The General Arbitration Treaties

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Unusual interest has been taken by our people and all other civilized peoples in our two general arbitration treaties, the one with Great Britain and the other with France, which were prepared under the direction of President Taft, and which were signed August 3, 1911. They differ from our former treaties, first, in that they are general rather than specific; second, in that they do not contain a provision excluding from arbitration all differences that affect the vital interests, the independence, or the honor of the contracting states or that concern the interests of third parties; and, third, in that they provide for the appointment of a joint high commission to inquire into controversies and to report upon them before they are submitted to arbitration.

The articles of each treaty are seven in number, and are substantially identical in each, and are preceded each by a preliminary statement, or preamble, containing the solemn and unqualified declaration that both nations are "resolved that no future difference shall be a cause of hostilities between them or interrupt their good relations," and that their object in concluding the treaty with each other is "to provide means for the peaceful solution of all questions of difference which it shall be found impossible in future to settle by diplomacy."

The nobility of purpose expressed in that declaration entitles it to rank with the majestic preamble of the constitution of the United States.

Of the seven articles the last two relate to the agreement that these treaties shall supersede our arbitration treaties in 1908 with Great Britain and France and to the exchange of ratifications and the twelve months' written notice that must be given in case either party desires to terminate the treaty. The other five articles contain the new plan of arbitration.

Article I provides that "all differences hereafter arising between the high contracting parties, which it has not been possible to adjust by diplomacy, relating to international matters in which the high contracting parties are concerned by virtue of a claim of right made by one against the other under treaty or otherwise, and which are justiciable in their nature by reason of being susceptible of decision by the application of the principles of law or equity, shall be submitted to the permanent court of arbitration established at The Hague by the convention of October 18, 1907, or to some other arbitral tribunal as may be decided in each case by special agreement, which special agreement shall provide for the organization of such tribunal if necessary, define the scope of the powers of the arbitrators, the question or questions at issue, and settle the terms of reference and the procedure thereunder."

The intention of the parties as thus expressed is evidently to have all their differences which can not be settled by diplomacy submitted to an arbitral tribunal. The clearness of that intention is not obscured by the restriction that the differences must relate, as they should, to international matters, nor that the parties must be concerned in them "by virtue of a claim of right made by one against the other under treaty or otherwise," for nothing could be less exclusive than "a claim of right" and nothing more unrestricted than the word "otherwise." All that the complaining party, therefore, would have to maintain would be "a claim of right" with the restriction that it be "justiciable" in its nature "by reason of being susceptible of decision by the application of the principles of law or equity." That restriction is one of common sense and decency, for a "claim of right" that has neither law nor equity on its side should not, of course, be referred for arbitration. It is possible to imagine, however, that some claims of right might be doubtful; or might seem justiciable to the complaining party in accordance with the terms of the treaty, but could be proved by the other party not to be so. That possibility doubtless suggested to the high contracting parties the wisdom of providing for the appointment of a joint high commission, and naturally the more the plan was considered the more it was developed and perfected. Articles II, III, IV, and V present the perfected plan, and it is admirable in all its details.

Article II provides that "the high contracting parties further agree to institute, as occasion arises, a joint high commission of inquiry to which, upon the request of either party, shall be referred for impartial and conscientious investigation any controversy between the parties within the scope of Article I, before such controversy has been submitted to arbitration, and also any other controversy hereafter arising between them, even if they are not agreed that it falls within the scope of Article I; provided, however, that such reference may be postponed until the expiration of one year after the date of the request therefor, in order to afford an opportunity "for diplomatic discussion and adjustment of the questions in controversy, if either party desires such postponment."

The difference between this article and Article I is, briefly, that Article I provides for the direct submission of differences to arbitral tribunals, while Article II practically provides a mediator, who, if either party desires it, can investigate the controversy impartially and conscientiously after a suitable opportunity has been given to the other party to settle it by diplomacy.

Article III authorizes the commission to "examine and report upon the particular questions or matters referred to it," and to make such "recommendations" as may be proper. These reports are not to be considered decisions or awards. Furthermore, the commission is very wisely empowered to decide whether or not a difference is subject to arbitration. Under Article I, in case the parties differ on that point, "and if all or all but one of the members of the commission agree and report that such difference is within the scope of Article I, it shall be referred to arbitration."

Articles IV and V confer on the commission such powers as it is necessary for it to possess in the performance of its duties, and provide for agents and counsel, hearings and salaries. After the commission has made its report and recommendation what is expected to happen the treaties do not state; but the inference is that its conclusions will receive due attention and careful consideration. When no compromise or settlement is effected, and it is decided to proceed to arbitration, the special agreement, which is mentioned in Article I, and which defines the questions at issue, must be prepared, and "in each case shall be made on the part of the United States by the president by and with the advice and consent of the senate," and on the part of Great Britain and France in accordance with their respective laws, but Great Britain reserves "the right before concluding a special agreement in any matter affecting the interests of a self-governing dominion of the British empire to obtain the concurrence therein of the government of that dominion;" and "such agreement shall be binding when confirmed by an exchange of notes."

The treaties are exceptionally concise and clear, and it seems to be generally hoped that they will be promptly ratified. The few who object to them are persons who are unwilling to submit to arbitration questions of honor; who fear for the integrity of the Monroe Doctrine; or supreme court may be deprived thereby of some of its constitutional rights or dignity; but they are greatly outnumbered by those who hold that questions of honor between nations should be questions of law; that the Monroe Doctrine will always be as much respected as it is entitled to be; and that our senate and supreme court can join in promoting the cause of international justice without losing either any of their constitutional rights or their dignity.

These treaties represent the culminating efforts of centuries to establish and preserve friendly relations among nations. They are the cry of civilization against the horrors of war. They voice the prayer of the peoples for peace.