resolution, was actually never acted upon by the Senate. The resolution

³⁶ Scott, J. B., U. S. and Arb., p. 495.

is as follows:

"Resolved, That the President of the United States is hereby authorized and requested to negotiate with all civilized powers who may be willing to enter into such negotiations for the establishment of an international system whereby matters in dispute between different governments agreeing thereto may be adjusted by arbitration, and if possible without recourse to war." ³⁷

In the second resolution the House made final a constructive stand on arbitration. The attitude of the House is best determined by the resolution in the following form:

"Whereas, War is at all times destructive of the material interests of a people, demoralizing in its tendencies, and at variance with an enlightened public sentiment; and,

Whereas, Difference between nations should in the interests of humanity and fraternity be adjusted if possible by international arbitration: Therefore,

Resolved, That the people of the United States, being devoted to the policy of peace with all mankind, enjoying its blessings and hoping for its permanence and its universal adoption, hereby through their representatives in Congress recommend such arbitration as a rational substitute for war, and they further recommend to the treaty making power of the Government to provide if practicable that hereafter in treaties made between the United States and foreign powers, war shall not be declared by either of the contracting parties against the other until efforts shall have been made to adjust all alleged cause of difference by impartial arbitration"³⁸.

The House thus made a constructive stand in favor

³⁷Cong. Record, 2 pt., V. 1, p. 5114 in U. S. and Arb., Scott. p. 495

³⁸Cong. Record, 2 pt., V. 1, p. 5124 in U. S. and Arb., Scott, p. 495

of friendly settlement of disputes by arbitration. Thereupon, the House requested the Senate to concur on a policy of arbitration. The response of the Senate was favorable and without debate the third paragraph in the Sumner Resolution, of 1872, was accepted, as the prevailing attitude toward arbitration. It is stated as follows:

"Resolved, That the United States, having at heart the cause of peace everywhere, and hoping to help its permanent establishment between nations, hereby recommend the adoption of arbitration as a just and practical method for the determination of international differences, to be maintained sincerely in good faith, so that war may cease to be regarded as a proper form of trial between nations"³⁹.

The Senate, however, seems unwilling to go as far as the House in accepting a policy that would require immediate negotiations for the establishment of an international system of arbitration.

In 1874, a resolution passed the House of Representatives in favor of general arbitration⁴⁰.

The memorial of greatest interest on arbitration came in the year 1888 from the British Parliament. Two hundred and thirty-three members of this great legislative body urged the negotiation of a general arbitration treaty

³⁹ Moore, J. B., Hist. & Dig., V. 2, p. 2110-11.

⁴⁰ Ibid.

between the two Anglo-Saxon peoples. The treaty in effect was that the settlement of any disputes or differences between the two countries which could not be settled by negotiation should be referred to arbitration⁴¹.

Likewise, in the year 1888, and in response to the timely memorial from the British Parliament, the Sherman Resolution of June 13, 1888, was reported to the Senate and unanimously passed requesting the President "to invite from time to time, as fit occasions may arise, negotiations with any government with which the United States has or may have diplomatic relations; to the end that any differences or disputes arising between the two governments which cannot be adjusted by diplomatic agency may be referred to arbitration, and be peaceably adjusted by such means"⁴².

The resolution in this form was not accepted by the House, but in 1890 a concurrent resolution of the same nature was agreed to by both houses⁴³.

The Congress of the United States made the first advance toward Great Britain in establishing the principle of arbitration between the two great Anglo-Saxon peoples. The response of the British government was favorable on July 16, 1893, and the House of Commons agreed to cooperate

⁴¹

Ibid.

⁴²Ibid.

⁴³U. S. Arb., W. P. F., p. 499.

for the British government on the basis of the resolution of Congress, April 3, 1890. Negotiations were undertaken between the two governments, and, though for a time the subject was suspended, a treaty of general arbitration was concluded on January 11, 1897⁴⁴.

Grover C. Cleveland and William McKinley, his successor, were urgently in favor of the treaty and hoped that the Senate would ratify it. President Cleveland had the feeling that the treaty was not one of unlimited and irrevocable arbitration, but that it was a practical working plan by which disputes between the two countries would be settled peaceably in their matter of course. William McKinley, in his inaugural address, urged the Senate to ratify the proposed treaty with Great Britain "as a duty to Mankind." The treaty was to him "an example of reason and peace" and was America's opportunity again to morally take the lead in a constructive continuance of her belief in the principle of arbitration⁴⁵.

The Senate debated the ratification of the treaty from January 18 to May 5, and in the last instance failed to advise and consent to its ratification. Numerous amendments were proposed and accepted until the treaty was hardly

⁴⁴ Moore, J. B., Hist. & Dig., V. 1, p. 962-63.

⁴⁵ Moore, J. B., Hist. & Dig., V. 1, p. 982-99.

recognizable as the original. It seems that the Senate was made up of a strong element which had minds of the middle ages. They were animated by mistaken and overdrawn jingoism, prejudice, and suspicion. A treaty to them was no more than a scrap of paper, just a temporary expedient to be broken whenever favorable to the interests of the government.. Military force and the army, "ready for battle", was regarded by them as the strength, support, and psychological background for the peace-loving nation of the United States. Such erratic opinions were not the mind of all, yet they were strong enough to prevent the proper two thirds vote necessary for ratification⁴⁶.

The treaty was clearly the result of our own initiative and indifferently we failed to ratify it. This certainly was the opportunity to link the common inheritances and hopes of one of the greatest peoples in the world. Relations had, for eighty years, been creditably amicable and no fairer auspices for the acceptance of a treaty of arbitration could not be found. It seems that the government of the United States, which is fast adopting a custom of nosing into international affairs, introduces some worthwhile enterprise, and then refuse to accept it in awe of her independence and safety. We should at least

⁴⁶ U. S. and Arb., W. P. F., p. 508.

be consistent, and if the course of this government requires a peculiar isolation, then due care should be taken that our representatives sign no agreement that would at all embarrass the moral and political position of the United States.

The test of the interest of the American Congress in arbitration resulted from a Switzerland inquiry on April 1, 1883⁴⁷. The government of Switzerland desired to make a general arbitration treaty with the United States. The inquiry was received with favor by the executive department of this government. The draft submitted to the United States government was never acted upon by the Senate. It is not known definitely why the negotiations were never brought to conclusion, but likely it is because of the complete obligatory character of the proposal. However, our disapproval of the proposal is no justification for the failure of the United States to answer through its diplomatic offices the position of the government on this matter.

Arbitration did not die because of the Senate's indifference toward Switzerland's proposal, but assumed a dual American setting. A meeting of all American nations was planned to meet in Washington, November 24, 1882, to discuss "methods of preventing war between the nations of

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Moore, J. B., Hist. & Dig., V. 2, p. 2112-3.

America." This conference was not held due to negligible conditions in South America⁴⁸.

A second International American Conference did meet on April 18, 1890, as result of an act of Congress authorizing the state department to call the conference. A plan of arbitration was adopted that is of interest to all American nations and Europe as well.

War was recognized as the "most cruel, the most fruitless, and the most dangerous expedient for the settlement of international differences." Arbitration was to substitute for war and by means of a general arbitration treaty, the principle of arbitration was written into American International Law. In every instance, except the question of independence of a nation, arbitration was to be obligatory. The treaty was to remain in force for twenty years after the exchange of ratifications.

The International American Conference of 1890 would have been written in the history of the United States as the "first and great" had the Senate of the United States accepted the general arbitration treaty, and in turn been accepted by the sister republics to the South. The treaty would have been spoken of as James G. Blaine did as the "New Magna Charta" which dared "call the world's attention

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Ibid.

to the deliberate, confident, solemn dedication of two great continents to peace." This, however, a "bygone of history", does represent a move which had the possibility of making war impossible among the Republics of America⁴⁹ .

⁴⁹ Moore, J. B., V. 2, p. 2115-17.



CHAPTER II

United States, Arbitration and The Hague Peace Conference
of 1899

Necessity and the realization of the uselessness of war drove the nations of the world into the Hague Peace Conference of 1899. Jealousies and vindictiveness, as well as fear of rival powers, were constantly arousing ire in European diplomatic circles. Each nation was heavily burdened with debts, and increasing armaments seemed necessary to meet the new political situations which hardly could be avoided with threats of war, hurled forth on every hand. The weight of armament vigorously bore down upon tax burdened Europe, causing the rulers and representatives of the people to investigate the actual situation before them. There was a growing desire to attain peace and to lessen war which was realized by some to be useless. With these burdens and problems before the nations of Europe, twenty-six nations, including the United States, assembled at the Hague in the attempt to set up a working ideal of peace for the world¹.

The United States was not at all an opportunist at the First Hague Peace Conference of 1899. Principles of goodwill and peace weighed upon the minds of the American

¹
Hist. & Dig., V. 7, Russian Circ of Aug. 1899.

delegates and the degraded condition of Europe aroused a sympathetic endeavor to work for peace as never before. Humanity, the world over, was the sufferer, and a spirit of the highest ideals for peace sent the American delegates to the Hague to limit, if possible, the on march of war and substitute principles and practices that make for the development of peace in the world. For the first time in the history of this nation, representatives of the United States sat in a great World Conference, voicing the ideals of a new world order. She was a student of world affairs about the conference table and did attempt to establish the means by which nations might live without war except as a final resort².

Before the Conference of 1899, there was no satisfactory solution to the problem of settling disputes between nations. Little faith existed in any give-and-take method between diplomacy on the one hand and war on the other. It was usually diplomacy and adjustment or war and death sealed by the blood of youth. As a matter of fact, arbitration as a peaceful international process had not been written into the accepted law of the nations of the world. Some nations, including the United States as shown in preceeding chapter had made the principle of ar-

²The Proceedings of the Hague Peace Conf., V. 1, p. 716.

bitration a fairly consistent practice in the foreign policy up to 1899. Other nations had made little use of arbitration, and consequently it had not been a part of the accepted international law of the day. Usually, a nation in a national crisis was afraid to do the natural and simple thing. After the failure of diplomacy, the unnatural and more difficult call to arms was heard sending the young manhood of the country into mouths of cannons and the country to jingoism and mourning.

The work of the conference was divided into three major commissions, and it was the duty of the third commission to consider arbitration. The program had been suggestively outlined in the Russian circular of December 30, 1898. Article VIII of the Russian Draft broadly gave the commission a working basis upon which to build up a system of voluntary arbitration. Compulsory arbitration was not suggested by the Minister of Russia in the program of the conference. It was not long until the hope and success of the conference was realized to rest on the work of the third commission.³

Upon three of the American Commissioners, namely, Andrew D. White, Seth Low, and F. W. Holls, rested the obligation and immediate instructions of this government to

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For. Rel. 1899, p. 514.

"concentrate the attention of the world upon a definite plan for the promotion of international justice"⁴. A "real and durable" peace was the ultimate goal of these men and of the country they represented⁵.

An American plan for a Permanent Court of Arbitration was presented as one among three to the conference as a whole, and was the last to be referred by the conference to the third commission for examination. The essential features of the american draft were as follows:

1. The nomination of judges in the tribunal by the highest court of justice within each nation.
2. The organization of the tribunal as soon as nine powers agreed on the proposed draft for the Permanent Court.
3. The formation of the court called upon to sit in each particular case according to conventions to be entered into between states in controversy.
4. The right of states, in certain specified cases, and after a given period, to a second hearing of the case before the same court.

(The above four suggestions distinguish the American plan from the British and Russian plans which had preceded the American proposal. In common there is a continuance;)

5. The agreement to submit all disputes except those of independence and honor to a judicial court for decision.

⁴The Proc. of the Hague Peace Conf., V. 1, p. 25.

⁵Inst. to Am. Delg. in For. Rel. 1899, p. 512-13.

6. The tribunal to be permanent.
7. The bench of judges to consist of not more than seven or less than three.
8. The general expenses of the court to be borne by the powers accepting the draft for the Permanent Court.

The American plan for the court of arbitral adjustment was consistent with our conceptions and ideals of jurisprudence. As a working plan for a permanent court of arbitration it was unsurpassed by either of the other two drafts⁶.

Mr. Holls, in presenting the American draft, threw a challenge to the committee of examination and reached a high point in realizing the purpose of the work of the third commission. The keynote was struck in his statement that "we shall have done nothing whatever if we separate without having established a permanent court of arbitration." This feeling prevailed among the members of the third commission and was practically as strong in the conference as a whole. In the committee there were many divergent views on every issue, but usually in a fine spirit of harmony, agreement was reached without bitterness. The process of working out a system of arbitration was necessarily slow, but the interest of the American delegates was constantly pushing toward

⁶ The Proc. of the Hague Peace Conf., V. 1, p. 127-28.

what they conceived to be the beginning of a new order in the relations of nations. There were many tendencies to revert to the old order of thought, but these breaks were used by the American delegates as opportunities to push further an organized conception of arbitration⁷.

Some of the most important features finally adopted were the result of the American draft or other suggestions made by the American delegates. These plans were purely the presentation of customs and ideals thought out and experienced in the contact of the government of the United States government with other governments applying the principle of judicial settlement of disputes. Our experience in government has been limited and of short duration in the life of a nation, but such as we had was rich in the understanding and use of international law. The suggestions were offered in the light of international law and were to stand in the final act of the conference on merit and merit alone⁸.

The principles or features presented by the American delegates were expressions of consequence in our attitude toward the entire phase of arbitration. As it was, she was progressive, and would have gone still further in the development of a system of arbitration had there been sufficient

⁷The Proc. of the Hague Peace Conf., V. 1, p. 715-16.

⁸For. Rel. 1899-1900, p. 514.

willingness to take the greater step on the part of her sister nations. The question of compulsory arbitration though not in the early program of the conference, as outlined in the Russian Note of 1899, proved to be a thorn in establishing a substantial system of arbitration. In general the attitude of the United States on the issue was similar to that of the European nations. No nation was willing to go the full way and arbitrate questions relating to its independence, vital interests or honor. Even on questions of less importance, it was impossible to secure agreements by which they would be compulsorily arbitrated. To preserve harmony and accept the near best, voluntary arbitration was accepted as the means for determining many of the disputes which would necessarily rise in the future. There was hope among the American delegates that in the course of time the submitting of the disputes to the court would become the natural and normal course of the world at large⁹.

The conception of the selection of the judges for the permanent tribunal or panel is consistent with American jurisprudence. Though not selected the same way, altogether there was a similar desire that the judgeship be free from pull or political suspicions. It was also recognized that

⁹ For. Rel. 1899, p. 519.

the judges of the highest court of a nation were the most capable in estimating the worth of the jurists who should sit on the bench of the permanent court. This principle has long been recognized, though not actually carried out in the nomination and consent of federal judges. For this particular court, the suggestion to permit the executive head of the government to nominate the judges, and the highest judicial court pass or reject the nominations are of American origin. The Supreme Court of the United States instead of the Senate marked the procedure of accepting or rejecting the nominations of the executive of the nation¹⁰.

The right to appeal a case on a writ of error or discovery of new evidence was early determined in the judicial system of the United States. The right to revise an arbitral award on appeal to the same court or tribunal hearing the case was emphasized and written into the Final Act due to American interest. The United States admitted with the majority of the nations at the Hague that the award should be final and without appeal, with the one exception of the amendment proposed by the United States. This amendment was just and did provide for a situation which frequently had occurred in courts of all types. The

overlooking of a fact or correcting of a point of law, if pertinent to the case, could modify the award and entire situation. Such an admendment made possible the reexamining of old situations and prevented new ones from becoming "sores and broiling places" for future difficulties and possible wars¹¹.

The principle that the arbitrator could serve only on his nation's panel was vigorously upheld by the American delegates. In an extension of the principle, the judge or the arbitrator could accept no political or legal duties save from his own government. The situation is like this: A jurist is placed on the bonified list of one government and may be used by his own nation or another. No two nations could use the same arbitrator for a particular case, and in case this did occur, for the sake of an impartial decision, the jurist was disqualified. In fairness to one or both nation, the principle was wisely sustained¹².

The question of a "compromise clause" was perhaps more rigidly discussed under fire than any other American suggestion. According to the Constitution of the United States, a treaty to be effective, must be ratified

¹¹The Proc. of the Hague Peace Conf., V. 1, p. 150, 244-741-749.

¹²The Proc. of the Hague Peace Conf., V. 1, p. 792-96.

by the Senate of the United States. The Senate of the United States has always regarded its consent to a treaty as a constitutional prerogative which is not to be tampered with or disregarded by the executive department of government. In effect the compromise clause in an arbitration treaty makes necessary that the Senate agree to the treaty in general and at a later time ratify the agreement which takes place as result of the compromise. The Senate has insisted rather vigorously on this point, and the department of state has and did instruct the delegates of the United States to the Hague to make a reservation as would comply with the United States' Constitution. The delegates of the United States were plain spoken to the conference in insisting that any arbitration to which the United States was a part would have to have the consent of the Senate before the case actually reached the arbitration court. This condition was wisely recognized by the conference and accordingly was written into the Final Act. A situation, however, might exist when a compromise unreasonable in the eyes of the Senate might be agreed upon. If such should occur, it was recognized that even though the compromise agreement was unacceptable to the government, the original arbitration treaty was not annulled or broken. It was necessary then that

a second compromise agreement be negotiated which would be acceptable by both of the litigants¹³.

All the principles advocated by the American delegates, except one, were written into the final plan of the Permanent Court of Arbitration. In the original American plan, the court was to meet in groups only as the occasion demanded, but in the final act of the conference, the tribunal might, if necessary, meet in full bench very much like that of the Supreme Court of the United States. However, as a usual fact, the tribunal was only temporary; its permanence existed, not in a standing court, but in a panel of jurists capable and ready to serve as called upon by the litigants. Each government, according to Article 23 of the Final Act, was to select four persons who were competent in international law to serve on the permanent panel of the court. In effect there does not exist a permanent court, but a permanent panel from which a temporary tribunal may be selected for each dispute of an arbitral nature¹⁴.

Arbitration procedure was made effective by centralizing the administrative work of the court into an International Bureau established at the Hague. This bureau

¹³The Proc. of the Hague Peace Conf., V. 1, p. 528.

¹⁴For. Rel. 1899, p. 516-17.

was very useful in case of recourse to arbitration. At the head of the Permanent Council of the Bureau there was the Minister of Netherlands, assisted by the diplomatic representatives of the signatory powers. Somebody had to call the bench for a case, set the court in action, and record the building up of new international law. This was the work of the Council¹⁵.

The United States was one among seventeen powers to ratify the final act of the convention of 1899. Other than the United States, ratifications of the Convention of Pacific Settlement of International Disputes were deposited at the Hague by Austria, Belgium, Denmark, England, France, Germany, Italy, Persia, Portugal, Roumania, Siam, Spain, Sweden and Norway, the Netherlands, and Japan¹⁶.

The first American judges to the panel of the permanent Court of Arbitration were appointed by President McKinley and announced in his Presidential message of December 3, 1900. In Benjamin Harrison, ex-president of the United States, Melville W. Fuller, chief justice of the United States, John W. Griggs, attorney general of the United States, there were four of the most capable and legally versed men in all America.

¹⁵ For. Rel. 1899, p. 526.

¹⁶ McKinley Message in Richardson, Dec. 1900, V. 10, p. 207.

The immediate result of the Hague Peace Conference of 1899 was to strengthen and advance the cause of arbitration throughout the world¹⁷. The principle of arbitration was established as the most efficient method of deciding controversies which diplomacy had failed to adjust. No doubt a general arbitration treaty which was supported by the United States would have been negotiated at the conference, had Germany been willing to accept any obligation at all to arbitrate. Though general obligatory arbitration failed, the interest incurred at the Hague led to the making of more than thirty treaties of arbitration, individually arrived at, and agreed on in separate instruments¹⁸.

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Scott, J. B., American Addresses at Second Hague Peace Conf., p. 47.

¹⁸For U. S. and Treaties see Chapter Six.

CHAPTER III

United States, Arbitration and The Second Hague Peace
Conference of 1907

Theodore Roosevelt, ex-president of the United States, was largely responsible for the assembling of the Second Hague Peace Conference. For many years Roosevelt had been vitally interested in the peace movement, and in 1907 was eminently capable of playing a new role as the leader in the initiation of the Second Hague Peace Conference¹. World fame had come to him through his mediation and aid in the settlement of the Russo-Japanese war and now, at the request of the Interparliamentary Union of the world, he proposed that the nations of the world come together in a great conference at the Hague. Ordinarily, it would have been thought that Russia was logically the nation to call the Second Hague Conference, but she could hardly do that and fight Russia at the same time. Under direction of President Roosevelt, instructions were sent from the Department of State on December 16, 1904, to the United States diplomatic representatives to invite the nations of the world into a future peace conference.

The idea of a general conference was generally accepted and with this done, President Roosevelt regarded

¹ Roosevelt, largely responsible for Arbitration Treaties, 1904-05. See Chapter VI.

his work as completed. The war, however, ended between Japan and Russia in September 1905, and the Russian Ambassador indicated to President Roosevelt the desire of the Czar to call the Second Hague Conference. This request was willingly granted by the President and consequently on June 15, 1907, forty-four nations assembled at the Hague upon invitation of the Czar of Russia².

There were, representing the United States, the following delegates;

Joseph H. Choate
 Horace Porter
 Uriah M. Rose
 David Jayne Hill
 James Brown Scott
 William M. Malloy
 Rear Admiral C. S. Perry
 Brig. Gen. G. B. Davis
 William Buchanan
 Charles H. Butler
 Chandler Hale
 A. Bailly Blanchard³

They were professional and public men of pronounced ability and reputation, men of legal talent and international interest. The American delegates were, no doubt, the equals of the representatives of any nation in the world.

On June 19, four days after the assembling of the conference, the suggested program of the Czar of Russia was assigned to four different major commissions⁴. Arbitration, probably the most difficult and hardest of subjects, was given

²Hull, The Two Hague Conf., p. 3-45.

³The Proc. of the Hague Conf. 1907, V. 1, p. 2-3.

⁴For. Rel. 1907, p. 1447.

to the first commission for examination and report to the conference. The experience of the elapsing eight years had shown the necessity of a careful revision of the Convention for the Pacific Settlement of International Disputes. The weaknesses of the Hague Tribunal, the tendency to act diplomatically instead of judicially, a lack of permanence, were revealed in the five times cases had been before the court of arbitration. However, arbitration under the Hague Tribunal of 1899 was not as free and easy of access to encourage widely the use of a tribunal as an arbitration court. The nations of the world were in need of an arbitral procedure through which a legal dispute could be submitted for arbitration with the assurance of the protection of their rights, nationally and internationally. A feeling also existed among the representatives at the Hague that the "Convention for the Peaceful Settlement of international Disputes" needed to be supplemented by a general treaty of arbitration, making it an obligation to submit a legal dispute to the tribunal court for arbitral decision. The delegates of the United States warmly supported the idea of general arbitration and sought to strengthen the system by the development of a Permanent Arbitral Court⁵.

No doubt the one great weakness in arbitration is the fact that the jurists of the tribunal court act diplomatically and render a decision under personal influence, feel-

⁵Scott, J. B., Am. Add. at the Sec. Hague, p. 85.

ing and traditional regard for one of the nations, a litigant before the arbitral court⁶. This situation is not true all the time, but exists in the proportion that nations fear arbitration because of this one weakness. However, the nations submitted cases to the Hague Tribunal aware of its weakness, yet know that the procedure is the best possible for the adjustment of disputes. The difficulty is not so bad as it sounds, but the problem is to detach the interest or partisanship of the arbitrator from one of the nations. It is natural for a nation to want a victory and it is quite natural for the arbitrator to lean toward one litigant or the other. Too, in any method of parley on a give and take basis, unless the extraordinary occurs, the arbitrators become diplomats working after a decision, conscious, no doubt, of the traditions, sentiments, and previous intercourses between the nations represented in the dispute⁷.

The present need in arbitration was seen by ex-president Roosevelt, and the delegates from the United States. The prevailing procedure suggested by Theodore Roosevelt, Elihu Root, and others assumed three forms, as follows:

- (1) Minor changes in the Convention of International Disputes.
- (2) The adoption of a general arbitration treaty.
- (3) The establishing of a Permanent Court of Arbitration or Arbitral Justice.

The first series of changes made were more or less incidental to the last two proposals. The latter were the most

⁶Ibid.
⁷Ibid.

important and did consume the greater thought and energy of the conference. Ex-president Roosevelt was not without opinion on the questions before the conference. "I hope," he said, "To see adopted a general arbitration treaty among the nations, and I hope to see the Hague Court greatly increased in power and permanency, and the judges in particular made permanent and given adequate salaries so as to make it increasingly probable that in each case that may come before them they will decide between the nations, great or small, exactly as a judge within our own limits decided between the individuals, great or small, who come before him. Doubtless many other matters will be taken up at the Hague, but it seems to me that this of general arbitration treaty is perhaps the most important"⁸. Roosevelt well stated the work and problems that faced the first commission in its program on arbitration.

The convention of the first peace conference was not vitally changed by any modifications of the conference of 1907. The convention of 1899 was still in force, and only modifications in the convention were submitted to the conference⁹. In many instances there were substitutions of words. For example, in Article III of the Convention for Pacific Settlement of International Disputes providing for the mediation "of one or more powers, strangers to the con-

⁸ Roosevelt to Carnegie, April 5, 1907, p. 78-9, in Scott, J. B., Am. Ad. at Second Hague Conf.

⁹ Hague Court Proc., Conf. 1907, Scott, J. B., V.1, p. 395.

troversy" before a final resort to war, the delegation from the United States presented an amendment for the insertion of the words "desirable" after the word "expedient". In another case under arbitration, the text of the Article was modified slightly from the Convention of 1899. In changed form, the addition to Article XXXVII of the same convention implied those engaging in an arbitration case to submit in good faith to the award¹⁰. Probably the most important change in the convention referred to the choice of arbiters for an arbitration tribunal. Article XXIV of the Convention of 1899 left to the parties absolute freedom in the choice of arbitrators. This power in order to give the arbitral tribunal the impartial character necessary to insure fairness and equity was limited to accord with principles arrived at during the Conference of 1907. A real defect was recognized in permitting only one person out of five, selected for a tribunal, to be a national of the country, a litigant to a dispute. This Article was strengthened and made impartial by causing the umpire to be selected by lot out of a choice of four members of the court not nominally interested in the case before the tribunal. The tendency was to remove the actual workings of the temporary tribunal just as far as possi-

¹⁰ Ibid. p. 413.

ble from the partisanship which often is revealed in
¹¹diplomacy . These modifications indicate the general
 nature of the changes which were a part of the Russian
 program for the Conference. The changes were approved
 by the American delegates.

A general arbitration agreement was greatly
¹²desired by many nations at the Hague . Theodore Roose-
 velt had indicated this to be the most important task
 that the second conference would consider and from the
 standpoint of the United States this desire and interest
 was a natural inclination of the central government. Long,
 the government had been committed to a policy of arbitra-
 tion and in 1904-5 definitely expressed this policy in en-
¹³tering eleven bi-lateral arbitration treaties . The policy
 and general opinion of the United States had changed by
 1907 in preference for a mondial arbitration treaty, signed
 by all the nations of the world interested in arbitration.
 This government saw no reason why governments which had
 committed themselves separately to arbitration agreements
 should not enter into a general treaty of the same type¹⁴.

The American delegates were instructed by Elihu
 Root, Secretary of State, to advocate and press a general

¹¹Scott, J. B., Ibid., p. 416-17.

¹²Scott, J. B., Am. Ad. at Sec. Hague Conf., p. XXI.

¹³For. Rel. 1907, p. 1134. See Chapter V.

¹⁴Ibid.

treaty of arbitration¹⁵. The Secretary of State was aware of the failure of the United States Senate to ratify the Root treaties of 1904 due to the dispute over the compromise agreement and just what agency should act for the United States on an agreement within a treaty that had already had the consent of the Senate. His instructions covered the situation and way was left open for the American delegates to complete and sign a general arbitration treaty under two conditions.

First, the general treaty was to include the substance of the first Article of the Root bi-lateral treaties of 1904¹⁶. Article I, "Differences which may arise of a legal nature, or relating to the interpretation of treaties existing between two contracting parties, and which it may not have been possible to settle by diplomacy, shall be referred to the permanent court of arbitration established at the Hague by the convention of the 29th of July 1899, provided, nevertheless, that they do not affect the vital interests, the independence, or the honor of the two contracting states and do not concern the interests of third parties¹⁷." This article tended to limit arbitration to questions of judicial nature and not in any sense to involve

¹⁵For. Rel. 1907, p. 1134.

¹⁶See Chapter V.

¹⁷For. Rel. 1907, p. 1134.

questions of strictly national interests.

Second, the general treaty was to include an explanation to the effect that "in signing the general arbitration treaty, the delegates of the United States desire to have it understood that the special agreements provided for in the Article of said treaty will be subject to submission to the Senate of the United States"¹⁸. Arbitration was thus further limited in causing the details of the compromise agreement to accord to the laws and constitutions of the several nations. This was an important question which could not be overlooked by the nations of republican form of government at the Hague. Consequently, the American delegates insisted rigidly to the conference that congressional consent was constitutionally necessary for any American issue to be submitted to arbitration¹⁹.

The statement of the compromise clause above, which provides for the special agreement defining the differences between the litigants and reserving to the United States Senate the privilege to advise and consent to the compromise agreement, has been written into some twenty-five arbitration treaties to which the United States government has been a party²⁰.

¹⁸Ibid.

¹⁹Scott, J. B., Am. Ad. at Sec. Hague, Choate Ad. p. XXI

²⁰Scott, J. B., Am. Ad. at Sec. Hague, p. 40.

The compromise was considered a part of the treaty²¹. It is in fact an agreement within a treaty to define clearly the points at issue so that all points foreign to the controversy may be eliminated. This was important and was to be framed under greatest care because upon it depended the consent of the government and the judgement of the court. No satisfactory decision could be reached unless the litigants had it definitely understood just what the dispute is and what is to be arbitrated before the panel of jurists. Agreement certainly could not exist until these negotiations had taken place.

Under instructions from Secretary Root, the American delegates presented the American Project of International Arbitration²². This project or plan of arbitration contained an article to the effect that the special agreement or compromise should be framed in accordance with the laws and constitutions of the signatory states. They, therefore, regarded it the right of any nation to submit the agreement to the department of government necessary for the final consent and ratification which in the United States is reserved for the Senate²³.

The stand of the American delegates was clear and

²¹Ibid.

²²For. Rel., p. 1134, 1907.

²³Scott, J. B., Am. Ad. at Sec. Hague Conf., p. 40.

unmistakable²⁴. They sought to eliminate any misunderstandings that arose at the conference and that might arise in the future. They were for the compromise and admitted the right of the state to the same reservation. The agreement regardless of the objections from monarchical governments had to be effected in accordance with the constitution of the United States. A practical situation was presented and the only successful way rested in the recognition of this right by the powers present at the conference²⁵.

Under such an agreement the United States is no less bound than any other nation²⁶. The form of government, whether republican or monarchical, makes no difference. The compromise is not valid and binding on either or both governments until it has been accepted by the department of government required by the constitution or organ of government. In case of monarchical forms of government, it usually is the executive. In republican forms of government, several branches usually are necessary to invalidate the compromise agreement. These are matters of consequence, yet of no concern to either contracting government since the important thing is the agreement whether acted upon by one or two or three departments of governments. The American delegates rested the matter of agree-

²⁴Scott, J. B., Am. Ad. at Sec. Hague Conf., p. 43-44.

²⁵Ibid.

²⁶Ibid., p. 50.

ment on trust and faith in the action of the governments concerned to act as it was constitutionally necessary and each arriving at the same conclusions regardless of the varying steps toward the one purpose of all arbitration "Agreement"²⁷.

This reservation was only a legislative safeguard against executive usurpation of power. It is very easy for the power to be abused and cause the nation to become parties to international controversies that could easily be avoided by a sane and reasonable foreign policy. It was necessary that the compromise agreement safeguard and protect the seeming rights of the republic signatories, but as a matter of practice in all cases of arbitration it would not be necessary to submit the compromise to the consent of the constituted authority. For example in the United States, the Senate has not always exercised its constitutional prerogative in giving its advice and consent to compromise agreements to which the United States has been a party. In the Pious Fund Case, the first case to be submitted by this government to the Hague Tribunal, no compromise agreement was ever submitted to the Senate. The evidence indicated that the action of the administration did not meet with disfavor or protest. Yet, in the back-

²⁷ Ibid., p. 51-52.

ground there was the acknowledged right of the Senate acting in executive capacity to have a final consent to matters of fundamental importance to the country at large²⁸.

The opponents of the compromise agreement raised considerable cries of the injustices and inequalities of the right of the United States to require the consent of the Senate to the compromise²⁹. This argument was shown to be superficial and unfounded in the fears of the monarchical nations. In reality, no inequality could exist, since neither power is bound by the compromise agreement until it is accepted by both litigants. No agreement exists without mutuality. Until then, no specific obligation exists with reference to the subject of the controversy. However, an obligation does exist from the general obligatory treaty, but no inequality can exist until the specific question in dispute is brought to a conclusion. This situation cannot arise without the consent of both parties, and no nation knowingly will consent to an unequal and unfair contract agreement. Even if such an agreement should be concluded, there would be no foundation for an arbitral award and, consequently, no government would be bound by a "non-existent judgement". The arguments of the American delegates were

²⁸Ibid., p. 43.

²⁹Ibid., p. 50.

convincing and had the general arbitration treaty been established, there is no doubt that a reservation, protecting the particular constitutional situation of the United States and the other republics of the world, would have been inserted³⁰.

Today it is commonly known that the attitude of the American delegates on the compromise agreement was sustained by the President and the Senate of the United States³¹. In actuality, the compromise agreement, as has been said, was written into the twenty-five treaties of arbitration negotiated by Secretary of State, Elihu Root, in the last years of his tenure with the Department of State. The compromise clause appeared in the following form:³²

"It is understood that such special agreements on the part of the United States will be made by the President of the United States, by and with the advice and consent of the Senate thereof." This clause was supplemented by a second statement which tended to eliminate the fears of the contracting nations that they would be bound by the compromise even though it had been unacceptable by the United States.

"Such agreements shall be binding only when confirmed by the governments of the high contracting parties by

³⁰

Ibid.

³¹Ibid., p. 40.

³²Ibid.

an exchange of notes." This clause was unnecessary since neither power can be bound to one agreement unless both are.

The question of obligatory arbitration was debated from July 16 until about the 5th of October³³. A vote was then taken on the subject and the scheme was accepted in the conference by a vote of more than four nations to one. This vote was indicative of the authoritative expression of the conference in favor of general arbitration. By many at the conference, including the American delegates, this vote marked the high point for arbitration reached during the Second Hague Peace Conference.

This question of a general arbitration treaty was not pressed to unanimous vote due to the fear that Germany, who opposed it, would withdraw from the conference. In theory Germany favored the idea of general obligatory arbitration, but in practice she was opposed and was unwilling to enter into a mondial treaty. The American delegates decided it was best to let arbitration rest where it as a doctrine was favored by a vote of four nations to one. It was evident that there was some weight to the place of arbitration when some thirty-two or more nations took a stand

³³Ibid., Choate Address XXI-II

favorable to a general arbitration treaty³⁴.

The principle of obligatory arbitration was thus established, but not written in a general arbitration treaty as was hoped for by the American delegates³⁵. A majority of the nations at the Hague substantially favored and had determined upon the general principles of arbitration. A minority existed, nominally disposed to arbitration, but unwilling to be bound by any general agreement on arbitration. The United States was among the former, and more hopeful nations, and near the close of the conference was willing to yield its position on general arbitration in the spirit of conciliation. Germany, among the minority, blocked with her sister state, Austria-Hungary, the establishment of a general arbitration treaty³⁶.

The minority, however, were willing to unite with the majority in a declaration, unanimously favoring the principle of obligatory arbitration³⁷.

"The conference, conforming to the spirit of good understanding and reciprocal concessions which to the very spirit of its deliberations, has drawn up the following declaration, which, while reserving to each one of the

³⁴Ibid., p. XXII.

³⁵For. Rel. 1907, p. 1174-75.

³⁶Ibid.

³⁷Ibid.

powers, represented the benefit of its votes, permits them all to affirm the principles which they consider to have been unanimously accepted,

"It is unanimous:

"1. In accepting the principle for obligatory arbitration.

"2. In declaring that certain differences and notably those relating to the interpretation and application of international conventional stipulations, are susceptible without restrictions." This opinion in effect was the registering of the failure of a number of powers to form an obligatory mondial treaty. It, also, reaffirmed their confidence in arbitration to settle differences of a legal nature ³⁸.

On this resolution the United States delegation failed to vote. In principle the representatives of the United States favored the resolution, but declined to take a stand on arbitration that was a retreat from the four to one position of the nations at the Hague already secured. The United States delegates, though unwilling to sign the obligatory resolution, hoped that the conference would break the unanimity rule and permit the thirty-two nations to enter a single arbitration agreement. Arbitration reached its high

³⁸Ibid.

point and was thoroughly ingrained at an established principle in the thought and intentions of the nations of the world³⁹.

In only one case did the conference assume an unqualified obligation to arbitrate⁴⁰. A convention respecting the limitation of the employment of force for the recovery of contract debts was adopted because of the initiative of the American delegates, in which the contracting powers "agree not to have recourse to armed force for the recovery of contract debts claimed from the government of one country by the government of another country as being due to its nationals." An exception was made in the use of force upon the failure to use arbitration or submit to the award.

The work of the American delegates was of great value and received consequent appreciation by Baron d, Estournelles, delegate, second plenipotentiary of France: "The Americans, in that fine and peaceful discussion of several months, have been splendid, and the youngest of all was certainly my eminent friend, Mr. Choate, who defended, with all the force of his authority and talent, the work of

³⁹ Scott, J. B., Am. Ad. at Sec. Hague Conf., p. XVII.

⁴⁰ Convention Respecting the Limitation of Force for the Recovery of Contract Debts in the Proc. of the Hague Peace Conf. 1907, V. 1, p. 620.

the majority against the criticisms of Baron Marschall (Germany). I must content myself with declaring that America, as I have been constantly predicting for many years, has, beyond any doubt, saved the conference"⁴¹.

A general court of arbitration is to be distinguished from a general arbitration treaty. Under the former, the scope of arbitration is widened to permit any nation to settle its disputes before the arbitral court. Under the latter, the nations agree to a single instrument signifying the conditions wherein arbitration may be used in the settling of disputes.

During the eight elapsing years from 1899-1907, American interest in the international court of arbitration took on new form and determination. If the conference was not made a success its failure was not to be attributed to American irresponsibility. With this new spirit in mind, Secretary of State, Elihu Root, instructed the United States delegation to the conference to bring about: "A development of the Hague Tribunal into a permanent tribunal composed of judges who are judicial officers and nothing else, who are paid adequate salaries, who have no other occupation, and who will devote their entire time to the trial and decision

⁴¹Results of the Sec. Hague Conf. Doc. 4, Dec. 1907, Ass. of Int. Rec., p. 10-15.

of international causes by judicial methods and under a sense of judicial responsibility. The judges should be so selected from the different countries that the different systems of law and procedure and the principle languages shall be fairly represented. The court to be of such dignity, consideration, and rank that the best and ablest jurists will accept appointment to it and that the whole world will have absolute confidence in its judgment⁴².

In actuality, these instructions were an expression of a new day, a new order of things for the world to consider. In the new system of arbitration, judicial responsibility was to substantiate the irresponsibility of the old panel arbitration; decision now to rest on application of the law instead of a mere respect for the international law of the day; but the new was to come, not tearing up the old, but strengthening it as another agency for peace in the world. Law and justice, instead of negotiation and compromise, were the standards to prevail in the handling of a case before the arbitral court. The American idea of a permanent court approached very closely what the world has set up as a "World Court or Permanent Court of International Justice"⁴³.

The delegation of the United States, shortly after

⁴²For. Rel. 1907, p. 1134.

⁴³Scott, J. B., Jud. Sett. of Int. Disputes, p. 43.

arriving at the conference, presented an American plan in rough draft for a permanent court⁴⁴. Mr. Choate, first delegate of the United States, in speaking of the plan, desired for the world a permanent court and not just a frame work for the selection of referees for each particular case. In part he said: "Let us seek to develop out of it [The Hague Panel of 1899] a permanent court which shall consist of the same judges, which shall pay due heed to its own decision, which shall speak with the authority of the 'United Voice' of the nations, and gradually build up a system of international law, definite and precise, which shall command the approval and regulate the conduct of the nations"⁴⁵.

The delegation of the United States sought, in the presenting of this plan, to develop a permanent court of arbitral justice without altering the Permanent Panel of 1899⁴⁶. The new court was not to supplant the court of 1899, but was to supplement it. The weaknesses of the old panel were to be remedied in the new court of arbitral justice. Side by side, there was to exist two institutions working for the peace of the world. Each was to exist for

⁴⁴For. Rel. 1907, p. 1178.

⁴⁵Scott, J. B., Am. Ad. at Second Hague Conf., p. 81.

⁴⁶Scott, J. B., Jud. Sett. of Int. Disp., p. 31.

a nation to choose according to the nature of the controversy.

The American proposal was favorably supported by the delegates from France, Great Britain, and Germany. The project as actually framed in Final Act of the convention was the result of the joint work of these three delegations. Each of these nations made a contribution to the court and thus advanced the peace of the world one step toward the actual substituting of law for war⁴⁷.

Briefly, the court was composed of judges, paid 6,000 florins a year, to meet in ordinary and extraordinary sessions as the business before it demanded. In its essential nature, the court had two outstanding characteristics.

First, the court was permanent and did not have to be constituted for any and every case brought before it. The judges on the court were permanent and if not at work on actual cases, were kept busy collecting and codifying arbitral procedure.

Second, the court was free and easy of access. The court had wide jurisdiction and was ready to receive the dispute of any group of nations without any additional expense. The use of the court did not increase the expense of the court to the litigants to a dispute, but in general was

⁴⁷For. Rel. 1907, p. 1178.

assumed by the signatory powers adhering to the court. The court was to serve the nations of the world and it made no difference whether the nations were large or small. With practically no difficulty, the court could be assembled and a case considered without any immediate expense. This arrangement had in it the possibility of frequent use of the court so that in time a redress of grievances through the court would be taken as a natural course. This plan was, as a whole, a remarkable advance in the international court idea considering that permanency was abandoned at the First Hague Peace Conference⁴⁸.

The conference unanimously agreed upon the function, organization, and procedure of the court, but was unable to reach an agreement on the method of creating and selecting the judges⁴⁹. The means of determining the jurists of the court was the most complex and disturbing problem of the conference. In it the conference failed to agree and only a frame work for a court existed. The interests of the large and small states seemed diametrically opposed and a conflict which threatened defeat resulted. As a whole they misunderstood what their interests were and the motives each should have in setting up a court that would be just and

⁴⁸Ibid., p. 1176-77.

⁴⁹Scott, J. B., Am. Add. at Sec. Hague Conf., p. 19.

equitable to a nation regardless of size. A conflict resulted.

In the world, at large, there were a small number of large nations and a large number of small nations, each desirous of a place on the bench of the court. The arguments and blocked interests of each group interlocked at various times, but as a whole were respected and regarded as sincere by the leaders of the opposing factions. If each state was to have an equal vote in the selection of the judges as was desired by the small states, then a judicial assembly would exist instead of a court. Such a plan was unwise, since the choice of the jurist would consequently rest within the jurisdiction of the small nations. The larger nations were unwilling to accept such a plan and subject their larger interests to the control of a court dominated by the small nations. On the other hand, the larger nations of the world desired permanent seats on the court bench thus producing a distinctive inequality unacceptable to the small nations. The nations of the world were in deadlock and no compromise was able to pry open a leeway by which the light of agreement could smooth the differences so abruptly presented over the creation and the election of judges to the court⁵⁰.

⁵⁰ Ibid.

The delegates of the United States on the question of the election of judges had no selfish interests and were unusually broadminded in their approach to the problem⁵¹. It was a question of superior evaluation of the interests and needs of the world. The court was the agency needed by the world, and the American delegation was willing to pledge its faith to any extent for the establishment of the court. It was of not great concern to the representatives of the United States that the American nationality be represented on the bench. The court, thought the delegates of the United States, should come first and later on the judges could be found on a basis of fitness and knowledge of the great judicial systems of the world. Broadly interpreted, this stand, which was a very pronounced step for one of the world's greatest nations to take, did show the extent the American delegation was willing to go for the sake of arbitral settlement of judicial disputes⁵².

The problem of creating and selecting the jurists was only provisionally solved. The United States, along with the other nations at the conference, accepted the framework of the court as agreed upon. The method and procedure

⁵¹Ibid., p. 9-12.

⁵²Scott, J. B., Am. Add. at Sec. Hague Conf., p. XXII-III.

for the election of the judges was left to the nations to work out the problem by negotiation⁵³.

As a result of the American proposal, arbitration merged into judicial settlement of disputes. Arbitration in its historic form is to be distinguished from the adjustment of a dispute before a permanent arbitral court. Usually arbitration assumed the form of a compromise agreement, diplomatically arrived at on a give-and-take basis, from the decision of an arbiter, a neutral to either litigant. At times the system of arbitration assumed the form of an arbitration tribunal which by nature might be a court. A court of this type, however, awarded the decision not on the application of international law to a definite issue, but compromised it on the basis of the respect for law. This seems to be an outstanding difference and distinguished the action of a permanent arbitral court from an arbitration tribunal set up for a particular case. They were in effect two distinct systems. Mutually, the two methods aid one another and co-exist in the betterment of the peaceful relations between the nations of the world.⁵⁴

However, there will always be political issues,

⁵³ Scott, J. B., *Jud. Sett. of Int. Disp.*, p. 124.

⁵⁴ *Ibid.*, p. 36-37.

as Scott expresses it, which can best be settled by the give-and-take method. These controversies arise according to Scott, the public takes a position; foreign relations become embittered. It usually is a matter of peaceful adjustment if diplomacy fails by arbitration or a resort to methods of coercion and force. The latter, force, is undesirable under any condition. Arbitration is the alternative to get these controversies out of the way, and as a process of adjustment must be retained to take care of these disputed questions of policy. As a matter of fact, these questions of policy on a clear basis of honor and justice are matters of law in the beginning, but become, by delay and mismanagement, disturbing political questions for which men are led to die for. The nations of the world have not yet dethroned their God, the God of Force, and supplanted it with the more sensible and humane recourse to law. Like a giant it stalks in the world and seeks to take the place of reason in submitting these trying questions to a judicial court. They are small and of little significance in the beginning and can be automatically settled by law without the world knowing about them. Not always adjusted in their infancy by law, these questions become inflaming political issues, and the old

form of the compromise arbitration is the best and most practical way of settling peaceably the controversy. An International Court of Arbitral Justice is a necessary complement of "Arbitration"⁵⁵.

Internationally, the results of the Second Hague Conference were significant. It is possible to state some changes that had taken place in the spirit of the nations of the world toward one another, and the actual accomplishments of the conference.

First, the foundation was laid for a permanent court of arbitral justice and the procedure was agreed on by which any number of powers might agree on the project of the convention and set up a court⁵⁶.

Second, it was found that a permanent court of arbitral justice was a necessary complement to arbitration.

Third, forty-four nations had learned to trust and live four months peaceably together.

Fourth, nations understood each other as never before.

Fifth, the attention of the world was called to principles of peace, law, and justice.

Sixth, the nations renewed their faith in arbi-

⁵⁵

⁵⁶Ibid.

For. Re. 1907, p. 1178.

tration as seen in the vote of the conference on obligatory arbitration.

Seventh and final, the conference concluded thirteen conventions, two declarations, one resolution, and five vœux, all in the interest of the better relations of mankind.

CHAPTER IV

The United States Use of the Hague Court of Arbitration

The United States has been the plaintiff in four cases submitted by it to the Hague Court of Arbitration. The court, as determined for each case, was selected from the Permanent Panel of 1899, and though a tribunal of a temporary nature, was able to render in each case decisions of equity, justice, and respect for law. The spirit of the United States was amicable and conciliatory. With little difficulty and restful ease the cases, to which she was a party, were indicative of her sincerity and faith in the Permanent Panel of the Hague. The United States, in each of these four cases, desired her disputes to be tested in the light of reason and fairness to the nations with whom she had conflicting interests.

The four cases submitted by the United States are as follows:

- (1) The Pious Fund Case
 between
 Mexico and the United States
 Decided, October 14, 1902

- (2) The Venezuela Preferential Case
 between
 Germany, Great Britain, Italy, and Venezuela
 and
 United States, Mexico, Spain, France, Belgium
 Netherlands, Sweden and Norway
 Decided, February 22, 1904

(3) North Atlantic Coast Fisheries Case
between
Great Britain and the United States
Decided, September 7, 1910

(4) Orinoco Steamship Company Case
between
United States and Venezuela
Decided, October 25, 1910

The Pious Fund Case
[Mexico vs United States]

The first case submitted by the United States or any other nation to the Permanent Court of Arbitration was the "Pious Fund Case of the Californias"¹. The United States in this dispute was the plaintiff and Mexico the defendant.

The case, which was of much interest to the United States and to the world at large, originated during the latter part of the 17th Century and the first half of the 18th Century. Donations had been made of a missionary nature by Spanish subjects for the spread and carrying on Christianity in the Californias. In this region, at that time, all people were heathens except the Catholics, and the fund, arising from the donations, was to be used in building up Catholicism².

The question was not political, but exclusively one of charity, missionary zeal, and religion. The vast sum

¹Scott, J. B., Hague Court Reports, p. 17.

²Ibid.

of \$1,700,000 was given by these Spanish enthusiasts to be devoted to God as the Society of Jesuits deemed wise and directed as a trust for the spreading of the Gospel³.

The trust was accepted and until 1767 the Jesuits, as its trustees, administered the funds for the spread of the Catholic faith⁴. Due to internal disturbances, the Jesuits were shortly expelled from this territory, which now was called New Spain, and the fund was administered by the representatives of the Spanish Monarchy. In the meantime, Mexico under Santa Anna had achieved independence and had assumed possession of the fund. In 1842, the government of Mexico declared its intention to sell the trust and retain the interest, six percent a year, for "the conversion of the savages of California"⁵. The government of Mexico was not a projector of the Christian Religion and the funds were kept in trusteeship for purposes of governmental religious evangelism.

In 1848, the region of the upper and lower Californias was ceded to the United States⁶. As result of this cession of territory, the Mexican government claimed that the region was due no longer the services made possible by

³Ibid.

⁴Ibid., p. 18

⁵Ibid.

⁶Ibid., p. 1.

the funds of the Spanish donors. Accordingly, the Mexican government refused to pay the guardians of the church the interest which had accrued after the ratification of the treaty. Legally, the cession of the Californias did not break the claims for the use of the fund in the region, but in actuality it remained the same as before. The legal question, however, was one of private law which at the time was not recognized by the Mexican government⁷.

An appeal was made by the church in the Californias to the government of the United States for justice in regard to the funds⁸. The case was submitted by the two governments to a mixed commission determined by the convention of 1868. Unable to agree, the case was referred to the umpire, Edward Thornton, who decided the award to the extent of twenty-one annuities of \$43,050.99 in favor of the United States. This award was accepted by both governments and was paid by the Mexican government until February 1869. According to the Mexican government, the payment of February 1869 was final and the last obligation to the church in the Californias. Again, the head of the church appealed to the government of the United States and through negotiation of the State Department, a compromise was agreed upon in which

⁷Ibid., p. 19.

⁸Ibid., p. 1.

the dispute was to be referred to the Hague Tribunal for judgement⁹.

The case was called before five non-citizen members of the Hague Panel, namely, Henning Matzen, Edward Fry, Martens, T. M. C. A. Asser, and A. F. De Savar-lum Lohman¹⁰. The tribunal was in session from September 15, 1902, until October 1, 1902. The judgement, however, was rendered on October 14, 1902, unanimously in favor of the United States. A total sum of \$1,420,682.67 was to be paid as the interest due from 1869 to 1902, and for each year following the Mexican government was to pay the annuity of \$43,050.99.

The award was clearly in favor of the American view point. The interest of the United States, however, was impersonal and she expected no victories or gain except the right to those who had become citizens of the United States through an exchange of territory.

The Venezuela Preferential Case

[Venezuela vs Germany, Great Britain, Italy, vs United States, Mexico, Spain, France, Belgium, Netherlands, Sweden and Norway.]

In the Venezuela Preferential Case, the United States was only indirectly a party to the dispute before the

⁹Ibid.
¹⁰Ibid.

court¹¹ .

The cause for arbitration arose because of the failure of Venezuela to pay certain claims to Great Britain, Germany, Italy. Negotiations ensued between Venezuela and the three powers which had claims against her until December 11, 1902. They were unable to reach an agreement and consequently the ports of Venezuela were blocked by the joint decree of Great Britain, Germany, and Italy¹² . Such a blockade was dangerous to American interests and fatherly control of this South American Republic against external interference.

About the same time, the United States, Mexico, France, Belgium, the Netherlands, Sweden and Norway, held claims against Venezuela, but as yet had taken no direct step in securing the obligations of Venezuela to this second group of powers.

Negotiations continued throughout the year 1903, and in the final negotiations, Venezuela proposed that her two ports, La Guayra, and Puerto Cabello, be subject to restrictions to the extent of thirty percent each month for the payment of these obligations¹³ .

Venezuela sought to pay each group of powers pro-

¹¹ Ibid., p. 55-56.

¹² Ibid.

¹³ Ibid.

portionally on a definitely signed ratio. Such a scheme was objected to by Great Britain, Germany, and Italy, who took the position that their claims should be paid first. This view of Venezuela's obligations was unacceptable to her governments and negotiations continued until an agreement was reached on May 7, 1903, to submit the question of preferential claims and treatment to the Hague Tribunal for decision. The United States as one of the powers in the second group was a party to the arbitration¹⁴.

The Czar of Russia, according to the agreement between the two groups of nations, appointed three members of the Panel of the Permanent Court of Arbitration to hear and decide the case. They were as follows: Nicolas V. Mouranreff, Fred Martens, and Heinrich Lammasch, non-citizens of any of the litigant powers¹⁵.

The tribunal met on October 1, 1903, and ended its session November 13, 1903. The decision was rendered on February 22, 1904, and held that Germany, Great Britain, and Italy had a right of preferential treatment in the payment of claims from Venezuela. The award was made by the court the basis of merit and justice, and was accepted without protest by the second group of nations.

¹⁴Ibid.

¹⁵Ibid., p. 57.

The North Atlantic Fisheries Case

(Great Britain and the United States)

The North Atlantic Fisheries Case arose over the controversy of fishing rights along the New Foundland and Labrador Coast¹⁶. In an earlier period, 1783-1812, the citizens of the United States enjoyed in common the privileges permitted British subjects along the North Atlantic Coast. Near the close of this period, the War of 1812 with Great Britain had been fought and won by the United States. The war closed and Great Britain assumed the position that the treaty of 1703, defining the right of American citizens in North Atlantic waters, was abrogated. On the other hand, the United States contended that the former rights still existed, since the war only suspended the treaty¹⁷. However, a new treaty was entered into on October 20, 1818, with Great Britain in an attempt to define the rights of American fishermen in the waters of the North Atlantic. This treaty provided in Article I that the United States was to have forever rights in common with British subjects along the Southern Coast; that along unsettled regions the United States fishermen might dry and cure their fish until the coast should be-

¹⁶Ibid., p. 141-42.

¹⁷Ibid.

come inhabited, the not without permission and agreement with the owners of the land; that the United States forever renounce any other liberties to fish not indicated in the treaty¹⁸ .

A distinct and menacing controversy arose over the meaning and scope of the rights and liberties of the American Fishermen as defined in Article I¹⁹ . In 1821, American fishing vessels were seized by the British authorities. Friction continued to increase over incidents of this character until feelings were intense between the two nations. By 1905 the legislation of the New Foundland government had become so oppressive that negotiations immediately were undertaken by the government of the United States with Great Britain. By a modus vivendo, agreed to between the two countries, the rules governing fishing and the rights of the citizens of the respective nations were determined for the fishing season of 1906-7. The modus was renewed the next three successive years and by January 1909, a compromise agreement had been determined upon to submit the dispute to the Hague Tribunal²⁰ .

A tribunal, composed of Heinrich Lammasch of Austria-Hungary, A. F. De Savornin Lohman of Holland, George

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Ibid.

Gray of the United States, Louis M. Drago of Argentina, and Sir Charles Fitzpatrick of Great Britain, was set up to hear and decide the dispute. The sessions of the tribunal began on January 1, 1910, and ended August 12, 1910. The decision was rendered on September 7, 1910²¹.

Seven questions were submitted to the tribunal for consideration and decision.

First, Great Britain contended for the right to regulate American fishermen in the waters limited by Article I of the treaty of 1818 without the consent of the United States. This right, to regulate, was in respect to (1) the hours, days, or seasons when fish may be taken on the treaty coast; (2) the method, means, and implements to be used in the taking of fish or in the carrying on of fishing operations on such coasts; (3) any other matters of a similar character; provided the regulations were "reasonable" and "necessary" to the fishermen of both countries. These contentions were disputed by the United States, but at the same time she contended that the two countries might determine and enforce the regulations jointly.

The tribunal, in its decision, recognized the right of Great Britain to regulate the rights for either country provided for in the treaty of 1818, but in case the

²¹Ibid.

reasonableness of the regulation was to be contested by the United States, then the dispute was to be submitted to the Hague Court. The first part of the award was in favor of Great Britain, and the latter in favor of the United States in that the regulations of Great Britain might on demand be passed on by a tribunal from the Hague Court²².

Second, the dispute related to the question of whether non-inhabitants of the United States, yet employees of citizens of the United States, were permitted to have the same rights granted by the treaty of 1818 to United States citizens²³. The United States contended that any of her citizens had the right to use an inhabitant in their service regardless of nationality, provided no terms in the treaty were violated. On the other hand, Great Britain limited the liberties of the treaty to none but American citizens. The tribunal rendered the decision in favor of the United States, but held that the non-inhabitants of the United States derived no privileges from the treaty but only from their employer²⁴.

Third, the United States contended that its citizens were not subject to requirements, not exacted from New

²² Ibid., p. 143

²³ Ibid., p. 144

²⁴ Ibid.

foundland fishermen. The tribunal in its award held that the United States citizens were not subject to conditions not imposed upon New Newfoundland fishermen ²⁵.

The fourth question was in regard to submitting to local regulations and judgments of the American fishermen upon first entrance into the ports of New Newfoundland. The tribunal held that these were exercises of hospitality and did not require a payment of duty as long as the privilege was not abused.

The fifth issue sought to limit wherein the United States fishermen could not fish except as defined in the treaty of 1818. The citizens of the United States in the future were to be excluded from the waters of bays by a direct line across the body of water from the two coast points.

The sixth dispute considered whether the United States had the right to make use of the treaty coast as was necessary for the carrying on of the work of the fishermen. The tribunal decided in favor of the United States ²⁶.

The seventh referred to whether a difference of rights existed for the ordinary American trading vessel from that of the fishing vessel. The tribunal decided in

²⁵ Ibid., p. 145.

²⁶ Ibid.

favor of the United States asserting that the rights were not exercised concurrently²⁷.

The Orinoco Steamship Company Case

(United States vs Venezuela)

The claim in the Orinoco Steamship Company Case originated in a concession made to a private individual by the name of Ellis Grell²⁸. This grant give him the exclusive right to navigate the Orinoco River in steam vessels between Trinidad and Cuidad Bolivia. At a subsequent period the concession was assumed by a British corporation, the Orinoco Shipping and Trading Company. In this corporation, the majority of stock and bonds were held by American citizens.

The government of Venezuela became involved with this company due to occuring damages and indebtedness of approximately one-half million dollars. Temporarily, the matter was adjusted by the government of Venezuela agreeing to pay \$19,000.00 to the company in six annual payments. The first payment was made according to agreement, but no more were forth coming²⁹.

The policy of the government and changed toward the company by October 5, 1900. Virtually, the concession

²⁷Ibid., p. 146.

²⁸Ibid., p. 226-227.

²⁹Ibid.

to the company was cancelled by opening the Orinoco River to the commerce of all nations. The company protested to the government of Venezuela, but did not receive any aid. After a reorganization had taken place within the company, the matter was brought to the attention of the British and American governments³⁰.

The sum of \$1,400,00.00 was awarded to the company as the total damages, services, and debts, which were due them from the government of Venezuela³¹. A joint claim commission was set up, and on February 22, 1904, made an award in favor of the company. The United States protested the decision of the commission on the basis that the award contained several errors in law and fact which according to international law did invalidate it.

Negotiations continued until 1909, when it was agreed to submit the dispute to arbitration³².

A protocol was drawn up indicating the new circumstances of a hearing on the case. On this basis and the former errors in law, the case was to be reexamined³³.

The tribunal was selected from the Court of Arbitration at the Hague. It was constituted as follows:

³⁰Ibid.

³¹Ibid., p. 227-28.

³²Ibid.

³³Ibid.

"Heinrich Lammasch, of Austria; M. F. Beernaerb, of Belgium; and Gonzalo de Quesda, of Cuba." The work of the tribunal began on September 28, and did not end until October 19, 1910. The decision was rendered on October 25, 1910³⁴ .

In the award, the tribunal allotted to the company the sum of \$64,412.59. The award was much short of the suit, yet the government of the United States was willing to accept the award for her citizens who operated the Orinoco Steamship Company³⁵ .

³⁴Ibid.

³⁵Ibid.

CHAPTER V

The Bi-lateral Arbitration Treaties, 1904,
1908, and 1911

The British-French Arbitration treaty of October 14, 1903, stimulated interest in arbitration within the United States¹. Great Britain and France, on the surface, had paved the way for a new era in arbitration. The ice between two great nations had been broken, and in the United States, the Second American Conference on International Arbitration, which met in Washington, D. C., on January 12, 1904, recommended to the government that the United States proceed to negotiate a series of arbitration treaties with the nations of the world². The President of the United States, Theodore Roosevelt, aware of the new interest in arbitration and the part that the United States ought to assume, directed the Secretary of State, John Hay, on October 20, 1904, a year and six days after the signing of the Franco-British Arbitration treaty, to enter into the negotiation of arbitration treaties with the governments signatory to the Hague Convention of 1907³. The United States, in its negotiations, considered the French-British treaty as a model and a type for any that she might sign with other nations in the current interest in bi-lateral treaties 1904-5.

¹Scott, J. B., U. S. and Arb., p. 513.

²Ibid.

³For. Rel. of U. S. 1904, p. 8-9.

A number of treaties were negotiated by the Department of State during the winter of 1904. President Roosevelt, in his annual message to Congress of December 6, 1904, in part said: "We are in every way endeavoring to help on with cardinal goodwill, every movement which will tend to bring us into more friendly relation with the rest of mankind. In pursuance of this policy, I shall shortly lay before the Senate treaties of arbitration with all powers which are willing to enter into these treaties with us. It is not possible, at this period, to arbitrate all matters, but there are many matter of possible difference between us and other nations which can be arbitrated"⁴. The treaties, referred to by President Roosevelt, were signed, simultaneously, with the following nations: France, November 1, 1904; Switzerland, November 21, 1904; Germany, November 22, 1904; Portugal, November 23, 1904; Great Britain, December 12, 1904; Italy, December 14, 1904; Austria-Hungary, January 6, 1905; Mexico, January 18, 1905; Sweden and Norway, February 11, 1905; Spain, February 11, 1905; Japan, February 11, 1905⁵.

The treaties were reported to the Senate from the Committee on Foreign Relations on February 8, 1905⁶. By a

⁴Scott, J. B., U. S. and Arb., p. 514.

⁵Scott, J. B., U. S. and Arb., p. 514.

⁶Outlook, V. 89, p. 468, (Feb. 29, 1908).

vote of fifty to nine, thirty-one not voting, the Senate advised and consented to the ratification of the treaty with France with the amendment that the word treaty be substituted for the word agreement in Article II, which as signed read: "In each individual case the high contracting parties before appealing to the Permanent Court of Arbitration, shall conclude a special agreement defining clearly the matter in dispute and the scope of the powers of the arbitrators and fixing the periods for the formation of the arbitral tribunal and several stages of the procedure"⁷. The amendment was disturbing to the administration and produced considerable discussion in the Senate.

President Roosevelt was much concerned over the state of the treaties in the Senate⁸. He courageously stated his attitude and reaction to the reception by the Senate of the present treaties. He felt that the amendment cut the very heart out of the treaties and left only a sham, a veritable disgrace to a nation with the enviable record of the United States in arbitration. He considered it nonsense to enter into a second treaty the special agreement, to enforce the original arbitration treaty, and since it

⁷ Scott, J. B., U. S. and Arb., p. 515; Cong. Rec., V. 39 p. 2417.

⁸ Theodore Roosevelt to Henry Cabot Lodge, Jan. 6, 1905, in Selections from the Corr. of Theodore Roosevelt and Henry Cabot Lodge, V. 2, p. 111-12.

would not mean anything, it would be better for the United States not to take any part at all in arbitration movements. In a letter of later date, February 10, 1905, to Cullom, Chairman of the Committee on Foreign Relations, Roosevelt sought to influence the ratification of the original treaties of arbitration⁹. He felt more than ever that the amendment was a step backward in arbitration and a nullification of the proposed treaty. The President did not hesitate in letting the Senate know that if the treaties were ratified in the revised form he would refuse to submit them to the other contracting powers. Roosevelt merely desired that the State Department have the right to agree with the contracting nation on the specific arbitral questions, which in general had been agreed upon in the original arbitration treaty. Unwilling to concede to the Senate what he considered an executive function, President Roosevelt throughout, maintained an extreme, determined, and unconciliatory position.

At times the President was disturbed by the split of the Senate and the Executive over the arbitration treaties.

On February 3, 1905, Secretary of State, John Hay, wrote in his diary: "The President spent an hour with me in the afternoon. He was deeply disturbed about the state of the treaties in the Senate, not so much at the opposition of the Democrats as at the nerveless acquiescence of our people in every attack

⁹Roosevelt to Cullom, February 10, 1905, in U. S. and Arb., Scott, J. S., p. 520-21.

that is made upon them. Knox and Spooner now take the ground that every separate agreement to arbitrate under these treaties must be submitted to the Senate and if this provision is incorporated it leaves us exactly where we are now"¹⁰.

A number of reasons were advanced responsible for the hostility of the Senate toward the treaties. Possibly the most extreme view point, voiced by Senator John Morgan, of Alabama, doubted the impropriety and the incompatibility of this government entering in a special arbitration agreement with a second nation¹¹. Closely related, was the absurd position that arbitration was "pusillanimous" and it was heroic for the United States to defy the world and gain applause from its constituents¹². There was also some intimation that opposition prevailed for political reasons in an attempt to prevent the administration from passing a vote securer in the next presidential election¹³. Often party jealousies and Senatorial politics defeat movements for peace within the nation in its international relationships. Likewise, the Senate's dignity was offended by the use of the word "agreement" in the text instead of the

¹⁰ Thayer, W. R., The Life & Letters of John Hay, V. 2, p. 392.

¹¹ The Minority Report in U. S. and Arb., p. 519

¹² Boston Evening Trans., Feb. 1, 1905, in U. S. and Arb., p. 517

¹³ Ibid.

word "treaty"¹⁴. In the last place, the Senators were bitter toward the arbitration treaties of 1904-5 because they felt that their constitutional power was being transferred by the original treaty to the exclusive authority of the President¹⁵. The President, according to this view, would have the power by diplomatic agreement to bind the government of the United States to any arbitration agreement without the advice and consent of the Senate. The Supreme Law of the land then would be determined by the President alone and not jointly with the advice of the Senate. It was regarded that the government of the United States would become a true autocracy when the President became invested with this power¹⁶.

The Senate, unwilling to concede its position, ratified the French-American Treaty as revised on October 11, 1905¹⁷. The President, according to his warning to Senator Cullom, failed to submit the treaty as ratified to France. This treaty with France was sufficient to show the uselessness of further consideration of the remaining arbitration treaties. The Senate and the President were at the cross-roads of international arbitration and neither dared

¹⁴ Outlook, v. 89, p. 47, May 9, 1908.

¹⁵ Boston Evening Trans., Feb. 1, 1905, in U. S. and Arb., Scott., J. B., p. 519

¹⁶ Ibid.

¹⁷ Ibid., p. 521.

budge or conciliate in favor of the other or of the greater cause of arbitration between them. Consequently, in this failure, a rich opportunity was lost to present the government of the United States as the early leader of Twentieth Century general obligatory arbitration.

In 1908, again, the United States seriously took up the problem of arbitration treaties¹⁸. It is well known that jealousy and narrowness within the executive and legislative departments of government defeated the good intentions and endeavors of the United States in 1904-5. In 1908, despite the stilted position of President Roosevelt in 1904-5, he agreed to renegotiate treaties with the signatory powers of the Hague of 1899, meeting the Senate condition which was unacceptable to him in 1904-5.

As result twenty-five bi-lateral arbitration treaties were negotiated and signed between December 23, 1908, and January 9, 1909, with the following countries¹⁹:

Argentina	December 23, 1908
Austria-Hungary	January 15, 1909
Bolivia	January 7, 1909
Brazil	January 23, 1909

¹⁸Am. Jr. of Int. Law, V. 2, p. 624

¹⁹Ibid; U. S. and Arb., Scott, J. B., p. 523.

China	October 8, 1908
Costa Rica	January 13, 1909
Denmark	May 18, 1908
Ecuador	January 7, 1909
France	February 10, 1908
Great Britain	April 4, 1908
Haiti	January 9, 1909
Italy	March 28, 1909
Japan	May 5, 1908
Liberia	February 10, 1926
Mexico	March 24, 1908
Netherlands	May 2, 1908
Norway	April 4, 1908
Paraguay	March 13, 1909
Peru	December 5, 1908
Portugal	April 6, 1908
Salvador	December 21, 1908
Spain	April 20, 1908
Sweden	May 2, 1908
Switzerland	February 29, 1908
Uruguay	January 9, 1909

Ratifications were exchanged with twenty-two of the twenty-five nations. The treaties with Argentina, Bolivia, and

Chile never went into effect because of the joint failure to consummate the treaties. The extent of the treaties was far reaching. Russia and Germany were the only great nations unwilling to enter into bi-lateral arbitration treaty with the United States.

The treaties were identic in text and embodied similar terms. The treaty with France may illustrate the text of the series of treaties and the compromise provision which was acceptable to the Senate²⁰. The treaty with France of February 10, 1908, was as follows:

Article I. 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, shall be referred to the Permanent Court of Arbitration established at the Hague by the convention of July 29, 1899, provided, nevertheless, that they do not affect the vital interests, the independence, or the honor of the two contracting states, and do not concern the interests of third parties.

Article II. In each individual case the high contracting parties, before appealing to the Permanent Court of Arbitration, shall conclude a special agreement defining clearly the matter in dispute, the scope of the powers of the arbitrators, and the periods to be fixed for the formation of the arbitral tribunal and the several stages of the procedure. It is understood that on the part of the United States such special agreements will be made by the President of the United States, Senate, and on the part of France they will be subject to the procedure required by the constitutional laws of France.

Article III. The present convention shall be ratified

²⁰Text of Treaty with France, Feb. 10, 1908, in Scott, J. B., U. S. and Arb., p. 521-22.

by the President of the United States of America, by and with the advice and consent of the Senate thereof; it shall become effective on the day of such ratification, and shall remain in force for a period of five years thereafter.

Done in duplicate in the English and French languages, at Washington, this tenth day of February, in the year 1908.

Elihu Root (Seal)
Jusserand (Seal).

These treaties, of which the one with France was an example, were considerable accomplishments in arbitration²¹. The nations of the world, signatory to the treaties, willingly met the United States in the series of its greatest general arbitration agreements. The advance and importance of the treaties clinched as never before the principle of arbitration among the nations of the world. The nations, under the leadership of the United States, actually committed themselves with this government to a policy of restricted arbitration²². The willingness to arbitrate differences stopped with the exclusion of subjects of vital interests, independence, or honor of the contracting parties²³. A great number of differences were included in those of a legal nature or relating to the interpretation of treaties, but the great issues of war, political by nature, were left out of the

²¹ Am. Jr. of Int. Law, V. 2, p. 626.

²² Ibid., p. 624.

²³ Outlook, V. 89, p. 47, May 9, 1908.

channel of arbitration under what was regarded very favorable auspices for the furtherance of arbitration. A nation, of course, might by agreement arbitrate any question, but such a step is hardly possible in the heat of the war passion. Possibly, the most significant result within the United States was the overcoming of the difficulty between the Senate and the President over the compromise agreement. The misunderstanding of 1904-5, was unfortunate, and the passing away of the dissention in 1908 was a surmise of what the United States could do in international arbitration.

The spirit of the United States over the compromise agreement in 1908 was commendable. The government was cautious about her internal difficulties, and was willing to permit the contracting nations the same internal freedom of action that she demanded for herself²⁴.

As the text of the treaty with France, February 10, 1908, indicated, the Senate of the United States was to pass on the compromise agreement, and likewise the same procedure according to the constitutional laws of France²⁵. Among other nations such as Switzerland, the compromise agreement was to be considered by the "Federal Council of the

²⁴Am. Jr. of Int. Law, V. 2, p. 627.

²⁵See Article II, Text of French-United States Treaty, Feb. 10, 1908.

Swiss Confederation", with the advice and consent of the Federal Assembly²⁶. Italy, Norway, and Portugal made no reservation concerning the organ or department of government responsible for the preparation of the compromise. It was regarded that the contracting nations might use any machinery sanctioned by their respective constitutions. The example of Great Britain was the fullest and most formal expression of the action of a contracting nation in going beyond the point required by the United States. She reserved the right to secure the consent and have a self-governing dominion concur on any special agreement affecting the interest of that dominion. This was her privilege and the government of the United States recognized the right of the British government to the same freedom of action which she retained for herself²⁷.

Arbitration was never before the people of the United States as it was in 1911-12. President Howard Taft, the official spokesman, of the government of the United States, was active in the new movement for unrestricted arbitration. Questions of legal differences, prominent in arbitration agreements of the series of treaties, 1904-5, 1908-9, were broadened so that questions of any nature,

²⁶ Am. Jr. of Int. Law, V. 2, p. 627.

²⁷ Elihu Root to Jas. Bryce, April 4, 1908, in Am. Jr. of Int. Law, V. 2, p. 628-9.

vital interests, political and independence, should be subject to investigation²⁸, the first step toward arbitration. The President proved himself to be a sincere exponent of the final settlement of all disputes by the arbitral court. In an address before the American Society for Judicial Settlement of International Disputes, the President stressed the application of all disputes, "whether honor, territory, or money", to an arbitration court for decision²⁹. The President saw little difference in the system of law procedure between individuals under a government and what ought to exist between nations³⁰. He admitted that he was willing to go on the question of arbitration further than most men, but he was unable to see why questions of honor should not be submitted to tribunals, composed of men, who understood "the meaning of national honor"³¹. President Taft, more than any other President during the period 1899-1914, was outspoken in his committance to arbitration without reservation.

During the summer of 1911 under the direction of Secretary of State, Knox, two treaties identic in text were negotiated and signed with France and Great Britain³². The

²⁸ Scott, J. B., U. S. and Arb., p. 526.

²⁹ Proceedings of Int. Conf., in Scott, p. 524.

³⁰ Ibid.

³¹ Ibid.

³² Ibid., p. 526.

text of the treaties was an advance in arbitral technique over the treaty series of 1908-9³³. A case to be arbitrated fell within one of two classes of questions, either justiciable within the application of law and equity, or outside the arbitral questions classified as vital interests, independence and honor within the control of the nation on discretion. The treaties of 1911 sought to remit the latter to an international commission of inquiry, composed of three nationals from each litigant. The commission was to investigate, report, delay, and finally in case of disagreement between the parties pass finally on the justiciable questions between the litigant powers³⁴. The power of the commission was not final in this instance except with the consent of two of the three nationals of either of the litigant nations. As to the questions not arbitral and submitted to the commission, it was provided that they be subject to deliberation, "inquiry, investigation, and advice", and as above the decision was not to be final except with the consent of two of the three representatives of either of the litigants³⁵. Then it was to be questioned the extent the report of the commission would be remandatory on either of the litigant nations. The main work of the commission on

³³ Outlook, V. 99, p. 62, Sept. 9, 1911.

³⁴ Am. Jr. of Int. Law, V. 6, p. 616.

³⁵ Ibid.

questions outside the vale of arbitration was to make such recommendations as seemed necessary for the settlement of the controversy³⁶. However, even though there was an invasion into questions that were not considered arbitral,

the treaties of 1911 did not go so far beyond the treaty series of 1908-9. The exceptions of 1908, "vital interests and honor", were covered in the treaty of 1911. The only difference was in the power or department of government passing on the question to be arbitrated. The right of the Senate to pass directly on the arbitration questions was transferred indirectly to the commission of inquiry. The Senate, however, did not see fit to have the right to pass on special arbitral questions taken away, but was in position, through its control over special agreements, to refuse the submission of any but justiciable questions to a tribunal for arbitration.

Public interest ran high due to the debates in the Senate over the ratification of the treaties³⁷. The injunction of secrecy was removed on August 5, 1911. Considerable opposition to the treaties developed due to the variance in view point of the majority members of the Committee on Foreign Relations from that of the minority.

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³⁷ Outlook, V. 98, p. 801.

Am. Jr. of Int. Law, V. 6, p. 628.

Each group submitted reports to the Senate presenting its attitude and argument for the position assumed. The majority report, made by Senator Henry Cabot Lodge, was the adverse report on the treaties³⁸. This report stressed the right of the Senate to have the final action on any question of international relationships, arbitral or unjusticiable and vigorously asserted the right of the Senate over what was regarded as a final report of the commission of inquiry. The report concluded with a pronounced statement, explaining in part the attitude of the majority on the Foreign Relations Committee of the Senate, and continued to the effect that "such an invitation would be a breeder of war and not of peace, and would arouse a series of disputes, now happily, and entirely at rest, into malign and dangerous activity"³⁹.

On the other hand, the minority report submitted by Senator Root, contended that the constitutional prerogative of the Senate was not taken away but was retained unaffected by any clause in the treaty. According to them, the commission was to investigate and determine whether the question was one upon which the Senate and President had passed in the special agreement as an arbitral question⁴⁰.

³⁸ Outlook, V. 98, p. 914, Aug. 26, 1911.

³⁹ Outlook, V. 99, p. 3.

⁴⁰ Ibid., p. 4.

The minority report suggested further that a reservation be inserted in each special agreement, placing questions of government policy and traditional American questions outside the realm of arbitration and unauthorized for consideration to the commission of inquiry by the Senate⁴¹. The minority report concluded by proving that the commission of inquiry fell short of unlimited authority and could not draw the line on international arbitration at its pleasure.

The Senate accepted the adverse report on the treaties, and not content with that, veritably butchered the treaties by the Bacon Amendment. The amendment passed the Senate and became a part of the following reservation⁴²: "That the Senate advises and consents to the ratification of the said treaty with the understanding, to be made a part of such ratifications, that the treaty does not authorize the submission to arbitration of any question which effects the admission of aliens into the United States, or the admission of aliens to the educational institutions of the several states, or the territorial integrity of the several states, or the United States or concerning the question of the alleged indebtedness or monied obligation of any state

⁴¹Scott, J. B., U. S. and Arb., p. 531

⁴²Cong. Rec., V. 48, p. 7054; Scott, p. 533-34.

of the United States, or any question which depends upon or involves the maintenance of the traditional attitude of the United States concerning American questions commonly described as the Monroe Doctrine, or other purely governmental policy."

It was generally regarded that the Bacon amendment destroyed the symmetry of the arbitration treaties of 1911⁴³. In fact it was evident that the very principle of general obligatory arbitration was so cut to pieces and vitiated that the treaties could no longer be classified as arbitration treaties. It seems that the Senate went to the most extreme position possible in the treaties on the acceptance of the Bacon amendment which annulled practically every question of an arbitral nature. As a model arbitration treaties, these of 1911, would have crippled the world and placed the principle of modern arbitration to rot on the first page of the annals of the year, one.

Ex-president Taft, who had led the fight for ratification in 1911-12, in an address at Montclair, New Jersey, on December 30, 1918, spoke of the reception of the treaties of 1911 in the Senate. In part Taft said: "That august body truncated them and amended them and qualified them in such a way that their own father could not recognize them. Since the treaties had really been

⁴³Am. Jr. of Int. Law, V.6, p. 628.

framed as models when they came back thus crippled and maimed, they were not very useful. So I put them on the shelf and let the dust accumulate on them in hope that the Senators might change their minds, or that the people might change the Senate; instead of which they changed me"⁴⁴ .

⁴⁴Taft Papers on the League of Nations, in Scott., p. 534.

CHAPTER VI

The Bryan Peace Treaties of 1913-14

The nations of the world in 1913 were brewing with an unconquerable war spirit, and the days of 1914 saw the world thrown into a great conflict. The militaristic spirit had assumed vigor in Europe and was casting its shadowy influences upon the entire world. The sword was now turned from the stilted overheads in the armory to the killing of men. The United States, stirringly, looked with unease at this awful conflict and wondered if the principles of peace might be called back to effect the world now disturbed by the "blood of youths" and crimes against childhood and womanhood. These were awful days for the United States to venture the word "peace" upon the world and offer to stimulate a general treaty to promote the peace of mankind¹.

The man of the hour was William Jennings Bryan, who had become Secretary of State under Woodrow Wilson in 1913². Bryan saw the conspicuous place that the United States as a great neutral and peaceful power could have by interceding in a world animated by the gods of war and one which needed more than ever to be retouched and reclothed

²Adams, R. G., Hist. of the For. Policy of the United States, p. 364.

³Scott, J. S., Intro. XVII The Bryan Peace Treaties

in the garb of peace. The world situation was accepted by the United States, and her influence was turned constructively in the promotion of world peace³.

Mr. Bryan presented a general plan to the President, who after conferring with his cabinet, authorized the Secretary of State to present the entire scheme to the consideration of the Senate Foreign Relations Committee. The formal proposal embodied in his statement read: "The parties hereto agree that all questions of whatever character and nature in dispute between them, shall, when diplomatic, be submitted for investigation and report to an international commission [the composition to be agreed on]; and the contracting parties agree not to declare war or begin hostilities until such investigation is made and report submitted.

The investigation shall be conducted as a matter of course upon the initiative of the commission without the formality of a request from either party, the report shall be submitted within (time to be agreed on) from the date of the submission of the dispute, but the parties hereto reserve the right to act independently on the subject matter in dispute after the report is submitted"⁴.

³For. Rel. 1913, p.9, [Bryan]

⁴Scott, J. B., U. S. and Arb., p. 535.

The plan was accepted in principle by the committee and was then authorized by the President to be presented to all the diplomatic representatives of foreign governments in Washington⁵.

Negotiations were undertaken by the State Department to determine a separate treaty with each nation according to the general outline of the Bryan plan. The Secretary of State left it rather clear that substance and not phraseology counted in considering the treaties. Bryan's one idea, regardless of form or detail, was to embody a treaty with each nation that would investigate a dispute before a resort to force. No nation, large or small, was omitted in the consideration of a peace treaty with the United States⁶.

The Bryan peace treaties did not exclude the idea of war, but merely postponed the beginning of the war until investigations were made and a report of the facts submitted to both nations⁷. These treaties rested on the belief that civilization had reached a point in the progress of nations when no nation could afford to engage in war until the cause of the war was impartially investigated and openly declared to the world⁸. In them, Bryan sought to avert, not only the immediate, but also the ultimate dangers of war through the

⁵ Scott, J. B., The Bryan Peace Treaties, p. XXXI11.

⁶ Scott, J. B., The Bryan Peace Treaties, p. XXI1V-V.

⁷ Scott, J. B., Am. Jr. of Int. Law, V. 7, p. 568.

⁸ For. Rel. of U. S., p. 8.

investigation of the dispute between the powers. In the historians of the day, Mr. Bryan was to secure those most capable of impartial judgement to ascertain the facts of a dispute, weigh the evidence before war resulted, and report without partiality to each of the nations with the hope of preventing war⁹.

Mr. Bryan introduced no new thing in this impartial commission of inquiry, but he did call the attention of the world to its usefulness and place in the international situation. Formerly, the commission of inquiry under the Hague provisions was only temporary, but now by agreement the commission became permanent and on the breaking out of a dispute was ready to lay before the public such facts of the dispute as would make a fair adjustment under the weight of public opinion¹⁰.

The commission of inquiry was composed of five members, the majority of which were strangers and non-citizens of the signatory countries. The commission's readiness to serve was continuous and was empowered to investigate the facts in a dispute upon the request of one or both of the powers. The powers of the commission were greatly strengthened by the right of assuming the initiative in the investi-

⁹Scott, J. B., Am. Jr. of Int. Law, p. 568.

¹⁰Scott, J. B., Treaties For the Adv. of Peace, p. XXVII-III.

gation without a request from either party. These two characteristics, namely the commission's permanence and power of initiation, strengthened its place in the peace program of the world. Reason, instead of passion, became now the criteria for the step toward war¹¹.

The treaty between the United States and the Netherlands, December 18, 1913, was representative of the group¹². The text contains many novel provisions and serves to illustrate the relation of arbitration to the Bryan Peace Treaties. In the preamble the United States and Her Majesty, the Queen of the Netherlands, were desirous "to strengthen the bonds of unity that bind them together and also to advance the cause of general peace."

In Article I the two contracting powers agreed, after the failure of diplomacy, to refer all disputes of every nature to the commission of inquiry for investigation and report, and further that no hostilities should begin until the investigation and report had been made. In case of a previous arbitration agreement, the Article recognized that certain disputes would fall within the scope of this treaty and would be settled by this process. As a usual thing, however, there were reservations or exceptions of

¹¹Ibid.

¹²Am. Jr. of Int. Law, V. 8, p. 567-70.

vital interests, honor, and independence outside the jurisdiction of the treaty agreement and consequently outside the consideration of an arbitral tribunal. Fortunately, these restrictions, though outside the realm of arbitration, were within the jurisdiction of the committee of investigation. However, only the facts in the case were determined by the commission and it was the prerogative of the litigant powers to accept or reject or compromise the issue whether pertaining to vital interests or questions within the range of arbitration.

The latter clause, agreeing not to resort to hostilities during the investigation and report, is not actually related to arbitration, but is related to peace. The invitation is one to investigate before arms are assumed to force the solving of a dispute and which is more desirable yet, investigate and not fight at all. In fact, according to Bryan, there is no need to fight when the passions of the people are calmed and subdued to consider the facts of a dispute and the step the government should take toward the issue. People hate and fear war, and ordinarily the forces of peace are mobilized in the approach of a conflict and public opinion usually demands or ought to demand the submitting of the dispute to the Hague tribu-

nal for decision¹³.

Article III indicates that there is no escape from arbitration if a treaty exists or if an investigation and report is made by the commission. If the arbitration treaty exists between the two nations in dispute, the preliminary arrangements are made between the two in accordance to the arbitration agreement. On the other hand, if the dispute is not covered by the arbitration agreement, and either or both powers refuse to commit the dispute to the commission, "spontaneously", the commission is empowered to investigate and report the facts of the difficulty to the world¹⁴.

The report of the commission, not binding, was merely informatory of existing conditions and left the parties entire freedom of action toward one another¹⁵. The report, as a usual thing, was to result in the natural referring of the dispute to arbitration. If diplomatic negotiation had failed, the only alternative left was war¹⁶. War is not constructive, but destructive and no nation secures adjustments by the war process that could not have been determined by either negotiation or arbitration. War,

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¹⁴Ibid.

¹⁵Am. Jr. of Int. Law 1914, V. 8, p. 570.

¹⁶Moore, J. B., Princ. of Am. Diplomacy, p. 336.

¹⁶Am. Jr. of Int. Law 1914, V. 8, p. 570.

according to the growing thought of the day, creates more problems than it solves. The problems of Europe were vastly more numerous in 1920 after the World War than they were in 1914, the year of the beginning of the war. War is wrong and does create an infinite premise of wrongs and injustices which can never be adjusted until all disputes are investigated and arbitrated in light of fact, law, and justice. Any series of treaties, which sought to investigate and express the legitimate facts of disputes, unsettled by diplomacy and outside the immediate jurisdiction of arbitration, practically closed the door to war and left arbitral adjustment as the only means by which a nation may settle its disputes with honor¹⁷.

William Jennings Bryan in urging his plan upon the nation gave three reasons which were sufficient to justify the part played by the United States in leading and cooperating with the world in the unique and pronounced peace movement of 1913-14¹⁸. In the first place, time was given for passion, the underdog of war, to subside and for reason, the greatest argument against war, to resume her place during the cooling off process. Nations do not fight, ordinarily, out of indifference toward their sister nations, certainly

¹⁷ Report of Lake Mohawk Conf. on Int. Arb., 1914, p. 45

¹⁸ W. J. Bryan to J. B. Scott, Sept. 30, 1917, in Scott XXVI Introduction.

not out of love for the, but assuredly out of hatred so intense that scientific murder is committed with no drain upon the conscious. Uncontrolled passion subjects men to drink of the blood of one another, hate with a hate that means death, so that the vileness of war affects not only the present civilization, but also the vitality and manhood of future cycles of civilization. The very presence of the drenching passion for war is the most damaging and unhopeful commentary upon any civilization. National passion has been the unearthing stimulus behind king force, and under the Bryan plan of procedure, time is given for the heat of passion to recede and reason and law to resume gradually their rightful place in the rational viewpoints of men and nations. It has been asserted many times by diplomatists and historians acquainted with the war situation in 1914 that a week's time for consideration would have prevented the World War. The Bryan Peace Plan, instead of one week, offered fifty-two weeks for the nations to investigate and find out if they really wanted to go to war in the face of the facts and the consequences of war¹⁹.

In the second place, time is given for the separation of questions of fact from questions of honor²⁰. It is very difficult for a nation in times of excitement and

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²⁰ibid.

ibid.

intense passion to separate the facts of a dispute from questions that a nation is honor bound to protect even to the extent of waring for them. It is regretable that nations, at times, are unable to discriminate the real facts of a situation from the whims of militarist and the diplomatist. This weakness under their hands usually leads to war. It is an international pity that the leadership of the world yet lives under a philosophy that force is the ultimate power and war is the greatest tonic for the human race. Facts, impartially investigated, do not misrepresent any dispute, and over a period of time, such as a year, adjustments and distinctions are made between facts immediate to the issue and question of honor bound duty to save the flag from the taint of shame. The only way the flag of the nation can unfurl honor and respect that is true to the best within the nation, is to weigh, consider, and peacefully adjust not only questions of fact, but also questions conceived to be of honor and vital interest to the nation.

Lastly, time is given for the peace forces of the world to operate. The tendency of drifting blindly into a war is growing less and less due to the agencies of peace within the nation that rationalize and present the facts and possible consequences of a precipitated crisis. These

forces call a halt to the political factors that seem headed for war, and usually when the situation is actually seen, public opinion reacts against the war spirit until the administration dares not declare war. The Bryan Peace Plan did not make war impossible, but did make war a remote possibility. The commission of inquiry brought to the attention of the public the truths of the dispute, and take it as it comes, truth is the best assurance against war.

The Bryan Peace Plan had been accepted in principle by thirty-four nations of the world up to June 29, 1914. These nations were as follows: Italy, Great Britain, France, Brazil, Sweden, Norway, Russia, Peru, Austria-Hungary, Netherlands, Bolivia, Germany, Argentina, China, Dominican Republic, Guatemala, Haiti, Spain, Portugal, Belgium, Denmark, Chile, Cuba, Costa Rica, Salvador, Switzerland, Paraguay, Panama, Honduras, Nicaragua, Persia, Ecuador, Venezuela, and Greece²¹.

Uruguay, the thirty-fifth nation, had accepted the plan by January 1, 1915²².

Thirty of the thirty-five nations agreeing to the principles of the Bryan Peace Plan had, by January 1,

²¹Am. Jr. of Int. Law, V. 2, p. 175.

²²Ibid.

1915, signed treaties with the United States²³. Chronologically, they are as follows:

Salvador	August 7, 1913
Guatemala	September 20, 1913
Panama	September 20, 1913
Honduras	November 3, 1913
Nicaragua	December 17, 1913
Netherlands	December 18, 1913
Bolivia	January 22, 1914
Persia	February 4, 1914
Portugal	February 4, 1914
Costa Rica	February 13, 1914
Switzerland	February 13, 1914
Dominican Republic	February 17, 1914
Venezuela	March 21, 1914
Denmark	April 17, 1914
Italy	May 5, 1914
Norway	June 24, 1914
Peru	July 14, 1914
Uruguay	July 20, 1914
Brazil	July 24, 1914
Argentine Republic	July 24, 1914
Chile	July 24, 1914
Paraguay	August 29, 1914.
China	September 15, 1914
France	September 15, 1914
Great Britain	September 15, 1914
Spain	September 15, 1914
Russia	October 1, 1914
Ecquador	October 13, 1914
Greece	October 13, 1914 ²⁴
Sweden	October 10, 1914 ²⁴

Of these thirty treaties signed, all have received the advice and consent of the Senate except those with Panama and Santo Domingo. The treaty with Panama was withheld because of the peculiar relation of the United

²³Am. Jr. of Int. Law, V. 7., p. 336, V. 8, p. 176.

²⁴Am. Jr. of Int. Law 1914, V. 8, p. 876.

States to Panama. In Santo Domingo, a revolution was in progress and since no stable government existed, it was impossible at that time to establish a treaty with that nation²⁵.

The signing of the Bryan Peace Treaties had significant consequences. In general, more than two-thirds of the inhabitants of the globe were under the influence and directly subject to the treaties entered into in 1913-14²⁶. The United States had reached the unique position of the moral leader of the world. The friendship of the United States extended by treaty to nearly all the large nations and to most of the small nations of any international responsibility. The long step had been taken by the United States and the prestige for peace was tremendously enhanced by mutual peace agreements with twenty-eight nations in the world. It is evident that had the remaining five nations been willing to share with one another the same resources and responsibilities as had been agreed upon in the Bryan Peace Treaties, then it is unlikely that the World War would have come in 1914.

Under the leadership of the United States, international principles had been established that will stand as long as civilization exists. The challenge of peace was left

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²⁶Ibid.

Am. Jr. of Int. Law 1914, V. 8, p. 877.

in an immature stage, and the United States only did a part of what she was capable of doing. The attainment of peace is progressive and no nation is any more eminently capable of leading the world in the spirit of truth and peace than the United States. The Statue of Liberty is meaningless to the world; the Declaration of Independence is an imposition; the United States is not true to the commanding law of love and brotherhood unless she leads the world in peace in the eons to come as she attempted to do in 1913-14. Doubtless had not the world been awakened into the conflict of the great war, William J. Bryan and his plan of peace would have been memorialized, but under the circumstances of a great war, the Treaties of Peace of 1913-14 were an empty gesture and did not amount to much. However, the way of peace was only opened up in 1913-14 as result of the Bryan Treaties to which the United States was a party to each, and no one realized more than William Jennings Bryan that a change must take place and a responsibility assumed and this he coveted for the United States²⁷.

In an address to the American People, Bryan wrote on June 11, 1915: "Some nation must lead the world out of the black night of war into the light of that day when 'swords

²⁷Am. Jr. of Int. Law 1915, V. 9, p. 664.

shall be beaten into plow shares'. Why not make the honor ours? Someday - why not now? The nations will learn that enduring peace cannot be built on fear, that goodwill does not grow upon the stalk of violence. Some day the nations of the world will place their trust in love, the weapon for which there is no shield; in love that suffereth long and is kind; in love, that is not easily provoked, that beareth all things, believeth all things, hopeth all things, endureth all things; in love which, though despised as weakness by the worship of Mars, abideth when all else fails"²⁸.

²⁸ Ibid.

CHAPTER VII

Conclusion

The interest of the public in arbitration is to be questioned at times. There, no doubt, existed a vague understanding of the system of arbitration by many and possibly a majority of the American people, but it is evident from the scanty reactions of the people during the period 1899-1914 that few comprehended the full significance and benefit of arbitration to the Nation and to the world at large. It was the tendency of the American public to accept any consequence without a big "kick", unless the existing situation caused the pocketbook to dwindle down and get slim. Arbitration, during the period 1899-1914, did not accordingly affect the individual or his pocketbook, except regionally in the North Atlantic Fisheries arbitration case of 1906-7. However, the public considered arbitration to be a good thing, but something far off in which they had no personal interest. Little popular enthusiasm was shown for arbitration, and throughout the period 1899-1914 the people of the United States were only languidly interested in the movement of this great international force. Public sentiment, at times, did appear strong for arbitration but, as shown in 1904 and 1911, lacked the

punch and prestige to carry a hostile Senate.

In conclusion, a number of principles developed during the period 1899-1914, which determined for the United States a distinct theory of international arbitration.

First, the reserving of purely American questions and government policy from the application of arbitration became traditional.

Second, the Senate regarded the right of passing on special agreements within general arbitration treaties as a constitutional prerogative not to be tampered with.

Third, the same freedom of action of the treaty making powers was permitted the contracting nation by the United States.

Fourth, the questions of vital interests, independence, and honor were left outside the pale of arbitration.

Fifth, unity of the executive and legislative departments of government were essential in agreement on any international policy, such as arbitration.

The government of the United States in its policy of arbitration has proven to have the best of intentions, motives, and ideals of arbitration, but horribly failed in 1904 and in 1911 in putting into practice these things believed by her. This was accounted in part because of the

development of political antagonism within the Senate and against the president. Such failure in policy was inexcusable and uncalled for in the best interest of the United States government, and people. The presidents of the period, McKinley, Roosevelt, Taft, and Wilson, favored aggressive policies of arbitration and did not fail to promote the general movement in the hope of bettering the international relations of the United States. Roosevelt, possibly, in 1904 was the one exception, but redeemed himself in the treaty series of 1908. On the other hand, the Senate has been the haunting ghost of arbitration, and has proved a bitter pill in its butcheries of 1904 and 1911. The world, no doubt, charged the United States with insincerity, but it didn't matter much since a big country could get away with most any thing and cover up its true attitude by a picture of Senatorial-Presidential dissention. It was a pity that the Senate's attitude, especially in 1911, was ever broadcasted to the world. The United States could have gone the full way in arbitration, but the nation was not ready for such, and the mishaps were of value in pointing out the slow approaching hour when all disputes of an international nature shall be submitted to a court of law for final decision on a basis of law and equity. Despite the significant decision

of the United States in 1904 and 1911, the government supported arbitration consistently from the Jay Treaty of 1795 to the Bryan Peace Treaties of 1914. The Hague Conferences, great epochal events, were supported, contributed to, and their results accepted by the United States government. Only in three instances did the United States refuse to arbitrate or fail to accept an offer of arbitration or come to some agreement with a nation which made the approach of peaceful procedure first. In two instances, the United States was virtually in war with the nation, Mexico in 1847, and Spain in 1898. The third instance related to the question of the abrogation of the treaty of 1832 with Russia, which without question was a just case for an arbitration tribunal. The Bryan Peace Treaties of 1914, though usually not considered very important, partly amend for the few and scattered breaks and mishaps in what may be truly expressed as true American policy of arbitration. Arbitrate to preserve peace, all legal difficulties and disputes with other nations, but in no way submit questions of the honor and independence of the United States to arbitration.

"Peace Hath Her Victories as Well as War."

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