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Amicable modes of settling
International Disputes

A thesis presented to
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Amicable Modes of Settling International Disputes

Part I (General Statement))

(A) Negotiation and Commissions of Inquiry.

Negotiation is the simplest means of settling differences between states.

> It consists in such acts of intercourse between the parties as are initiated and directed for the purpose of effecting an understanding, and thereby amicably settling the difference that has arisen between them. (X)

There can thus be said to be no regular method of negotiation, for the method may vary according to the case. But in general negotiation begins by one state complaining of the act of another state, or lodging a claim with another state. The latter state may then make out its case and hand it to the former. This may be all that is necessary to effect an understanding. If not, other statements may be exchanged between the parties; there may be a conference of diplomatic representatives, or even the heads of the states may confer in order to facilitate an understanding.

While one state may be powerful enough to compel another to yield to any solution it may demand, yet if the states at variance have a regard for international law, and the manner of the complaining state toward the other is friendly, an understanding agreeable to both sides is likely to be reached. While the outcome of negotiation may be to show that an amicable understanding cannot be reached, yet often one state acknowledges the claim of the other.

While the process of negotiation has been developed

(X) From Oppenheim International Law.

purely by custom and not by treaties, yet it is decidedly important in the settling of international disputes, for the greater number of the many unavoidable differences that arise between states as a result of the development of international traffic and transport, individuals travelling in foreign countries, and the interest taken by larger states in colonial enterprise, are settled thru some kind of negotiation.

Failure to reach an understanding by negotiation is often due to being unable to arrive at the true facts of the case. In order to have an impartial investigation, and to get at the true facts of the case, states frequently appoint commissions of inquiry. The one outstanding function of commissions of inquiry is the ascertainment of the true facts in the case. The report of the commission has in no way the character of an arbitral award. It must be noted that a commission of inquiry is not exactly a method of settling disputes, but is really a means of making possible the amicable settlement of disputes. It has, however, been a very successful means as I will show in the second part of this paper.

(B) Good Offices and Mediation.

When states do not care to settle their differences by negotiation, or have been unsuccessful in coming to an understanding through negotiation, a settlement may be often secured by a third State's tendering its good offices or mediation.

"Good offices", according to Secretary Hay, may mean "the un-official advocacy of interests which the agent may properly represent, but which it may not be convenient to present and discuss on a full economic footing," or it may refer broadly to

an act of a State or of an officer thereof in endeavoring, by friendly suggestion to facilitate adjustment of a controversy between others.

A State may tender its good offices for the purpose of adjusting a controversy or by furnishing through its own agencies a means of negotiation for its settlement. If the latter offer is accepted by the parties to the controversy, the one making the offer becomes a mediator.

While diplomatic practice frequently does not distinguish between good offices and mediation, yet there is a distinction. Good offices seeks to get the conflicting States to negotiate. Mediation consists usually in the direct conduct of the negotiation by the mediator, if not direct, at least indirect. Good offices may consist in advice or in submitting a proposal of one of the parties, but the State tendering them does not take part in the negotiations. If it does, it becomes a mediator. In other words a mediator is one who takes part in the negotiations, either directly or indirectly, making proposals to harmonize the interests of the opposing states. It is during war that good offices and mediation are of particular value, for neither of the belligerents ~~are~~ inclined to open peace negotiations on his own account. The mediator tries to encourage compromise, rather than adhering to a legal principle.

The value of good offices and mediation in settling international disputes is very great. Its value is both great in preventing a war or in bringing to an end a war.

(C) Arbitration

According to Hyde, the term "arbitration" as a process of adjusting international differences, signifies in a broad sense, the reference of a controversy to a single individual known as an arbitrator, or to an uneven number of persons so described, and that regardless of whether their award is to be based upon compromise expressive of diplomatic achievement, and of whether those individuals are to act as the representatives of either party to the dispute. Again, according to Hyde in the narrower sense which is commonly employed by statesmen "arbitration" appears to refer to an impartial adjudication according to law, and that before a tribunal of which at least a single member who is commonly a national of a State neutral to the contest acts as umpire. Recourse to arbitration thus implies that the issue is regarded as justiciable; that is, one capable of reasonable adjustment by reference to accepted principles of international law, that the arbitrators are acquainted with those principles and will apply them, and that the parties to the controversy will respect the award".

Controversies affecting the so-called "vital interest", "national honor", or "independence" of one of the parties to the dispute have been considered as out of the realm of arbitration, in other words, such disputes are non-justiciable.

The term "vital interest", is very vague. Any state can declare a dispute affects its "vital interests" and is

therefore, out of the realm of arbitration. Up to the time of the Bryan treaties and Covenant of the League of Nations, there had not been specific settlement of this type of dispute.

The method of proceeding to arbitrate, is fairly simple. First, the conflicting states must conclude a treaty by which they agree to arbitration. This treaty may be negotiated, before the outbreak of a difference, as when states concluding a treaty may stipulate by a so called Compromise Clause that any differences arising between them in regard to matters regulated by treaty are to be submitted to arbitration, or it may be negotiated after the outbreak of a difference. States may also conclude general arbitration treaties which stipulate that all differences of certain types which may arise between them in the future are to be settled by arbitration. Again, states may conclude a treaty by which they appoint a third State as arbitrators; or they may trust the arbitration to any other individual, or to an arbitration committee or commission.

The arbitration treaty should stipulate the principles that the arbitrators are to use as a basis of deciding the question; i.e., whether they are to be rules of international law, rules of any particular municipal law, rules of natural equity, or any special rules for the case in question. The arbitration treaty may sometimes stipulate that the arbitrators are to compromise the claims of the conflicting states rather than use any legal principles. If there is no provision in regard to the

principles to be used, those of International Law are used, or if there are no rules of International Law ~~in~~ which are applicable, then the rules of equity are followed.

The rules of procedure to be used by the arbitrators, are also usually stated in the treaty.

The arbitral verdict is binding if given by the umpires impartially, and if they have not overstepped their bounds nor been bribed, nor coerced.

In antiquity and during the Middle Ages, arbitration was only occasionally used for settling international disputes. During the sixteenth, seventeenth and eighteenth centuries, very few cases or arbitration occurred. Toward the end of the eighteenth century, however, arbitration became much more frequent, there being 177 cases from 1794 to the end of 1900. Public opinion has more and more favored arbitration which is shown by the importance given to it by the Hague Conventions and Covenant of the League of Nations, which I will discuss later.

Part II Development of these Methods

(A) Negotiation and Commissions of Inquiry.

1. By General Treaty Agreement

The method of Negotiation cannot be said to have had any development by treaty agreement method; i.e., there have been no treaties between countries saying that before they would resort to arms they would try and negotiate their difficulties. This method is almost invariably followed, however, before any other method, amicable or non-amicable, is employed. All that can be said of it is that it is the natural thing for nations to do, to try and settle by negotiation their difficulties, and the many numerous difficulties that arise between nations due to international commerce, etc., are most of them settled by this method.

While Negotiation has had no development by treaties, yet, there has been treaty agreement in regard to Commissions of Inquiry. The development of Commissions of Inquiry has been of a fairly recent beginning. The Hague Conference of 1899 was the first important agreement between nations in regard to them. Then the Dogger Bank incident fully showed how valuable such a body might prove, and as a result the second Hague Conference retained the provisions of the first, amplifying them slightly, and Secretary Bryan of the United-States, during his office tenure negotiated his Famous Treaties for the Advancement of Peace. As I have treated further in this paper, the Hague Conferences, I will proceed here to treat of the Bryan Peace Treaties.

There were thirty (30) of these treaties negotiated, and

signed by Mr. Bryan as Secretary of State, twenty-nine advised and consented to by the Senate, and twenty which were ratified by both countries. Among the large countries by whom treaties were ratified, were, Great Britain, France, Italy and Russia. The remaining treaties were between smaller countries.

The plan was offered to all nations alike without regard to population, extent of territory, or relative influence. Austria-Hungary, Belgium and Germany endorsed the plan, although they did'nt enter into treaties embodying it. Nearly all the nations of large influence endorsed the plan and those that did not were generally, restrained by circumstances, which readily explain their failure to give their endorsement, as the unstaple government in the case of Mexico, and the unsettled alien dispute in the case regarding Japan.

I quote the following imperfected treaty between the United States and Salvador as a model of all:

> The United States and the Republic of Salvador, being desirous to strengthen the bonds of amity that bind them together and also to advance the cause of general peace, have resolved to enter into a treaty for that purpose and to that end have appointed as their plenipotentiaries:
>
> The President of the United States, the Honorable William Jennings Bryan, Secretary of State; and
>
> The President of Salvador, Senor Don Federico Mejia, Envoy Extradrdinary and Minister Plenipotentiary of Salvador to the United States:
>
> Who, after having communicated to each other their respective full powers, found to be in proper form, have agreed upon the following articles:
>
> Article I
>
> The high contracting parties agree that all disputes between them, of every nature whatsoever, which diplomacy shall fail to adjust, shall be submitted for investigation and report to an International Commission, to be constituted in the

manner prescribed in the next succeeding Article; and they agree not to declare war or begin hostilities during such investigation and report.

Article II

The International Commission shall be composed of five members, to be appointed as follows: One member shall be chosen from each country, by the Government thereof; one member shall be chosen by each Government from some third country; the fifth member shall be chosen by common agreement between the two Governments. The expenses of the Commission shall be paid by the two Governments in equal proportion.

The International Commission shall be appointed within four months after the exchange of the ratifications of this treaty; and vacancies shall be filled according to the manner of the original appointment.

Article III

In case the high contracting parties shall have failed to adjust a dispute by diplomatic methods, they shall at once refer it to the International Commission for investigation and report. The International Commission may, however, act upon its own initiative, and in such case it shall notify both Governments and request their co-operation in the investigation.

The report of the International Commission shall be completed within one year after date on which it shall declare its investigation to have begun, unless the high contracting parties shall extend the time by mutual agreement. The report shall be prepared in triplicate; one copy shall be presented to each Government, and the third retained by the Commission for its files.

The high contracting parties reserve the right to act independently on the subject-matter of the dispute after the report of the Commission shall have been submitted.

Article IV

Pending the investigation and report of the International Commission, the high contracting parties agree not to increase their military or naval programs, unless danger from a third power shall compel such increase, in which case the party feeling itself menaced shall confidentially communicate the fact in writing to the other contracting party, where-upon the latter shall also be released from its obligation to maintain its military and naval status quo.

Article V

The present treaty shall be ratified by the President of the United States of America, by and with the advice of the Senate thereof; and by the President of the Republic of Salvador, with the approval of the Congress thereof; and the ratifications shall be exchanged as soon as possible. It shall take effect immediately after the exchange of ratifications, and shall continue in force for a period of five years; and it shall thereafter remain in force until twelve months after one of the high contracting parties have given notice to the other of an intention to terminate it.

In witness whereof the respective plenipotentiaries have signed the present treaty and have affixed thereunto their seals.

Done in Washington on the seventh day of August, in the year of our Lord nineteen hundred and thirteen.

(SEAL) William Jennings Bryan
(SEAL) F. Mejia

While not all the treaties were alike, yet Articles, I, II (first paragraph), and III of the Salvador treaty were embodied in all the others.

It will be noticed from the treaty quoted, that the plan provides:

First, for the investigation of "all" disputes.

Secondly, for a permanent international commission.

Thirdly, for the sake of impartiality, the commission is to be made up of "one subject or citizen from each nation to be chosen by that nation", and one subject or citizen to be chosen by each nation from a foreign nation, and a fifth to be selected by

agreement of the two contracting nations.

Fourthly, for a year's time for investigation and report during which the parties are not to declare war, or resort to hostilities.

Fifthly, for the reservation by each of the nations of the right to decide for itself, at the conclusion of investigation, what action it will take.

The principal arguments in favor of Mr. Bryan's plan, are, to quote his exact language:

> First, that it gives time for passion to subside and for reason to resume her sway--a time for cooling off. European diplomats have asserted that a week's time for consideration would have prevented the present war. Our plan gives fifty-two weeks.
>
> Second, it gives time for separation of questions of honor from questions of fact, inasmuch as the line between these two kinds of questions is apt to be obscured in time of excitement.
>
> Third, it gives time for peace forces of the world to operate.
>
> While the treaties do not make war impossible they make it a remote possibility. Nations are not apt to go to war after a year's time spent in investigation of the facts by an international tribunal.
>
> The nations have had machinery for war--they could go to war in a week--but strange to say, they had no machinery for the adjustment of disputes which defied diplomatic settlement. They were compelled to rely upon good offices or mediation with nothing to prevent acts of hostilities before either could be offered. The peace treaty plan furnishes the machinery, and it can be invoked as soon as diplomacy fails. The time may come when all questions, without exception, will be submitted to arbitration; until that time, the treaty providing for investigation in all cases is the best insurance we have against war. (X)

I might add to these an advantage that may be included under the third one, viz; that this plan gives opportunity to mobilize public opinion for the compelling of a peaceful settlement,

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(X) From Treaties for the Advancement of Peace (1913-1914) - Scott.

and this is an advantage not to be overlooked.

I do not think that I could by further comment show anymore clearly the nature, and advantage of Mr. Bryan's plan. It is a great advance over the Hague method in that it provides a permanent commission for investigation in all types of disputes.

All of the treaties were concluded for a period of five (5) years, but were to continue in force until twelve (12) months after one of the parties had given notice of withdrawal. Accordingly, many of them are still in operation.

(B) Good Offices and Mediation.

The first step to internationalize "good offices" and "mediation" was taken at the Congress of Paris in 1856, which put an end to the Crimean War. The belligerents with Austria and Russia in addition, adopted upon the initiative of Lord Clarendon, the British plenipotentiary;

"The voeu that states,between which any serious misunderstanding may arise, should, before appealing to arms have recourse, so far as circumstances might allow to the good offices of a friendly Power". The plenipotentiaries were either so sure of their voeu as to express the hope that the governments not represented at the Congress will unite in the sentiment which has inspired the voeu recorded in the present protocal". (Twenty-third protocol of the Treaty) (X)

Article VIII of the treaty is not so general. It is as follows:

(X) From Treaties for the Advancement of Peace (1913-1919)--Scott

> If there should arise between the sublime Porte, and one or more of the other signing Powers, any misunderstanding, which might endanger the maintenance of their relations, the Sublime Porte and each of such Powers before having recourse to the use of force, shall afford the other Contracting Parties the opportunity of preventing such an extremity, by means of their mediation." (X) (X)

The next important treaty provision in regard to mediation was Article XII of the General Act of the Congo Conference signed at Berlin, February 26, 1885. Article XII is as follows:

> In cases where serious disagreement with regard to, or within the limits of, the territories mentioned in Article I and placed under the regime of commercial liberty may arise between the signatory Powers of the present act or Powers which may adhere thereto in the future, these Powers agree before appealing to arms, to resort to the mediation of one or more friendly Powers. (X)

(C) Arbitration

In dealing with the development of Arbitration by treaty agreement, I will treat the following three types of Arbitration treaties, viz; Treaties between Great Powers, Treaties between minor States, and Treaties between Great Powers and minor States.

Treaties between Great Powers

Great Britain has signed compulsory treaties with the following Great Powers: France, (1903), Germany (1904), Italy (1904), Austria-Hungary (1905) and the United States (1897) and (1908).

France with Great Britain (1903), Italy (1903), and the United States (1911):

Germany with Great Britain (1904);

Italy with France (1903), Great Britain (1904), and the

(X) From Treaties for the advancement of Peace (1913-1914)--Scott.
(X) (X) From Hague Peace Conference--Scott, Vol. I.

United States (1908) and Russie (1910).

Russia with Italy (1910)

Austria-Hungary with the United States (1909), and Great Britain (1910);

The United States with Great Britain (1897) and (1908), Austria-Hungary (1909) and France (1908);

Japan with the United States (1908).

All of these treaties excepting those of 1897 and 1911 between the United States and Great Britain and that of 1911 between the United States and France, have been modelled after the Anglo-French agreement of October 14, 1903, which is as follows:

Anglo-French Treaty of October 14, 1903.

The government of the French Republic, and the government of H. B. Majesty, signatories of the Convention for the pacific settlement of international disputes, concluded at the Hague, July 29, 1899.

Considering that by Article XIX of this Convention the High Contracting Parties reserved to themselves the conclusion of Agreements in view of recourse to arbitration in all cases which they judged capable of submission to it . . . . . .

Have authorized the undersigned to agree as follows . . .

Article I

Differences of a judicial order, or relating to the interpretation of existing Treaties between the two Contracting Parties, which may arise, and which it may not have been possible to settle by diplomacy shall be submitted to the permanent Court of Arbitration, established by the Convention of July 29, 1899, at the Hague, on condition, however, that neither the vital interests nor the independence or honour of the two Contracting States, nor the interest of any State other than the two Contracting States, are involved.

Article II

In each particular case the High Contracting Parties, before addressing themselves to the Permanent Court of Arbitration, shall sign a special undertaking (in French 'Compromise') determining clearly the subject of dispute, the extent of the arbitral powers, and the periods to be observed in the constitution of the Arbitral Tribunal, and the procedure.

Article III

The present arrangement is concluded for a period of five years from the date of signature. (X)

It will be seen from the above treaty that "compulsion" is confined to differences of a judicial character and to the interpretation of existing treaties between Contracting Parties, which diplomacy has not been able to settle, and it excludes cases involving the vital interest, ~~interest,~~ independence, or honor of the two Contracting States, and cases in which the interests of any other than the two Contracting States are involved. The special undertaking that the two nations are to sign in any one particular case provides a safeguard against compulsion, because the Contracting states can escape from the operation of the treaty, if theyy choose to disagree, on the subjects of dispute, the extent of the Arbitral Powers etc.

The treaty of January 12, 1897 between Great Britain and the United States, makes provision for the settlement by arbitration of pecuniary and territorial claims between the two nations.

The Anglo-American Treaty of Arbitration and Conciliation signed at Washington, August 3, 1911, made provision for referring

(X) From New Methods of Adjusting International Disputes - Barclay.

certain types of cases to arbitration, but also provided that upon the request of either party a Joint High Commission of Inquiry was to be instituted to investigate the controversy before it was submitted to arbitration, or any other controversy that might arise between the parties to the agreement, and also, that such reference might be postponed for one year after the formal request thereof, "in order to afford an opportunity for diplomatic discussion and adjustment of the questions in controversy", if either party desired such postponement.

Treaties between Minor States.

The minor states have been much bolder than the Great Powers, in concluding treaties that have provided for referring all types of differences without any exception, to arbitration.

Such treaties have been entered into by Argentina and Chile (1902), Denmark and Netherlands (1904), Denmark and Portugal (1907).

Generally speaking treaties of this type are usually made by countries between which war is not very likely to break out. This is the case with the preceding treaties except perhaps in the case of Argentina and Chile.

The Argentina-Chile treaty placed the appointment of the arbitrator outside the power of the Parties themselves. The Holland-Denmark treaty, however, contained no provision whatsoever as to the appointment or mode of appointment of an arbitrator or arbitrators. Thus a nice loophole for escape in case of need. The Argentina-Chile Treaty excluded those cases from arbitration that affected

the constitutionality of either country.

Other treaties between minor states invariably except national honour.

A standing Treaty between Argentina, Bolivia, St. Domingo, Guatemala, Salvador, Mexico, Paraguay, Peru and Uruguay, signed at Mexico on January 27, 1902, the first of its type, added a clause declaring that certain matters such as questions arising out of diplomatic privileges, boundaries, navigation rights and the validity, interpretation, and execution of treaties, were not to be regarded as involving the national independence or honour. This sort of a device has been followed somewhat in Europe also.

Treaties between Great Powers and Minor States.

A Treaty between Argentina and Italy signed September 18, 1907, while the second Hague Conference was sitting, declared all matters subject to arbitration excepting those that affected the constitutional laws of either country, as the case of the Argentina-Chile Treaty.

Other all embracing Arbitration Treaties between great powers and Minor States have been Denmark and Italy (1905), and Italy and the Netherlands (1909).

There was an arbitration treaty between France and Denmark signed August 9, 1911, which excluded, however, from arbitration questions affecting the vital interests, national honor or independence of either of the Contracting States.

In the above discussion, I have dealt with modern treaties of arbitration. Before the first Hague Conference, there were not

many general treaties of arbitration. The most important was the Jay Treaty of 1794 between Great Britain and the United States, also the United Stated had a general arbitral clause in its treaty with Mexico of 1848, which was confirmed by that of 1853, and the Pecuniary Claims Convention of 1906 with the Latin American Nations.

(B) Development by the Hague Conference.

The First Peace conference of the Hague had six articles in regard to Commissions of Inquiry (Articles 9-14)

Since these articles are so few, I will quote them exactly.

Article IX

In differences of an internationalnnature involving neither honor nor vital interest, and arising from a difference of Opinion on points of fact, the Signatory Powers recommend that the parties who have not been able to come to an agreement by means of diplomacy, should, so far as circumstances allow, institute an International Commission of Inquiry to facilitate a solution of these differences by elucidating the facts by means of an impartial and conscientious investigation.

Article X

The International Commissions of Inquiry are constituted by special agreement between the parties in conflict.

The Convention for an inquiry defines the facts to be examined and the extent of the Commissioners powers.

It settles the procedure.

On the inquiry both sides must be heard.

The form and the periods to be observed, if not stated in the Inquiry convention, are decided by the Commission itself.

Article XI

The International Commissions of Inquiry are formed, unless otherwise stipulated, in the manner fixed by Article XXXII of the present Convention.

Note: Article XXXII relates to the method of selecting arbitrators.

Article XII

The Powers in dispute engage to supply the International Commission of Inquiry, as fully as they may think possible, with all means and facilities necessary to enable it to be completely acquainted with and to accurately understand the facts in question.

Article XIII

The International Commission of Inquiry communicates its report to the conflicting Powers, signed by all the members of the Commission.

Article XIV

The report of the International Commission of Inquiry is limited to a statement of facts, and has in no way the character of an Arbitral Award. It leaves the conflicting Powers entire freedom as to the effect to be given to this statement. (x)

It is seen from these articles that the entire proceeding is voluntary, for the nations do not bind themselves to submit a conflicting question to a tribunal. The constitution of the commission depends upon the agreement of the parties. The tribunal is therefore, voluntary, and the nations at variance are left entire freedom to give effect to the facts as found by the commission. Of the proceedings to be taken after the ascertainment of the facts, the parties to the controversy are the sole judges. The ascertainment of the fact, however, goes a long way in establishing responsibility and a moral pressure is brought upon the parties to settle the controversy in accordance with the facts found.

The Convention of 1907 interferes in no way with the voluntary character of the inquiry , and states as before, although in amplified terms:

(X) From Hague Peace Conference (Vol. II) - Scott.

> The inquiry convention defines the facts to be examined, determines the mode and time in which the commission is to be formed, and the extent of the powers of the commissioners, the the place where the commission shall sit, whether it may remove to another place, the language of languages to be used, as well as the date on which each party must deposit its statement of facts, and, generally speaking, all the conditions upon which the parties have agreed.

There are 26 articles (9-36) in all in the second convention on the subject of Commissions of Inquiry, the more important of which according to Oppenheim are as follows:

> 1 A commission was to be constituted by a special treaty between the parties. It was to determine the facts to be examined, the manner and period within which the commission was to be formed and the extent of the powers of the commissioners (Art. 10). If the treaty did not stipulate the manner in which the commission was to be formed, it was to be formed in the same manner as an arbitration tribunal under Articles; 45 and 57. (Article XII). The parties might appoint assessors, agents, and counsel (Articles X, XIV).
>
> 2. The International Bureau of the Permanent Court of Arbitration was to act as registry for the commissions which sat at the Hague; but if they sat elsewhere, a Secretary General was to be appointed, whose office was to serve as registry (Articles XV, XVI)
>
> 3. The parties might agree upon rules of procedure, otherwise the rules comprised in Articles 19-32 were to be applicable (Article XVII), and details of procedure not covered by the treaty or by Articles 19-32, were to be determined by the commission (Article XVIII).
>
> 4. The report of the commission was to be signed by all its members; if a member refused to sign, the fact was to be mentioned, but the validity of the report was not to be thereby affected (Article XXXIII). The report of the commission was to be read in open court, the agents and counsel of the parties being present or duly summoned to attend, a copy was to be furnished to each party (Article XXXIV).
>
> The provisions as to the purpose and functions of the commissions, are practically the same in both conventions. The differences between the provisions of the two conventions on this subject relate chiefly to details of procedure, with which it is not necessary to deal.

Good Offices and Mediation

Since there are only seven articles (2-7) in the Conference 1899 relating to Good Offices and Mediation, I will quote them exactly.

Article II

In case of serious disagreement or conflict, before an appeal to arms, the Signatory Powers recommend that one or more Powers, strangers to the dispute, should on their own initiative, and as far as circumstances may allow, offer their good offices or mediation to the States at variance.

Powers, strangers to the dispute, have the right to offer good offices or mediation, even during the course of hostilities.

The exercise of this right can never be regarded by one or the other of the parties in conflict as an unfriendly act.

Article IV

The part of the mediator is in reconciling the opposing claims and appeasing the feelings of resentment which may have arisen between the States at variance.

Article V

The functions of the mediator are at an end when once it is declared, either by one of the parties to the dispute, or by the mediator himself, that the means of reconciliation proposed by him are not accepted.

Article VI

Good offices and Mediation, either at the request of the parties at variance, or on the initiative of Powers strangers to the dispute, have exclusively the character of advice and never have binding force.

Article VII

The acceptance of mediation cannot, unless there be an agreement to the contrary, have the effect of interrupting, delaying, or hindering mobilization or other measures of preparation for war.

If mediation occurs after the commencement of hostilities, it causes no interruption to the military operations in progress, unless there be an agreement to the contrary.

Article VIII

The Signatory Powers are agreed in recommending the application, when circumstances allow, of a special mediation in the following form:

In case of a serious difference endangering the peace, the States at variance choose respectively a Power, to whom they intrust the mission of entering into direct communication with the Power chosen, on the other side with the object of preventing the rupture of pacific relations.

For the period of this mandate, the term of which, unless otherwise stipulated, cannot exceed thirty days, the States in conflict cease from all direct communication on the subject of the dispute, which is regarded as referred exclusively to the mediating Powers, who must use their best efforts to settle it.

In case of a definite rupture of pacific relations, these Powers are charged with the joint task of taking advantage of any opportunity to restore peace. (X)

These articles are identically the same in the Conference of 1907 with exception of about three words which do not alter the sense at all.

It will be noticed from these articles that there is created no legal obligation either on States to offer good offices and mediation, or on the part of conflicting States to accept good offices or mediation, or on the part of such States to request States not taking part in the controversy to expend their good offices and mediation. Everything is voluntary as is also the case with Commissions of Inquiry and Arbitration under the Hague Conventions. The greatest thing these articles did was to make it possible for states to offer their good offices and mediation without their act being regarded by one or the other parties in conflict as an unfriendly act. It was not to be considered as meddling.

(X) From Hague Peace Conferences--Scott. Vol. 2.

A very important point to notice about these articles, is that the nature of controversies to which good offices and mediation is applicable is not specified; therefore, political and judicial controversies involving a mere question of fact, or touching the independence, vital interests, or honor of the conflicting nations, may be the subject of good offices and mediation.

Previous to the 1899 Conference, they had been considered as extended to States in conflict through the inactivity of some stranger or strangers to the dispute. The articles of conference provide a system of mediation in which the States in controversy co-operate. The States in controversy each choose a power, which they ask to enter into negotiations with the other power. If belligerents should regard the offering of good offices and mediation by a third power, as meddling, then the belligerents can have recourse to this other system of mediation.

Arbitration

Since there are so many articles in the Hague conferences on Arbitration, I will not quote them all, but will give a summary of them.

There were four distinct phases of arbitration dealt with in the Conventions, viz; the general system of arbitral justice, the establishment of permanent court, arbitral procedure and arbitration by summary procedure. I will omit the third phase from my discussion.

The articles of the Conference of 1907 on the general system of arbitration are as follows:

Article XXXVII

International arbitration has for its object the settlement of differences between states by judges of their own choice, and on the basis of respect for law.

(Recourse to arbitration implies an engage ment to submit in good faith to the award)

Article XXXVIII

In questions of a legal nature and especially in the interpretation of application of international conventions, arbitration is recognized by the (contracting) powers as the most effictive, and at the same time the most equitable, means of settling disputes which diplomacy has failed to settle.

(Consequently, it would be desirable that, in disputes about the above mentioned questions, the contracting powers should, if the case arose, have recourse to arbitration, in so far as circumstances permit).

Article XXXIX

The arbitration convention is concluded for questions already existing or for questions which may arise eventually.

It may embrace any dispute or only disputes of a certain category.

Article XL

Independently of general or private treaties expressly stipulating recourse, as obligatory on the contracting powers, the said powers reserve to themselves the right of concluding new agreements, general or particular, with a view of extending compulsion arbitration to all cases which they may consider it possible to submit to it. (X)

There is very little comment needed on these articles. They are very plain. While they undoubtedly have had a great deal to do with furthering arbitration, yet they have not stood the final test as was seen by the last war (1914). The chief fault with them is that they make arbitration purely voluntary. This is the great fault with all the provisions of the Hague Conferences in regard to

6

From Hague Peace Conferences--Scott. Vol. 2.

the methods of settling international disputes. The articles of arbitration impose absolutely no obligation on the signatory Powers to submit to arbitration. The submission to arbitration of differences of a judicial character, and especially those regarding the interpretation or application of treaties, for which the signatory powers recognized arbitration as the most efficacious and equitable method, was purely a voluntary matter.

The Permanent Court of Arbitration.

"For the purpose of facilitating" recourse to arbitration, the signatory powers undertook in 1899 to establish a Permanent Court of Arbitration, which they agreed to maintain at the Conferences of 1907.

The seat of the court is at the Hague. It is competent for all arbitration cases unless the parties at variance institute a special tribunal.

The court consists of a panel of judges, four of whom at the most are selected by each signatory power. The selection by two or more powers of the same person, whether by agreement or otherwise is permitted. The term of appointment capable of renewal, is six years. The arbitrators in a particular case are chosen from the general list. In case of disagreement as to the composition of the Court, each party appoints two arbitrators, "of whom one only can be its national or chosen from among the persons selected by it as members of the Permanent Court". These arbitrators choose an umpire. If they disagree, then his choice is entrusted to a third Power selected by agreement between the parties. If the parties cannot agree

on the selection of the third Power, then each party selects a different Power, which two together select an umpire. If in two months time these two Powers have not been able to agree on the selection of an umpire, then each presents two candidates from the list of members of the Permanent Court, exclusive of the members selected by the parties, and who are not nationals of either of them. From these candidates the umpire is determined by lot.

When the tribunal has been constituted, the parties inform the Bureau (which conducts the administrative business of the court etc.) that they desire to have recourse to the Court, giving the text of their "compromise", which is their special agreement to arbitrate, and the names of the arbitrators. The Bureau then communicates to each arbitrator the "compromise" and names of the other arbitrators. The Tribunal then assembles at the date fixed by the parties. The parties may agree upon such rules of arbitral procedure as they like. In the absence of any agreement on rules, the Convention has laid down a procedure, which may be followed. The arbitral award is given after deliberation behind closed doors, and the proceedings remain secret. The majority of votes of the members of the tribunal makes the decision of that body. The award when pronounced is binding and without appeal unless the possibility of an appeal has been stated in the "compromise", in which case it may be made only on the ground of the discovery of some new fact which was unknown to the tribunal and appealing party at the time the discussion was closed, and which may exercise a decisive influence on the award. The treaty of arbitration must state the period of time within which

the demand for a rehearing must be made.

Recourse to this court of arbitration is of course, voluntary. There were attempts made at the Conferences of 1899 and 1907 to make recourse to arbitration obligatory, but they were unsuccessful.

The defects of such a court as I have described, can be easily seen. Indeed it has not the qualities of a court except in the rendering of a decision. Everything else about it is as far from the idea of a court as can be. It is just a mere panel of men which the various states have nominated. It is nothing like a permanent body sitting all the time. The court makes its award and then goes out of existence. It has no definite jurisdiction, and there is no obligation on the part of the states to submit to it. The judges have no way of building up a precedent system for International Law. This is certainly far from the idea of a court. It is not known that any party to the Convention has, when confronted with a grave issue made use of the Bureau for the purpose of informing its adversary of a readiness to arbitrate.

Arbitration by Summary Procedure (1907)

The following are the articles for Summary Procedure:

Article LXXVI

> With a view to facilitating the working of the system of arbitration in disputes admitting of a summary procedure, the contracting powers adopt the following rules, which shall be observed in the absence of other arrangements and subject to the reservation that the provisions of Chapter III apply so far as may be.

Article LXXXVII

Each of the parties in dispute appoint an arbitrator. The two arbitrators thus selected choose an umpire. If they do not agree on this point, each of them proposes two candidates taken from from the general list of the members of the Permanent Court exclusive of the members appointed by either of the parties and not being nationals of either of them; which of the candidates thus proposed shall be the umpire is determined by lot. The umpire presides over the tribunal, which gives its decisions by a majority of votes.

Article LXXXVIII

In the absence of any previous agreement the tribunal, as soon as it is formed, settles the time within which two parties must submit their respective cases to it.

Article LXXXIX

Each party is represented before the tribunal by an agent, who serves as intermediary between the tribunal and the government who appointed him.

Article XC

The proceedings are conducted exclusively in writing. Each party, however, is entitled to ask that witnesses and experts should be called. The tribunal has, for its part, the right to demand oral explanations from the agents of the two parties, as well as from the experts and witnesses whose appearance in court it may consider useful. (X)

(C) By the Covenant of the League of Nations.

I now come to the greatest achievement yet made from the standpoint of preserving peace, viz; the Covenant of the League of Nations. There is no question about it but that the Hague Conventions went a long way towards adjusting international disputes by amicable means, but they were absolutely no good when the crucial test came

(X) From Hague Peace Conferences (Vol. 2) — Scott.

in 1914, and as a result the world was plunged into the most destructive war, mankind has ever seen. Serbia declared her willingness to arbitrate, but due to the hitherto voluntary character of arbitration, Austria refused and this refusal was responsible for all the agony and suffering endured.

Germany by her violating Belgium, showed to the world, that she considered the treaty guarantying Belgium as a mere scrap of paper.

The above facts illustrate how poorly international law had up to that time provided for such cases. It provided no remedy in case a powerful nation broke a treaty.

In remedying such conditions, the Covenant of the League of Nations has certainly gone a long ways. While war is still possible, yet it is certainly not probable if nations will join the League and the League is run efficiently.

While the articles in the Covenant relating to the settlement of international disputes are fairly long, yet because of their extreme importance, in showing how many defects in the method of settling disputes have been remedied, I think it would be well to quote them exactly and then comment on them:

Article XII

> The Members of the League agree that if there should arise between them any dispute likely to lead to a rupture, they will submit the matter either to arbitration or to inquiry by the Council and they agree in no case to resort to war until three months after the award by the arbitrators or the report by the Council.
>
> In any case under this Article the award of the arbitrators shall be made within a reasonable time, and the report of the Council shall be made within six months after the submission of the dispute.

Article XIII

The members of the League agree that whenever any dispute shall arise between them which, they recognize to be suitable for submission to arbitration and which cannot be satisfactorily settled by diplomacy, they will submit the whole subject matter to arbitration. Disputes as to the interpretation of a treaty, as to any question of international law, as to the existence of any fact, which, if established, would constitute a breach of any international obligation, or as to the extent and nature of the reparation to be made for any such breach, are declared to be among those which are generally suitable for submission to arbitration. For the consideration of any such dispute the court of arbitration to which the case is referred shall be the court agreed upon by the parties to the dispute or stipulated in any convention existing between them.

The members of the League agree that they will carry out in full good faith any award that may be rendered and that they will not resort to war against a member of the League which complies therewith. In the event of a failure to carry out such an award, the Council shall propose what steps should be taken to give effect thereto.

Article XIV

The Council shall formulate and submit to the members of the League for adoption plans for the establishment of a permanent court of international justice. The court shall be competent to hear and determine any dispute of an international character which the parties thereto submit to it. The court may also give an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly.

Article XV

If there should arise between members of the League any dispute likely to lead to a rupture, which is not submitted to arbitration as above, the members of the League agree that they will submit the matter to the Council. Any party to the dispute may effect such submission by giving notice of the existence of the dispute to the Secretary General, who will make all necessary arrangements for a full investigation and consideration thereof. For this purpose the parties to the dispute will communicate to the Secretary General, as promptly as possible, statements of their case, all the relevant facts and papers; the Council may forthwith direct the publication thereof.

Article XV (Continued)

The Council shall endeavor to effect a settlement of any dispute, and if such efforts are successful, a statement shall be made public, giving such facts and explanations regarding the dispute and terms of settlement thereof as the Council may deem appropriate.

If the dispute is not thus settled, the Council either unanimously or by a majority vote shall make and publish a report containing a statement of the facts of the dispute and the recommendations which are deemed just and proper in regard thereto.

Any member of the League represented on the Council may make public a statement of the facts of the dispute and of its conclusions regarding the same.

If a report by the Council is unanimously agreed to by the members thereof, other than the representatives of one or more of the parties to the dispute, the members of the League agree that they will not go to war with any party to the dispute which complies with the recommendations of the report.

If the Council fails to reach a report which is unanimously agreed to by the members thereof, other than the representatives of one or more of the parties to the dispute, the members of the League reserve to themselves the right to take such action as they shall consider necessary for the maintenance of right and justice.

If the dispute between the parties is claimed by one of them, and is found by the Council, to arise out of a matter which by international law is solely within the domestic jurisdiction of that party, the Council shall so report, and shall make no recommendations as to its settlement.

The Council may in any case under this Article refer the dispute to the Assembly. The dispute shall be so referred at the request of either party to the dispute, provided that such request be made within fourteen days after the submission of the dispute to the Council.

In any case referred to the Assembly all the provisions of this article and of Article XII, relating to the action and powers of the Council shall apply to the action and powers of the Assembly, provided that a report made by the Assembly, if concurred in by the representatives of those members of the League represented on the Council and of a majority of the other members of the League, exclusive in each case of the representatives of the parties to the dispute, shall have the same force as a report by the Council concurred in by all the members thereof other than the representatives of one or more of the parties to the dispute.

Article XVI

Should any member of the League resort to war in disregard of its covenants under Articles XII, XIII or XV, it shall ipso facto be deemed to have committed an act of war against all other members of the League, which hereby undertake immediately to subject it to the severance of all trade of financial relations, the prohibition of all intercourse between their nationals and the nationals of the covenant-breaking State and the prevention of all financial, commercial, or personal intercourse between the nationals of the covenant-breaking State and nationals of any other State, whether a member of the League or not.

It shall be the duty of the Council in such case to recommend to the several Governments concerned what effective military or naval forces the members of the League shall severally contribute to the araments of forces to be used to protect the covenants of the League.

The members of the League agree, further, that they will mutually support one another in the financial and economic measures which are taken under this article, in order to minimize the loss and inconvenience resulting from the above measures, and that they will mutually support one another in resisting any special covenant-breaking States, and that they will take the necessary steps to afford passage through their territory to the forces of any of the members of the League which are co-operating to protect the covenants. of the League.

Any member of the League which has violated any covenant of the League may be declared to be no longer a member of the League by a vote of the Council concurred in by the Representatives of all the other Members of the League represented thereon.

Article XVII

In the event of a dispute between a Member of the League and a State which is not a Member of the League, or between States not Members of the League the State or States not Members of the League shall be invited to accept the obligations of the membership in the League for the purposes of such dispute, upon such conditions as the Council may deem just. If such invitation is accepted, the provisions of Article XII to XVI inclusive shall be applied with such modifications as may be deemed necessary by the Council.

Upon such invitation being given, the Council shall immediately institute an inquiry into the circumstances of the dispute and recommend such action as may seem best and most effectual in the circumstances.

If a State so invited shall refuse to accept the obligations of membership in the League for the purposes

Article XVII (Continued)

of such dispute, and shall resort to war against a member of the League, the provisions of Article XVI shall be applicable as against the State taking such action.

If both parties to the dispute, when so invited, refuse to accept the obligations of membership in the League for the purposes of such dispute, the Council may take such measures and make such recommendations as willprevent hostilities and will result in the settlement of the dispute.

By Article XII it is noticed that the members "agree in no case to go to war until three months after the award by the arbitrators. This gives an additional delay in which diplomacy has a chance to work and public opinion has a chance to form in regard to the award or report given.

Article XIII puts diplomacy in the foreground as a method of settling disputes, but in case the matter is not settled by diplomacy and is suitable for arbitration, the members agree to submit it to arbitration and the article defines what is meant by justiciable disputes.

Article XIV, provides for the establishment of a Permanent Court of International Justice, of which I will treat later.

Article XV, makes the long needed provision for the non-justiciable class of disputes. It should be noticed that this article does not make the submission voluntary which has been the one great fault heretofore, for if the dispute is not submitted to arbitration the Members of the League agree that

"they will submit the matter to the Council," which acts as a Commission of Inquiry. Also, if the Council fails to come to an agreement concerning the matter" the Members of the League reserve to themselves the right to take such action as they shall consider necessary for the maintenance of right and justice." The dispute may be referred to the Assembly if one of the parties requests it. The most conspicuous thing about this article, is that if one of the parties to the dispute complies with the recommendations of the report, even though the other parties to the dispute may not, then the members of the League, including the parties which do not comply with the report, agree not to go to war with the member that accepts the decision. This is nothing more nor less than the compulsory settlement of disputes.

Article XVI, provides that the sanction for violations of the Covenant. The sanctions are of two kinds, viz; automatic sanctions and those of force. The automatic sanctions include thosecomplete severance by other members of the League of all commercial and financial relations, of diplomatic relations, and a complete and effective boycott, against the Covenant-breaker. These sanctions automatically become effective against a Covenant breaker.

Then there is also provision made in this article for the use of force against a violator of the Covenant. It will be noticed that this is not an automatic sanction, but depends on the unanimous agreement of the Council and would most likely be

used in case the automatic sanctions are not effective enough.

It might be well to list here some of the things which would make a member a Covenant-breaker.

1. Disregard of the three month delay before declaring war.

2. Refusal to submit a dispute to either Arbitration of Inquiry and Conciliation.

3. Going to war with a member that complies with the report of the Council.

If there should be a dispute between a member of the League and a non-member, the latter would be a Covenant-breaker if it did not conform to the requirement for the settlement of disputes.

Article XVII, makes provisions for disputes in which non-members are involved.

It might be said in concluding this part of the discussion of the League, that the two outstanding features of the articles discussed, are the compulsory settlement of disputes, and the provision for sanctions in case members disregard the covenant.

The International Court of Justice.

In accordance with the provision of Article XIV, of the Covenant of the League of Nations, a group of eminent jurists was appointed in 1920 by the Council to draw up a plan for an International Court of Justice. Mr. Elihu Root, from the United States was in this group. After working five or six months on the plan the jurists submitted it to the Council and the Assembly, and with

a few minor changes it was adopted. The plan was then submitted to the various members of the League, most of whom have ratified it. I will confine myself here to giving a brief summary of the plan quoting exact some of the articles, and then briefly comparing this court with that of the Hague.

Article I

The Court is in addition to the Court of Arbitration at the Hague and any special arbitral tribunals to which States may wish to submit their disputes.

Article II

The Court "shall be composed of a body of independent judges, elected regardless of their nationality from among persons of high moral character, who possess the qualifications required in their respective countries for appointment to the highest judicial offices, or are juris-counsels of recognized competence in international law."

Article III

"The Court shall consist of fifteen members; eleven judges and four deputy judges. The number of judges and deputy judges may hereafter be increased by the Assembly, upon the proposal of the Council of the League of Nations, to a total of fifteen judges and six deputy judges".

Article IV

"The members of the Court shall be elected by the Assembly and by the Council from a list of persons nominated by the national groups in the Court of Arbitration, in accordance with the following provisions.

"In the case of members of the League of Nations not represented in the Permanent Court of Arbitration, the list of candidates shall be drawn up by national groups appointed for this purpose by their governments under the same conditions as those prescribed for members of the Permanent Court of Arbitration by Article XLIV of the Convention of The Hague of 1907 for the Pacific settlement of International Disputes".

Article V

"No group may nominate more than four persons, not more than two of whom shall be of their own nationality. In no case must the members of candidates nominated be more than double the number of seats to be filled".

Article VIII

The Assembly and Council are to proceed independently of one another in electing the judges, and the deputy judges.

Article X

Those candidates obtaining an absolute majority of votes in the Assembly and in the Council are considered as elected.

In case of more than one national of the same member of the League being elected, the eldest of these only is considered as elected.

Article XIII

Members of the Court are elected for nine years, but may be re-elected.

Article XVI

The ordinary members of the Court are not to exercise any political or administrative function. This does not apply to deputy judges except when performing their duties on the Court.

Any doubt on this point is to be settled by the decision of the Court.

Article XVII

No member of the Court can act as agent, counsel, or advocate in any case of an international nature nor participate in a decision of any case in which he has previously taken an active part in these roles.

Article XVIII

"A member of the Court cannot be dismissed unless, in the unanimous opinion of the other members, he has ceased to fulfil the required conditions".

Article XIX

"The members of the Court, when engaged on the business of the Court, shall enjoy diplomatic privileges and immunities."

Article XXI

The Court elects its President and Vice President for three years, but they may be re-elected.

Article XXII

The seat of the Court is at the Hague.

Article XXIII

A session of the Court is to be held every year.
The President may summon an extraordinary session when necessary.

Article XXXI

Judges of the nationality of each contesting party shall retain their right to sit in the case before the Court.
If a judge of the nationality of only one of the parties is on the bench, the other party, may select from the deputy judges one of its nationality if there be one, and if not the party may choose a judge, preferably from among the persons nominated as candidates as provided in Articles IV and V. This procedure applies also, if neither of the parties has a judge of its nationality on the bench.

Article XXXIV

"Only States or members of the League of Nations can be parties in cases before the Court".

Article XXXV

This article is a statement of the conditions under which the Court is to be open to states not members of the League, which conditions are to be laid down by the Council.

Article XXXVI

The jurisdiction of the Court comprises all cases which parties may refer to it.

The members of the League and the states mentioned in the annex to the Covenant may when signing the protocal or later declare that they recognize as compulsory, "ipso facto", and without special agreement, in relation to any other member or state accepting the same obligation, the jurisdiction of the Court in all or any of the classes of legal disputes concerning:

(a) "The interpretation of a treaty.

(b) "Any question of international law.

(c) "The existence of any fact which, if established, would constitite a breach of an international obligation.

(d) "The nature or extent of the reparation to be made for the breach of an international obligation.

"The declaration referred to above may be made unconditionally or on condition of reciprocity on the part of several or certain members or states or for a certain time.

"In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court".

Article XXXVIII

The Court shall apply:

1. International Conventions.

2. International custom.

3. The general principles of law recognized by civilized nations.

4. Judicial decisions and teachings of the most highly qualified pubicists of the various nations

4. (Continued)

as subsidiary means for the determination of rules of law.

The Court may, however, decide a case ex aequo et bono, if the parties agree thereto.

Article XXXIX

The official languages of the Court are to be French and English.

Article XLVI

The hearing in Court is to be public unless the Court decide or the parties demand that the public be not admitted.

Article LIII

If one of the parties fails to appear before the court to defend his case, the other party may call on the Court to decide in his favor, which the Court may do if is satisfied that it has jurisdiction, and that the claim of the party is well founded in fact and law.

Article LV

All questions to be decided by majority of judges at the hearing. In case of a tie, the President or his deputy has a casting vote.

Article LIX

The decision of the Court is binding only on the parties and in respect to the particular case.

Article LX

The judgment is final and without appeal.

Article LXI

An application for revision of judgment may be made only when it is based on the discovery of some fact of such a nature as to be a decisive factor, and which was unknown both to the Court and the parties claiming revision, at the time the judgment was given, provided that such ignorance was not due to negligence.

How much more like a real court is this one than that established at the Hague! How much more practical it is! It is not a mere series of names, but is a permanent tribunal. Whereas the Hague court had no jurisdiction that was definite, the powers of this court are clearly defined, and the court may decide any type of dispute whereas in the Hague court those involving vital interests were not in its jurisdiction. The method of selecting the judges is far superior to any method of the Hague. The big states have an equal voice in the selection of judges with those of the smaller states. Under this court there is a chance for a case system of International Law to be built up if it is desired.

Part III Citation of certain Important International Cases, that have been decided by Amicable Modes.

(A) Commission of Inquiry.

On October 21, 1904, during the Russo-Japanese War, the Russian Baltic Fleet, on its way to the Far East, fired into the Hull (British) fishing fleet off the Dogger Bank in the North Sea, killing two fishermen, wounding six, sinking one trawler, The Crane, and damaging five others. Great Britain demanded an apology from Russia, damage and punishment for those responsible. Russia maintained that the firing was caused by the approach of some Japanese torpedo boats, and that she could not punish those in command. The two parties agreed on the establishment of a Commission of Inquiry,

who was to "inquire into and report on all the circumstances relative to the North Sea incident, and particularly on the question as to where the responsibility lies, and the degree of blame attaching to the subjects of the two high contracting parties or to the subject of other countries in the event of their responsibility being established by the inquiry". (Article II) Under the other articles of the agreement, the commission was to settle its own procedure; the parties were to afford every facility necessary to insure the success of the commission. Paris was designated as the place of meeting, which was to be held as soon as possible after the signing of the agreement; a report, signed by all the commissioners was to be presented to the two parties; all decisions were to be taken by a majority of votes; and the expenses of the commission were to be shared equally by the two governments. The commission consisted of five naval officers of high rank - one British, one Russion one American, one Frenchman, and one Austrian.

The Commission reported that no Japanese vessels had been among the fishing fleet, that the firing was not justifiable, that Admiral Rojdestvensky, Commander of the Russian fleet was responsible for the occurrence, but that these facts were "not of a nature to cast any discredit upon the military qualities or the humanity of Admiral Rojdestvensky, or of the personnel of his squadron".

Great Britain because of the last part of this report did not insist on the punishment of the Russian Admiral, but got $65,000.00 as an indemnity.

This case showed the success of a Commission of Inquiry. Great Britain was greatly incensed at Russia and the issue was very grave. The question of fact concerned was whether Japanese torpedo boats had been among the fishing fleet. The Russian Admiral had had information that these torpedo boats were around, and therefore, fired into what turned out to be harmless fishing boats.

According to the Hague Conventions, the purpose of a Commission of Inquiry was to determine the fact involved, and its report was in no way to have the character of an arbitral award. While the report of the Commission in the Dogger Bank case did not have the character of an arbitral award, yet the Commission was to fix the responsibility for the occurrence, and this was certainly an extra duty which Commissions of Inquiry do not generally have.

(B) Cases of Good Offices and Mediation.

Mediation was frequently resorted to in the Middle ages, especially, by the Pope. In modern times the tendency to mediation has greatly increased, and there have been few cases of international disputes in recent times in which, friendly powers have not tendered their good offices to conflicting states. While it is true, that these offices have not always been accepted, yet their effect has been beneficial.

Generally speaking, especially before the Hague Convention of 1899 States were somewhat delicate about tendering their good offices because of the fear that it might be interpreted as an

unfriendly act to one of the disputant nations. While it was, of course, frequently done, yet it was necessary to use caution. The HÄgue Conventions, of course, eliminated all of this fear, and made the tendering of good offices very much easier.

Venezuela-Guiana Boundary Question.

This case is a good instance of the distinction between "good offices" and "mediation".

In this case the United States's suggestion of mediation to the British Government, "to promote an amicable settlement of the respective claims of Great Britain and Venezuela", was declined and yet the "good offices" of the United States resulted in a Treaty between Great Britain and Venezuela to submit the question to Arbitration. (X)

This is an example of "good offices" only. If the "good offices" had been accepted, they would have resulted in "mediation".

The Caroline Islands (1885) Case.

This is a comparatively recent instance of successful mediation which was made by Pope Leo XIII, in the dispute which arose between Germany and Spain in 1885 relative to the hoisting of the German flag on one of the Caroline Islands. Germany had consented to arbitration, but owing to the refusal of Spain to arbitration on a question affecting her indisputable territorial rights, Germany proposed the mediation of the Pope. Spain accepted, and the Pope drew up proposals accepted by the states, which became the basis of a protocol of arrangement between the Parties, signed at Rome on Dec. 17, 1885.

(X) New Methods of Adjusting International Disputes and the Future. Barlay.

Because this is such an excellent example of mediation, I am going to quote the proposals of the Pope, and part of the protocol.

The Pope Leo XIII, acting as mediator between Germany and Spain in the controversy touching the Caroline and Pelew Islands, made the following proposition.

> "The discovery made by Spain in the sixteenth century of the Caroline and Pelew Islands which form part of the archipelago and series of acts accomplished at different periods by the Spanish Government in those same islands for the good of that nation, created a title to the sovereignty founded on the maxims of international law invoked and followed at that period in the case of analogus disputes. In fact, when one examines the history of the abovementioned acts, the authority of which is confirmed by divers documents in the archives of the Propaganda, one cannot fail to recognize the beneficial work of Spain toward those islanders. It is also to be remarked that no other government has ever exercised a similar action over them. This explains the constant tradition, which must be taken into account and the conviction of the Spanish people relative to that sovereignty, tradition and conviction which two months ago were manifested with such an ardor and animosity, capable for a moment of compromising the internal peace and relations of two friendly governments.
>
> "On the other hand, Germany and England in 1875, expressly informed the Spanish Government that they would not recognize the sovereignty of Spain over the said islands. On the contrary, the Imperial Government thought it is the effective occupation of a territory which creates the sovereignty, occupation which was never carried into effect on the part of Spain in the Caroline Islands. It was in conformity with this principle that it acted in the Island of Yap, and in that, as on its part the Spanish Government has also done, the mediator is pleased to recognize the complete loyalty of the Imperial Government.
>
> "Consequently, and in order that this divergence of views between the two governments be not an obstacle to an honorable arrangement the mediator, after having well considered the whole question, proposes that in the new convention to be stipulated they shall observe the forms of the protocol relative to the

Sooloo Archipelago signed at Madrid, on the 7th March last between the representatives of Great Britain, Germany and Spain, and that the following points to be adopted:

1. "To confirm the sovereignty of Spain over the Caroline and Pelew Islands.

2. "The Spanish Government, to render her sovereignty effective, engages to establish as quickly as possible in that archipelago a regular administration with sufficient force to guarantee order and the rights acquired.

3. "Spain offers to Germany full and entire liberty of commerce and navigation, and of fishing at the same islands, as also the right of establishing a naval station and a coal depot.

4. "The liberty of making plantations in those islands, and of founding agricultural establishments on the same footing as Spanish subjects, to be also guaranteed to Germany.

"L Card. Jacobim".

"Rome, from the Vatican, October 22, 1885"

This proposition was accepted by the governments to which it was made, and was embodied in the following protocol:

"The undersigned, His Excellency the Marquis de Molines, Ambassador of His Catholic Majesty, near the Holy See, and His Excellency M. de Schloezer, Envoy Extraordinary and Minister Plenipotentiary of his Majesty the King of Prussia near the Holy See, being duly authorized to conclude the negotiations which the governments of Spain and Germany, under the accepted mediation of Holiness the Pope, have pursued in Madrid relatively to the rights which each of said governments may have acquired to the possession of the Caroline and Pelew Islands, considering the propositions made by His Holiness as a basis for mutual understanding, have agreed upon the following articles in accordance with the propositions of the august mediator. . . ."
(Moore: International Arbitrations, Vol. V, pp. 5043-46.)
(X)

(X) International Cases --Peace.

Protection of Venezuela Citizens in France(1893)

March 14, 1893, the United States instructed its ambassador at Paris as follows:

> At the request of the Venezuelan Government, you will, with the acquiescence of the government at France, upon the retirement of the Venezuelan Minister and upon application by him, afford your friendly good offices for the protection of Venezuelan citizens in France; but you will not represent Venezuela diplomatically, nor will consuls under you, act in official representation of Venezuela. "The French Government" acquiesced in the proposed arrangement, provided, however, that the pending diplomatic questions would have to be settled between France and Venezuela themselves." This proviso was in accord with the instruction that the embassy was not to represent Venezuela diplomatically. (X)

Roosevelt's Good Offices during the Russo-Japanese War (1905).

This is a very recent and very well known example of "good offices". As a result of Roosevelt's tendering his "good offices" Russia and Japan negotiated the treaty of Portsmouth and the Russo-Japanese war was ended. It should be noted that this is an example of "good offices" not "mediation".

The following official telegrams under date of June 8, 1905, addressed to the American Ambassador at St. Petersburg and the American Minister at Tokio state Mr. Roosevelt's purpose and the means by which it was affected:

> The President feels that the time has come when, in the interest of all mankind, he must endeavor to see if it is not possible to bring to an end the terrible and lamentable conflict now being waged. With both Russia and Japan, the

(X) (This account is taken textually from Moore: Digest of Int. Law, Vol IV p 591)

United States has inherited ties of friendship and good will. It hopes for the prosperity and welfare of each, and it feels that the progress of the world is set back by the war between these two great nations. The President accordingly urges the Russian and Japanese Governments, not only for their own sakes, but in the interest of the whole civilized world, to open direct negotiations for peace with one another. The President suggests that these peace negotiations be conducted directly and exclusively between the belligerents - in other words, that there may be a meeting of Russian and Japanese plenipotentiaries or delegates, without any intermediary, in order to see if it is not possible for these representatives of the two powers to agree to terms of peace. The President earnestly asks that the Japanese Government do now agree, to such meeting, and is asking the Russian Government likewise to agree. While the President does not feel that any intermediary should be called in respect to the peace negotiations themselves, he is entirely willing to do what he properly can if the two powers concerned feel that his services will be of aid in arranging the preliminaries as to the time and place of meeting, but if even these preliminaries can be arranged directly between the two powers, or in any other way, the President will be glad, as his sole purpose is to bring about a meeting which the whole civilized world will pray may result in peace. (X)

(C) - - Cases of Arbitration.

It would be folly to attempt in this limited and extended dissussion of arbitration cases for there have been so many of them that such a discussion is quite beyond the purpose of this paper. I will give briefly in detail only one case, and will cite others.

In Asiatic and Egyptian history, there was no inter-State arbitration. Among the Greeks, the Amphictomic League

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(X) From Treaties for the Advancement of Peace 1913-1914-Scott.

was in effect a tribunal of arbitration. This was an ecclesiastical body which acted as a diplomatic assembly on certain occasions; they laid down principles of international law, and settled disputes between one City and another, e.g., between Athens and Delos (343 B. C.), between Thebes and Sparta (380 B. C.); and other cases are recorded as early as 600 and 606 B. C. Differences were also, referred to a town or to an individual, as, when Sparta arbitrated between Athens and Megara in regard to the possession of Salamis, when Periander settled the dispute regarding Sigeum between Athens and Mitylene, and when Themistocles settled the dispute between Corinth and Corcyra as to Lencadia.

Arbitration was, generally speaking, foreign to Rome's policy, a typical case in which Rome acted as arbitrator was - 445 B. C., when she arbitrated between Ardea and Aricia as to a piece of disputed land, and took possession of it herself. Three centuries later a similar thing took place in the case of Neapolis and Nola. Cyrus, King of Persia, nominated the King of India in a dispute between himself and the kingdom of Assyria. The Carthaginians, in order to avoid war, submitted their dispute, with Masinissa to the King of Numidia for arbitration. In the Middle Ages the dukes of Perugia, Bologna, and Padua, frequently acted as arbitrators. Pope Boniface VIII, in 1298 arbitrated between Philip le Bel, and Edward I of England. In 1319, Pope Leo X arbitrated between Philip the Long and the Flemish.

It is very hard to get exact figures on the number of arbitration cases for most every authority differs, but generally speaking, from "1798 when the first mixed commission met under Jay's treaty to 1904 it seems there had been some 241 instances of international arbitration; that of these Great Britain had to its credit 98; the United States 76; that they had arbitrated with one another, and that taking them together, the sponsors of this form of peaceable settlement in the modern world had arbitrated more than two thirds of all the cases of arbitration". (X)

Of the arbitration cases during the nineteenth century, The Alabama Claim Case, the Award of which was given in December 1871, the Behring Sea Seal Fisheries case, the award given in August 1893, and the Venezuela boundary question (1897), were the most famous.

In October 1902, the Hague Court decided its first case. From this time till October 13, 1922, the date of the last case decided by this court there have been seventeen awards given by it.

The most outstanding of these cases are:

United States v. Mexico (Pious finds of the Californias) Award, October 14, 1902. France v. Great Britain (Muscat Dhows). Award, August 8, 1905; Great Britain v. United States America (North Atlantic Coast Fisheries). Award September 7, 1910.

(X)From treaties for the advancement of Peace (1913-1914--Scott

United States America v. Venezuela (Orinoco S. S. Co. Claim). Award, October 25, 1910, and France v. Great Britain, (Arrest and surrender of Savarakar). Award, February 24, 1911.

The one decidedly most important case that has been dealt with by the Hague Court, was the North Atlantic Coast Fisheries Case, not only on account of the gravity of the issue generally, but also on account of the different delicate questions dealt with in the award. The case related to the respective British and American rights in Newfoundland waters under Article I of the Anglo-American Convention of October 20, 1818. It was provided in this article that the United States should for ever in common with British subjects be at liberty to take fish of all kinds on certain specified coast of Newfoundland, could dry and cure fish in any of the unsettled bays, harbors, and creeks on the specified parts of the southern shores of Newfoundland and of the coast of Labrador, but as soon as any portion of such territory became settled, it would not be lawful for the American fishermen to dry or cure fish thereat, except, by agreement with the inhabitants proprietors, or possessors of the ground. The United States renounced the liberty to take, dry or cure fish on or within three marine miles off any British American coasts, bays, creeks of harbours not included within the specified limits. American fishermen, however, had the right to enter such bays, and harbours for purposes of repairs, shelter, the purchase of wood and obtaining of water.

Differences arose as to the scope and meaning of these provisions. The right was claimed by the British authorities to deal in their regulations with the hours, days and seasons when the fish may be taken, and with the method, means and implements to be used in fishing operations.

The British and American authorities, also differed as to the mode of measuring the three marine miles off the coasts and harbours. Besides these, there were many more subsidiary differences.

The award gave the British the right to make necessary and appropriate regulations for the protection and preservation of the fisheries, and for public order and morals, provided the regulations did not unnecessarily interfere with the fishery itself, and were not so framed as to give an advantage to local over American fishermen. Any question as to the reasonableness of any regulation not settled between the two countries themselves, was to be referred to a Commission of three expert specialists, one to be designated by each of the Parties and the third not to be a national of either Party, and to be appointed by the Court.

In regard to the mode of measuring the three marine miles, it was decided by the Court, that in case of bays, the three marine miles should be measured from a straight line drawn across the body of the water at the place where it ceases to have the configuration and characteristics of a bay. At all other places, the three miles were to be measured following the irregularities of the coast. The Court recommended, however, the

method followed in the North Sea Fisheries Convention of May 8, 1882, of fixing the line at the part of the bay nearest the entrance where the width does not exceed ten miles. From the operation of this general proposition the decision excepted a certain number of bays "where the configuration of the coast and the local climatic conditions are such, that foreign fishermen, when within the geographic headlands might reasonably and bonafide believe themselves on the high seas", and fixed for these certain points between which the line should be drawn. (X)

The above is nothing more than a mere summary of this most interesting case. The full award is long and detailed and is full of interesting points connected with fishery methods, territorial waters, and bays.

Cases Decided by the League of Nations.

While the League has not been in operation long enough to decide a great many disputes, yet there are four outstanding conflicts that it so far has successfully dealt with and which show that the League is operating successfully in preventing war by helping towards amicable settlements.

The Polish-Lithuanian Dispute.

The Poles and Lithuanians ever since the Peace Conference have been fighting sporadically over their boundary. There hasn't been any regular war waged but there has been a lot of unpleasantness. In 1920, the Polish Government requested the Council of the League

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(X) This account is taken from New Methods of adjusting International Disputes and the Future---Barclay.

to endeavor to find means of averting war which threatened between Poland and Lithuania regarding the Vilna territory. The Council prevented the hostilities which seemed imminent. While neither Poland nor Lithuania saw its way to accept a draft agreement which had been drawn up by M. Paul Hymans, the Belgian Representative, and recommended to them by the Council, nevertheless, order was maintained, and the danger of war was averted. The spirit of conciliation which animated the Council, exercised its influence over the two parties, and in spite of the difficulties which still separate them, their representatives entered into a solemn engagment before the Council, in January 1922, to abstain in the future from any act of hostility.

Dispute between Serbia and Albania.

The Council, during the year 1921, dealt with this dispute which was caused by the fact that ~~the~~the Peace Conference the boundary line between Serbia and Albania was left undetermined. After failure on the part of these two countries to arrive at a settlement of that question, Serbia moved troops into that portion of Albania which she claimed. Thus under the League Covenant was equivalent to external agression, which was a violation to article X. Therefore, Great Britain advised Jugo-Slavia to withdraw her troops or she would place her under an economic boycott. Serbia withdrew her troops and the question was referred to the League for settlement which drew a boundary line acceptable to both parties.

The Aaland Island Dispute

Since 1918, the inhabitants of the Aaland Islands had often declared their wish to be separated from Finland and incorporated with Sweden. Sweden considered this wish legitimate, and claimed for the Aaland Islanders the right to hold a plebicite. Finland, however, refused this solution on the ground that the Finnish state was sovereign over its own territory.

Under the provision of Article 11, paragraph 2, of the covenant which recognizes "the friendly right of each member of the League to bring to the attention of the Assembly or of the Council any circumstance whatever affecting international relations, which threatens to disturb international peace or the good understanding between nations upon which peace depends", Great Britain brought the question before the League.

On the report of an International Commission of three Members which had made an inquiry on the spot, the Council decided that sovereignty over the islands should belong to Finland, "but that in the interest of general peace and of future good relations between Finland and Sweden, and with a view to prosperity and welfare of the Islands themselves further guarantees should be provided for the population of the Islands, and that the neutralization and non-fortification of the archipelago should be assured by an international agreement". (X)

(X) From supplement to the Monthly Summary of the League of Nations. Feb. 1922.

Such an agreement was concluded in the form of a diplomatic convention guaranteed by the Council, which is entrusted with the duty of taking those measures which are necessary to assure the observance and maintenance of the provisions of the Convention.

Dispute over Upper Silesia.

The Peace Conference had alloted Upper Silesia neither to Poland nor Germany but had made provision for a plebiscite to be taken. The result of the plebiscite satisfied neither country. Germans and Poles are very intimately mixed from the standpoint of distribution in this particular area, although the majority of the population is Poles. Germany wanted this area because it was the only remaining one in which she had any amount of coal and iron deposits. After several more unsuccessful attempts toward a solution, the question was referred to the Council of the League, which traced a frontier-line at the same time recommending that Poland and Germany should adopt certain economic guarantees which it considered indispensable in the interests of the population. Germany got certain mineral rights in the region and a portion of the territory. Poland got the rest of it.

While there were some protests from Germany and Poland, and considerable criticism in regard to the settlement, yet it was accepted, and since the decision the most complete calm has reigned in Upper Silesia, which before and after the plebiscite had been the scene of the most serious disturbances.

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