

CURRENT TOPICS

PRESIDENT ROOSEVELT has addressed a letter to Senator Cullom, chairman of the senate committee on foreign relations, stating that the action of the committee in amending the arbitration treaties by substituting for the word "agreement" the word "treaty" is in his opinion, a step backward. The president holds that if the word "treaty" is substituted, the treaties would amount to a specific announcement against the whole principle of a general arbitration treaty. Senators who insist upon substituting the word "treaty" for the word "agreement" maintained that if the word "agreement" were used, it would give the president full power to negotiate agreements without submitting them to the senate. Republican senators, as well as democratic senators, have taken issue with the president, declaring that it is necessary that the senate preserve its prerogative. Mr. Roosevelt says that if the senate amendment prevails, his administration will make no effort to secure a ratification of the amended treaty.

PRIOR to the American union, the states of America possessed within their own limits exclusive right to make treaties, but in their active union they ceded that right to the general government. In one article of the constitution, it is provided "The president shall have power, by and with the advice and consent of the senate, to make treaties provided two-thirds of the senators present concur." It also provides "No state shall enter into any treaty, alliance, or confederation. No state shall, without the consent of congress, enter into any agreement or compact with another state, or with a foreign power." Mr. Jefferson said: "These paragraphs of the constitution declaring that the general government shall have and that the particular ones shall not have the right of treaty, are so explicit that no commentary can explain them further, nor can any explain them away." Mr. Jefferson further declared that "treaties are legislative acts. A treaty is a law of the land; it differs from other laws only as it must have the consent of a foreign nation, being but a contract with respect to that nation. In all countries, I believe, except England, treaties are made by legislative power and, there, also, if they touch the laws of the land, they must be approved by parliament. An act of parliament was necessary to validate the American treaty of 1783."

THE adoption of the treaties in the form as suggested by the president, would have the effect of placing the treaty-making power in the executive hands, a thing never contemplated by the founders of this government. Treaty making with foreign powers is a very delicate task and the senators who insist upon the senate's prerogative are following lines very clearly cut in the history of this nation. Referring to the checks on the treaty-making power, Judge Cooley says: "The full treaty-making power is in the president and senate; but the house of representatives has a restraining power upon it in that it may in its discretion at any time refuse to give assent to legislation necessary to give a treaty effect. Many treaties need no such legislation; but when moneys are to be paid by the United States, they can be appropriated by congress alone; and in some other cases laws are needful. An unconstitutional or manifestly unwise treaty the house of representatives may possibly refuse to aid; and this, when legislation is needful, would be equivalent to a refusal of the government, through one of its branches, to carry the treaty into effect. This would be an extreme measure, but it is conceivable that a case might arise in which a resort to it would be justified."

REFERRING to the constitutional provision that the president shall have power "by and with the advice and consent of the senate, to make treaties, provided two-thirds of the senators present concur," Alexander Hamilton declared that this provision was "one of the best digested and most unexceptionable parts of the plan." It was contended in Mr. Hamilton's time that the president alone ought to possess the prerogative of making treaties; others held that that power ought to have

been exclusively deposited in the senate; others maintained that the house of representatives ought to have been associated in the treaty-making power. Others claimed that two-thirds of all the members of the senate should have been required, rather than two-thirds of the members present.

MR. HAMILTON pointed out that treaty-making partook more of the legislative than of the executive character, although he admitted that it does not seem to fall strictly within the definition of either. He said that a treaty was in the nature of a contract with a foreign nation—an agreement between sovereign and sovereign. It was proper, he said, that the management of foreign negotiations be entrusted to the executive, but the vast importance of the trust and the operation of the treaties as laws, pleaded in Mr. Hamilton's opinion, "strongly for the participation of the whole or a portion of the legislative body in the office of making them." He declared: "It would be utterly unsafe and improper to entrust that power to an elective magistrate of four years' duration," and he presented at length many reasons showing the unwisdom of placing that power in the hands of any one man. Replying to those who insisted that the power should be placed exclusively in the senate, Mr. Hamilton said that this plan would require the relinquishment of the benefits of the constitutional agency of the president on the ground that "the fluctuating and the taking of its future increase into account, the multitudinous composition of that body forbid us to expect in it those qualities which are essential to the proper execution of such a trust."

IN HAMILTON'S opinion, decision, secrecy and dispatch were necessary in the consideration of proposed treaties and the fact that the plan of having the senate, without the house, would better meet these conditions. Replying to the claim that two-thirds of all the members of the senate should be necessary for the ratification of the treaty, Mr. Hamilton said that that was a matter of practical consideration and experience had justified that if two-thirds of the whole number of members had been required, it would in many cases from the non-attendance of a part, amount in practice to a necessity of unanimity. He added the history of every political establishment in which this principle has prevailed, is a history of impotence, perplexity and disorder."

INTERESTING reference to treaties is made by James D. Richardson in his compilation of the messages and papers of the presidents. Mr. Richardson says: "The modern definition of a treaty is an agreement or covenant between two or more nations or sovereignties formally signed by duly authorized commissioners and solemnly ratified by each. In ancient times terms of treaties were dictated rather than contracted. A conqueror with an army at the gates of a capital stated his terms and declared his intention of remaining and inflicting such punishment as he saw fit until he received satisfactory assurances that his wishes would be carried out. In the fifteenth century a jurisprudence of political treaties began to grow and was closely connected with the development of European statecraft. The treaty of Westphalia, which ended the thirty years' war, marked the turning point between ancient and modern diplomacy. Up to this time treaty negotiations had been based upon rights which had once existed and were recognized before rupture. After the treaties of Munster and Osnabruck the object of diplomacy was to establish a political equilibrium at the expense of pre-existent rights and to maintain the status quo. The efforts of European diplomats during the early part of the nineteenth century were directed toward the suppression of the revolutionary spirit and the curbing of monarchical ambitions. Later the maritime rights of neutrals, suppression of slave trade, and the international emancipation of trade, navigation, arts, and labor became leading subjects for diplomatic consideration. The popularity of the principle of arbitration marks the latest step in diplomatic progress. The proposition made by the czar of

Russia in 1898 for the general disarmament of the world and the settlement of international disputes by a court of arbitration points to a culmination of the science of diplomacy."

THE same authority adds: "The first treaties of the United States were conceived before the Declaration of Independence was signed. November 29, 1775, the continental congress appointed a committee on secret correspondence, charged with ascertaining whether if the colonies should be forced to form themselves into an independent state, France would enter into any treaty or alliance with them. February 6, 1778, two treaties were concluded in Paris with France—a treaty of alliance and a treaty of amity and commerce. October 8, 1782, a treaty of amity and commerce was concluded with the Netherlands, and April 3, 1783, a similar treaty with Sweden. January 30, 1783, an armistice with Great Britain was arranged, followed September 3 by a definite treaty of peace. Other treaties concluded before the adoption of the constitution were a treaty of amity and commerce with Prussia, Dec. 10, 1785; a treaty of peace and friendship with Morocco in January, 1787, and a consular convention with France, Nov. 14, 1788."

WHEN Washington was called to the presidency he found the northern frontier of the United States occupied by British military posts and Spain making encroachments on the south. With the outbreak of the French revolution Spain joined England and French sympathizers in America were attempting to fit out privateers to prey upon Spanish and English commerce. Washington was urged to cast the fortunes of the United States into one side of the struggle. To avoid any entangling alliances he sent John Jay, chief justice of the United States, as a special envoy to London. November 19, 1794, Jay concluded the treaty which has since borne his name. In consequence of the irritating conduct of Genet, the French minister at Washington, congress in 1798 abrogated the treaties and consular conventions with France. Another treaty was made in 1800, and in 1803 three conventions were signed, including the one ceding Louisiana. One of the most enduring treaties made by the United States was that of Oct. 27, 1795, with Spain, which stood for more than 100 years. This was the only treaty not swept away by the Napoleonic wars. The treaty of Ghent, signed in 1814, was important as settling some disputed boundary questions, as well as concluding peace between the United States and England. No mention was made of the right of search and the impressment of American seamen, though these were the especial causes of the war."

OTHER notable treaties made by the United States," says Mr. Richardson, "were the Webster-Ashburton treaty, signed at Washington in 1842, defining the northeastern boundary between Canada and the United States, and the treaty of Guadalupe Hidalgo, in 1848, concluding the Mexican war, by which Mexico ceded territory now comprising Nevada, Utah, most of Arizona, a large part of New Mexico, parts of Colorado and Wyoming, and all of California. The treaty with Japan in 1854 secured humane treatment for American sailors shipwrecked on the coast of Japan and the right to appoint a consular agent; it also led to the establishment of important trading privileges with the United States and Great Britain in 1858. The treaties of Tientsin, concluded in 1858, and the Burlingame treaty of 1868 opened China to foreign travel and gave protection to Christians within her borders. The treaty of Washington was signed in 1871 and settled questions pending between the United States and Great Britain. It submitted the Alabama claims to a commission of arbitration and adjusted the fisheries question on a reciprocity basis. There was also a concession of important privileges by each to subjects of the other in America, and the question of the northwestern boundary of the United States was submitted to the arbitration of the German emperor. At the close of the Spanish-American war, in 1898, Spain was forced to relinquish her sovereignty in Cuba and cede to the